

ADMINISTRATIVE PANEL DECISION

Maloja Clothing GmbH v. Khdeu Yeubri

Case No. D2023-0384

1. The Parties

The Complainant is Maloja Clothing GmbH, Germany, represented by BPM Legal, Germany.

The Respondent is Khdeu Yeubri, China.

2. The Domain Name and Registrar

The disputed domain name <shopmaloja.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 27, 2023. On January 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 31, 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 (Whois Agent, Domain Protection Services, Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 1, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on February 3, 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 February 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 28, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 1, 2023.

The Center appointed George R. F. Souter as the sole panelist in this matter on March 8, 2023. 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 German company which has, since 2004, been selling sports- and streetwear under its MALOJA trademark. It has flagship stores in Germany, Austria and South Korea, and trades on a worldwide basis. Its turnover is currently just over EUR 30 million.

The Complainant is the owner of the European trademark registration No. 009491317 for MALOJA, registered on April 1, 2011.

The disputed domain name was registered on May 12, 2022, and resolves to a website offering goods for sale, in competition with those of traded in by the Complainant.

5. Parties' Contentions

A Complainant

The Complainant alleges that the disputed domain name is confusingly similar to its MALOJA trademark, containing the MALOJA trademark in its entirety, with the mere addition of the descriptive or non distinctive word "shop".

The Complainant alleges that the Respondent lacks rights or legitimate interests in the disputed domain name, in particular that the Respondent is generally known by the disputed domain name, and the Complainant has never granted permission to the Respondent to use its MALOJA trademark in connection with the registration of a domain name, or otherwise.

The Complainant alleges that the disputed domain name was registered in bad faith, and is being used in bad faith in connection with the website referred to above.

B Respondent

The Respondent did not reply to the Complaint.

6 Discussion and Findings

Paragraph 4(a) of the Policy lists three elements that the Complainant must prove to merit a finding that the disputed domain name be transferred to the Complainant:

- (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. Confusing similarity

The Panel finds that the Complainant has rights to its MALOJA trademark for the purposes of these proceedings.

It is well established in prior decisions under the UDRP, with which the Panel agrees, that a generic Top Level Domain ("gTLD") may generally be disregarded when comparing a trademark with a disputed domain name. The Panel considers the ".com" gTLD to be irrelevant in the circumstances of the present case, and finds that it may be disregarded here.

The Complainant's MALOJA trademark is clearly recognizable in the disputed domain name, rendering the disputed domain names confusingly similar to the Complainant's trademark. The addition of the word "shop" does not detract from this finding.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in connection with the disputed domain names at issue.

B. Rights or Legitimate Interests

The Panel considers that the Complainant's allegations are sufficient to provide a *prima facie* case under this heading.

It is the consensus view of UDRP panels, with which the Panel agrees, that a *prima facie* case advanced by the complainant will generally be sufficient for the complainant to be deemed to have satisfied the requirement of paragraph 4(a)(ii) of the Policy, provided the respondent does not come forward with evidence demonstrating rights or legitimate interests in the domain name and the complainant has presented a sufficient *prima facie* case to succeed under paragraph 4(a)(ii) of the Policy.

The Respondent did not advance any claim of rights or legitimate interests in the disputed domain name to rebut this *prima facie* case.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel is of the view that the finding that a respondent has no rights or legitimate interests in a disputed domain name can lead, in appropriate circumstances, to a finding of registration of a disputed domain name in bad faith. The circumstances of the present case (*i.e.* Complainant's products being offered at highly reduced prices at the Respondent's website, suggesting the sale of counterfeit products), in which the Panel regards it as self-evident that the Complainant's MALOJA trademark was deliberately appropriated in the disputed domain name are such that the Panel concludes that a finding of registration in bad faith is justified, in connection with the disputed domain name and so finds.

It is well-established in prior decisions under the Policy that the use of a disputed domain name in connection with a website offering services competing with those offered by a complainant constitutes use of the disputed domain name in bad faith, and, in the circumstances of the present case, the Panel so finds.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) of the Policy.

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, <shopmaloja.com> be transferred to the Complainant.

/George R. F. Souter/

George R. F. Souter

Sole Panelist

Date: March 22, 2023