

ADMINISTRATIVE PANEL DECISION

Arniston Ltd v. Perfect Privacy, LLC / Master, Web, Planet on Demand.com
Case No. D2022-2187

1. The Parties

The Complainant is Arniston Ltd, United Kingdom, represented by Jerrold Temko, United Kingdom.

The Respondent is Perfect Privacy, LLC, United States of America (“United States”) / Master, Web, Planet on Demand.com, United States.

2. The Domain Name and Registrar

The disputed domain name <snugg.com> is registered with Register.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 15, 2022. On June 16, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 21, 2022, the Registrar transmitted by email to the Center its verification response:

- (a) confirming the disputed domain name is registered with it;
- (b) confirming the language of the registration agreement is English; and
- (c) disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint.

The Center sent an email communication to the Complainant on June 22, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. Further to a request for extension, the Complainant filed an amended Complaint on July 1, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on July 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 26, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 27, 2022.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on August 8, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

On August 30, 2022, the Panel issued Procedural Order No 1 directing the Complainant's attention to WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 3.8.1 and 3.8.2 and inviting the Complainant to submit a supplemental filing addressing the matters raised in those sections.

On September 5, 2022, the Complainant submitted a supplemental filing.

4. Factual Background

According to the Complaint, the disputed domain name was registered on August 23, 2020, and updated on August 16, 2021.

On August 26, 2021, the Complainant was incorporated as a company under the laws of England and Wales. It is based in Edinburgh, Scotland. According to the Complaint, from about the date of its incorporation, the Complainant has been trading under the name "Snugg".

From materials included in the Complainant's supplemental filing, it appears that the Complainant provides services in connection with providing or developing energy efficient homes under the tag line "Making energy efficient homes simple and affordable for everyone".

These are obviously important and potentially valuable services in times where the risks of climate change are widely recognized.

In 2022, the Complainant won a place in the Lloyds Banking Group's Launch Innovation Program. The Complainant has also been nominated in the Scottish Financial Technology Awards 2022 in the categories for Climate & Environmental Impact and for Rising Star: Best New Entrant.

The Complainant created a Twitter account, @snuggEnergy, in November 2021 and has 224 followers. The Complainant's LinkedIn page appears to have been created in 2022 and has 178 followers.

The Complainant's supplemental filing also includes examples of press coverage of the Complainant including in The Scotsman, Fintech Scotland, Digit and Smart Energy International. Each of the examples is dated in 2022.

The Complainant is the owner of a trademark registered in the United Kingdom, Registered Trademark No. UK00003730685, SNUGG, in respect of apparatus and instruments for conducting, switching, transmitting, accumulating, regulating or controlling the distribution or use of electricity in International Class 9 and associated financial consultancy and scientific and technological research and design services in International Classes 36 and 42. The trademark application was filed on December 8, 2021, and entered on the Register on March 25, 2022.

Annex 2 to the Complaint is a screenshot of what the Complainant says is the website to which the disputed domain name resolved before the Complaint was filed. The website is headed "Snugg.com". It contains a listing of, and tabs for, "related searches": iPad Air Cases, iPad Mini Cases, snugg cases, Smartphone Cases, iPhone Cases, and Macbook Covers.

Annex 3 is screenshot of what the Panel understands to be the webpage resulting from following the link for iPad Air Cases. It contains two links under the heading "Ads for "iPad Air Cases". The two "ads" have relevant headings and what appear to be URLs for "www.simplifyanswer.com" and "www.incrediblesearches.com".

According to the Complaint, "there are no links or [sic] any way of ordering these products."

Both screenshots, however, include in the upper right hand corner the Network Solutions "logo" and the message "This Page is Under Construction – Coming Soon! This site is under construction."

In December 2021 and January 2022, the Complainant made attempts to contact the Respondent through, respectively, the GoDaddy Domain Name broker service and the Network Solutions broker service offering to take a transfer of the disputed domain name for USD 5,000. The offers expired without response from the Respondent.

