

ADMINISTRATIVE PANEL DECISION

BIRGER CHRISTENSEN A/S v. Rxsjn Yncjs

Case No. D2023-0315

1. The Parties

Complainant is BIRGER CHRISTENSEN A/S, Denmark, represented by Plesner Law Firm, Denmark.

Respondent is Rxsjn Yncjs, China.

2. The Domain Name and Registrar

The disputed domain name <rotate-birger-christensen.com> 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 January 24, 2023. On January 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 26, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Domain Protection Services, Inc.) and contact information in the Complaint. The Center sent an email communication to Complainant on February 3, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on February 5, 2023.

The Center verified that the Complaint together with the amendment to 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 Respondent of the Complaint, and the proceedings commenced on February 7, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 27, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on March 21, 2023.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on March 28, 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

Complainant is a company organized under the laws of Denmark that is active in the fashion industry.

Complainant has provided evidence that it is the registered owner of several trademarks relating to its brands ROTATE and ROTATE BIRGER CHRISTENSEN, including, but not limited to the following:

- Word mark ROTATE, International Registration with the World Intellectual Property Office (WIPO), registration number: 1458009, registration date: December 27, 2018, status: active.
- Word mark ROTATE BIRGER CHRISTENSEN, United States Patent and Trademark Office (USPTO), registration number: 6,172,632, registration date: October 13, 2020, status: active.

Moreover, Complainant has demonstrated to own the domain name <rotatebirgerchristensen.com> which resolves to Complainant's main website at "www.rotatebirgerchristensen.com", promoting Complainant's fashion products and related services worldwide.

Respondent, according to the disclosed Whois information for the disputed domain name, is located in China and registered the disputed domain name on July 8, 2022, which resolves to a website at "www.rotate-birger-christensen.com", which has a similar look and feel as Complainant's official website and as well purportedly offers fashion products for online sale, thereby prominently displaying Complainant's trademarks and brands ROTATE as well as ROTATE BIRGER CHRISTENSEN without any authorization to do so.

Complainant requests that the disputed domain name be transferred to Complainant.

5. Parties' Contentions

A. Complainant

Complainant contends to be a very famous European fashion brand with roots in Denmark going back to the year 1928, today operating globally.

Complainant submits that the disputed domain name is identical to Complainant's trademarks ROTATE as well as ROTATE BIRGER CHRISTENSEN, as it incorporates both of them in their entirety without any alteration. Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) Respondent has not been authorized by Complainant to use the disputed domain name nor has Respondent any connection with Complainant, and (2) Complainant has received several complaints from its customers who have been misled by the disputed domain name when buying clothes on the website thereunder which are all on sale, but which the customers never received. Finally, Complainant argues that Respondent has registered and is using the disputed domain name in bad faith since (1) given the distinctiveness and reputation of Complainant's ROTATE as well as ROTATE BIRGER CHRISTENSEN trademarks, Respondent can only have registered the disputed domain name with those trademarks in mind, and (2) the activities on the website under the disputed domain name are illegitimate and an attempt to scam consumers who deposit money under false pretenses.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

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

Respondent's default in the case at hand does not automatically result in a decision in favor of Complainant, however, paragraph 5(f) of the Rules provides that if Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint. Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from Respondent's failure to submit a Response as it considers appropriate.

A. Identical or Confusingly Similar

The Panel concludes that the disputed domain name is confusingly similar to the ROTATE and ROTATE BIRGER CHRISTENSEN trademarks in which Complainant has rights.

The disputed domain name incorporates both of Complainant's trademarks in their entirety, simply added by two hyphens. Numerous UDRP panels have recognized that where a domain name incorporates a trademark in its entirety, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered at least confusingly similar to that trademark (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7).

Therefore, Complainant has established the first element under the Policy as set forth by paragraph 4(a)(i).

B. Rights or Legitimate Interests

The Panel is further convinced on the basis of Complainant's undisputed contentions that Respondent has not made use of the disputed domain name in connection with a *bona fide* offering of goods or services, nor has Respondent been commonly known by the disputed domain name, nor can it be found that Respondent has made a legitimate noncommercial or fair use thereof without intent for commercial gain.

Respondent apparently has neither been granted a license nor has it been otherwise authorized by Complainant to use the ROTATE and/or ROTATE BIRGER CHRISTENSEN trademarks, either as a domain name or in any other way. Also, there is no reason to believe that Respondent's name somehow corresponds with the disputed domain name and Respondent does not appear to have any trademark rights associated with the terms "Rotate", "Birger" and/or "Christensen" on its own. To the contrary, Respondent is running a website under the disputed domain name, which has a similar look and feel as Complainant's official website and as well purportedly offers fashion products for online sale, thereby prominently displaying Complainant's trademarks and brands ROTATE as well as ROTATE BIRGER CHRISTENSEN without any authorization to do so. Such making use of the disputed domain names neither qualifies as *bona fide* nor as legitimate noncommercial or fair within the meaning of the Policy. Moreover, the Panel recognizes that the disputed domain name is inherently misleading which also is in contrast to find that it is used in a fair manner (see [WIPO Overview 3.0](#), section 2.5.1).

Accordingly, Complainant has established a *prima facie* case that Respondent has no rights or legitimate interests in respect of the disputed domain name. Now, the burden of production shifts to Respondent to come forward with appropriate allegations or evidence demonstrating such rights or legitimate interests (see [WIPO Overview 3.0](#), section 2.1). Given that Respondent has defaulted, it has not met that burden.

The Panel, therefore, finds that Complainant has also satisfied paragraph 4(a)(ii) and, thus, the second element of the Policy.

C. Registered and Used in Bad Faith

The Panel finally holds that the disputed domain name was registered and is being used by Respondent in bad faith.

Given the nature of the disputed domain name which incorporates both of Complainant's ROTATE and ROTATE BIRGER CHRISTENSEN trademarks in their entirety without any alteration, except for adding two hyphens, leaves no doubt that Respondent was well aware of Complainant's trademark rights when registering the disputed domain name and that the latter is directly targeting such trademarks. Moreover, resolving the disputed domain name which incorporates Complainant's ROTATE and ROTATE BIRGER CHRISTENSEN trademarks in their entirety, to a website at "www.rotate-birger-christensen.com", which has a similar look and feel as Complainant's official website and as well purportedly offers fashion products for online sale, thereby prominently displaying Complainant's trademarks and brands ROTATE as well as ROTATE BIRGER CHRISTENSEN without any authorization to do so, is a clear indication that Respondent intentionally attempted to attract, for commercial gain, Internet users to its own website by creating a likelihood of confusing with Complainant's ROTATE and ROTATE BIRGER CHRISTENSEN trademarks as to the source, sponsorship, affiliation or endorsement of Respondent's website. Such circumstances are evidence of registration and use of the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

In this context, it also carries weight in the eyes of the Panel that Respondent obviously provided false or incomplete contact information in the Whois register for the disputed domain name since, according to the case file, the Written Notice on the Notification of Complaint dated February 7, 2023, could not be delivered due to a bad address. This fact at least throws a light on Respondent's behavior which supports the Panel's bad faith finding.

Therefore, the Panel concludes that Complainant has also satisfied the third element under the Policy as set forth by paragraph 4(a)(iii).

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 <rotate-birger-christensen.com> be transferred to Complainant.

/Stephanie G. Hartung/

Stephanie G. Hartung

Sole Panelist

Date: March 30, 2023