

ADMINISTRATIVE PANEL DECISION

Surya Carpet, Inc. v. Guifang Liu
Case No. D2022-2322

1. The Parties

The Complainant is Surya Carpet, Inc., United States of America (“United States” or “US”), represented by The Seigel Law Firm LLC, United States.

The Respondent is Guifang Liu, China.

2. The Domain Name and Registrar

The disputed domain name <suryadiscount.com> (the “Disputed Domain Name”) is registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 27, 2022. On June 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On June 28, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 June 30, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 20, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 21, 2022.

The Center appointed Nick J. Gardner as the sole panelist in this matter on July 26, 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.

4. Factual Background

The Complainant is a US Corporation. It manufactures and sells a range of rugs, carpets, and other furnishings under the brand name SURYA. Its website is linked to the domain name <surya.com>

The Complainant owns United States trademark 4327716, registered on April 30, 2013, for SURYA. This trademark is referred to as the “SURYA trademark” in this decision.

The Disputed Domain Name was registered on March 15, 2022. The filed evidence shows it has been linked to a website (the “Respondent’s Website”) which is in substance a copy of the Complainant’s website and which offers for sale what purport to be the Complainant’s products at substantial discounts.

5. Parties’ Contentions

A. Complainant

The Complainant’s contentions can be summarized as follows.

The Disputed Domain Name is similar to the SURYA trademark.

The Respondent has no rights or legitimate interests in the term “surya”.

In consequence the Complainant alleges that the Disputed Domain Name was registered and is being used in bad faith. The Complainant says the deceptive nature of the Respondent’s Website is clear evidence of bad faith. It says “[t]he Respondent is hosting a website at the domain name that is a knock-off of Complainant’s website. Respondent’s website includes an exact copy of Complainant’s stylized mark and sun logo and is offering for sale rugs. Additionally Respondent’s website displays photographs of Complainant’s rugs that were copied from Complainant’s website without authorization”. It says that by using the Disputed Domain Name, the Respondent intentionally attempted to attract for commercial gain, Internet users to the Respondent’s Website, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s Website or of a product or service on the Respondent’s Website.

B. Respondent

The Respondent did not reply to the Complainant’s contentions.

6. Discussion and Findings

Preliminary Matters

The Panel notes that no communication has been received from the Respondent. However, given the Complaint and Written Notice were sent to the relevant addresses disclosed by the Registrar, then the Panel considers that this satisfies the requirement in paragraph 2(a) of the UDRP Rules to “employ reasonably available means calculated to achieve actual notice”. Accordingly, the Panel considers it is able to proceed to determine this Complaint and to draw inferences from the Respondent’s failure to file any Response. While the Respondent’s failure to file a Response does not automatically result in a decision in favour of the Complainant, the Panel may draw appropriate inferences from the Respondent’s default (see, e.g., *Verner Panton Design v. Fontana di Luce Corp*, WIPO Case No. [D2012-1909](#)).

Substantive Matters

To succeed, in accordance with paragraph 4(a) of the Policy, the Complainant must satisfy the Panel that:

- (i) the Disputed Domain Name is identical with or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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 Complainant has rights in the SURYA trademark. The Panel finds the Disputed Domain Name is confusingly similar to this trademark. Previous UDRP panels have consistently held that domain names are identical or confusingly similar to a trademark for purposes of the Policy “when the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name” (*Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale*, WIPO Case No. [D2000-0662](#)). It is established that, where a mark is recognizable within the disputed domain name, the disputed domain name is considered to be confusingly similar to the mark (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) at section 1.7).

It is also established that the addition of a term (such as here “discount”) to a disputed domain name would not prevent a finding of confusing similarity between the domain name and the mark ([WIPO Overview 3.0](#) at section 1.8).

It is also well established that the Top-Level Domain (“TLD”), in this case “.com”, is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See [WIPO Overview 3.0](#) at section 1.11.

Accordingly, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant’s trademark and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a domain name:

- (i) before any notice to the respondent of the dispute, use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

None of these apply in the present circumstances. The Complainant has not authorised, licensed, or permitted the Respondent to register or use the Disputed Domain Name or to use SURYA trademark. The Complainant has prior rights in the SURYA trademark which precede the Respondent’s acquisition of the Disputed Domain Name. The Complainant has therefore established a *prima facie* case that the Respondent does not have any rights or legitimate interests in the Disputed Domain Name and thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Name (see, for example, *Do The Hustle, LLC v. Tropic Web*,

WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

The Panel finds that the Respondent has failed to produce any evidence to establish his rights or legitimate interests in the Disputed Domain Name. Accordingly, the Panel finds the Respondent has no rights or any legitimate interests in the Disputed Domain Name and the second condition of paragraph 4(a) of the Policy has been fulfilled.

C. Registered and Used in Bad Faith

In the present circumstances, the fact that the Disputed Domain Name was linked to the Respondent's Website which impersonated the Complainant's own website lead the Panel to conclude the registration and use were in bad faith.

The Panel concludes that the Respondent chose to register a domain name comprising the Complainant's trademark combined with the descriptive word "discount" in order to facilitate a scheme where the Respondent's website impersonated that of the Complainant.

Under paragraph 4(b) of the Policy a non-exhaustive list of factors evidencing registration and use in bad faith comprises:

- (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

In the present circumstances the Panel agrees with the Complainant that factor (iv) applies as the Respondent was seeking to achieve commercial gain by impersonating the Complainant. The Panel also finds that the Respondent is disrupting the business of Complainant given the Respondent's Website directly impersonates the Complainant's own website. The Panel also notes that the Respondent has not filed a Response and hence has not availed himself of the opportunity to present any case of good faith that he might have. The Panel infers that none exists.

Accordingly, the Panel finds that the Disputed Domain Name has been registered and is being used in bad faith and the third condition of paragraph 4(a) of the Policy has been fulfilled.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Disputed Domain Name <suryadiscout.com> be transferred to the Complainant.

/Nick J. Gardner/

Nick J. Gardner

Sole Panelist

Date: August 8, 2022