5. Discussion and Findings

When a respondent has defaulted, paragraph 14(a) of the Rules requires the Panel to proceed to a decision on the Complaint in the absence of exceptional circumstances. Accordingly, paragraph 15(a) of the Rules requires the Panel to decide the dispute on the basis of the statements and documents that have been submitted and any rules and principles of law deemed applicable.

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

The Complainant has proven ownership of the registered trademark for SNUGG identified in section 4 above.

The second stage of this inquiry simply requires a visual and aural comparison of the disputed domain name to the proven trademarks. This test is narrower than and thus different to the question of "likelihood of confusion" under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant,

may fall for consideration under the other elements of the Policy. See e.g. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([WIPO Overview 3.0](#)), section 1.7.

In undertaking that comparison, it is permissible in the present circumstances to disregard the generic Top Level Domain (“gTLD”) component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

Disregarding the “.com” gTLD, the disputed domain name consists of the Complainant’s registered trademark.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is identical with the Complainant’s trademark and the requirement under the first limb of the Policy is satisfied.

B. Registered and Used in Bad Faith

In the circumstances of this case, it is appropriate to consider the third requirement under the Policy next.

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see e.g. *Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd* WIPO Case No. [D2010-0470](#).

Generally speaking, therefore, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

The Complainant contends that a finding of registration and use in bad faith should follow from three matters. First, the failure of the Respondent¹ to respond to the offers of purchase. Secondly, the Respondent’s use of generic webpages which do not link to purchasing actual products. Thirdly, findings by other panels in other proceedings that the Respondent has registered multiple trademarks in bad faith. Thus, the Complainant’s central argument under this requirement is that the Respondent has not made any genuine attempt to use the disputed domain name and is merely ‘warehousing’ the disputed domain name.

That may very well be the case. Indeed, it appears to be so.

In the present case, however, the Respondent registered the disputed domain name before the Complainant applied to register its trademark. Moreover, it appears that the Respondent registered the disputed domain name before the Complainant was even incorporated or began using its trademark.

In these circumstances, [WIPO Overview 3.0](#), section 3.8 relevantly explains:

“Subject to scenarios described in 3.8.2 below, where a respondent registers a domain name before the complainant’s trademark rights accrue, panels will not normally find bad faith on the part of the respondent. (This would not however impact a panel’s assessment of a complainant’s standing under the first UDRP element.)”

“ ... ”

Section 3.8.2 further explains:

¹ As the first-named Respondent is a privacy service, the Panel will refer to the second-named Respondent as the Respondent unless the context requires the contrary.

“As an exception to the general proposition described above in 3.8.1, in certain limited circumstances where the facts of the case establish that the respondent’s intent in registering the domain name was to unfairly capitalize on the complainant’s nascent (typically as yet unregistered) trademark rights, panels have been prepared to find that the respondent has acted in bad faith.

Such scenarios include registration of a domain name: (i) shortly before or after announcement of a corporate merger, (ii) further to the respondent’s insider knowledge (e.g., a former employee), (iii) further to significant media attention (e.g., in connection with a product launch or prominent event), or (iv) following the complainant’s filing of a trademark application.”

So far as the record in this proceeding shows, circumstances of the kind referred to in section 3.8.2 of [WIPO Overview 3.0](#) do not appear to apply in this case.

Even if the date of August 23, 2021, when the Whois record was last updated reflected the date of transfer to the Respondent (a conclusion for which there is no evidence), it was still three days before the incorporation of the Complainant.

The Complainant has not identified any basis on which it could be held that the Respondent registered the disputed domain name with some intention of targeting the Complainant or its trademark at a time when the Complainant did not exist and had not even begun using the trademark.

Accordingly, the Complainant has not proved that the Respondent registered the disputed domain name in bad faith.

This is significant because, as noted above, both registration in bad faith and use in bad faith must be established.

As the Complainant has not established that the disputed domain name was registered in bad faith, therefore the Complaint must fail.

C. Rights or Legitimate Interests

As the Complaint must fail, no good purpose would be served by considering the other requirements under the Policy.

6. Decision

For the foregoing reasons, the Complaint is denied.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: September 14, 2022