

## **ADMINISTRATIVE PANEL DECISION**

Sniffies, LLC v. Polyakov Andrey

Case No. D2023-1602

### **1. The Parties**

The Complainant is Sniffies, LLC, United States of America (“United States”), represented by Hanson Bridgett LLP, United States.

The Respondent is Polyakov Andrey, Ukraine.

### **2. The Domain Names and Registrar**

The disputed domain names <sniffies-app.com> and <sniffieshub.com> are registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 13, 2023. On April 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On April 13, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 15, 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 April 17, 2023.

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 April 18, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 8, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 10, 2023.

The Center appointed Assen Alexiev as the sole panelist in this matter on May 16, 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 provider of online platforms. In 2017, it started offering a social platform and online dating service with geolocation capabilities marketed to the gay male market under the brand SNIFFIES. The platform is available online through the website at the domain name <sniffies.com>, registered on January 31, 2015.

The Complainant is the owner of the following trademark registrations for the sign “SNIFFIES” (the “SNIFFIES trademark”):

- the United States trademark SNIFFIES with registration No. 6820819, registered on August 16, 2022 for services in International Classes 38, 42 and 45; and
- the European Union trademark SNIFFIES with registration No. 018596060, registered on November 15, 2022 for goods and services in International Classes 9, 38, 42 and 45.

The disputed domain names were registered on February 14, 2023. They resolve to similar websites that feature the Complainant’s SNIFFIES trademark and logo, advertise what is described as the Complainant’s SNIFFIES downloadable desktop application, and contain links offering visitors to download it.

There is no information about the Respondent other than its contact details provided by the Registrar and the content of the websites at the disputed domain names.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain names.

The Complainant states that the disputed domain names are confusingly similar to its SNIFFIES trademark, because they incorporate this trademark in its entirety with the addition of the descriptive words “hub” and “app”.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain names, because it is not known by them, has no relevant trademark rights and is not affiliated with the Complainant or authorized by it to use the SNIFFIES trademark or any domain names incorporating it. The Complainant submits that the Respondent does not use the disputed domain names in connection with a *bona fide* offering of goods and services, nor in a noncommercial manner or in a manner that might be deemed a legitimate fair use. The Complainant points out that the Respondent uses the disputed domain names to host websites titled “Sniffies” alongside the Complainant’s own logo, screenshots of the Complainant’s SNIFFIES web platform and the Complainant’s copyright-protected photographs and illustrations. These websites provide links with the words “Download Sniffies App for Windows Desktop for Free”, “Get Sniffies”, and other variations of the same. The Complainant points out that it does not offer a downloadable application and that its services are provided exclusively via a web platform. In the Complainant’s view, based on the character of the Respondent’s conduct, an inference can be made that the download links on the Respondent’s websites are designed to lead to a scam, fraudulent websites or malicious software. The Complainant further notes that both of the disputed domain names have “news” or “blog” webpages, containing articles purporting to give advice regarding the use of the “SNIFFIES app”, titled “valuable tips for using sniffies app” and articles to report software updates, titled “Sniffies Update Notes”.

These articles superficially appear to offer advice and updates from the perspective of the Complainant, using specific wording to suggest that the Complainant has written, approved or sponsored these websites.

The Complainant adds that the websites at the disputed domain names state that they have been created by fans of the “Sniffies app” who want “to help app developers and users” or who “want to share everything [they] know about it with other users”. These statements are however not contained on the homepages of the websites at the disputed domain names, but under separate tabs titled “Download Now” or “About Us”. According to the Complainant, these statements are not sufficient to form a defense for the Respondent’s conduct.

The Complainant contends that the disputed domain names were registered and are being used in bad faith with the intent to divert individuals looking for Complainant and its genuine SNIFFIES services for profit, in order to disrupt the Complainant’s legitimate business by misdirecting its customers through deceit to the Respondent’s websites that copy the Complainant’s website and contain links that may be fraudulent or lead to a scam. The Complainant notes that the Respondent registered the disputed domain names in 2023, which is eight years after the Complainant registered its <sniffies.com> domain name, so the Respondent was well aware of the Complainant and its prior trademark rights, and the reputation of the Complainant was instrumental to the Respondent’s deceptive scheme.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **6.1. Procedural considerations**

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition.

Since the Respondent’s mailing address is stated to be in Ukraine (whether this is indeed accurate is not clear), which is subject to an international conflict at the date of this Decision that may impact case notification, it is appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

Having considered all the circumstances of the case, the Panel is of the view that it should. The Panel has reached this conclusion in part because it is unclear whether the Respondent’s purported mailing address in Ukraine is indeed genuine. The disputed domain names contain only English words, the language of the registration agreement for them is English, and the associated websites are only in English and do not mention having any link to Ukraine. These circumstances support an inference that the Respondent is not actually located in Ukraine. The Panel notes that the Center sent the Notification of Complaint by email to the Respondent at its email address as registered with the Registrar, and there is no evidence that the case notification email to this email address was not successfully delivered.

The Panel also notes that the Complainant has specified in the Complaint that any challenge made by the Respondent to any decision to transfer or cancel the disputed domain names shall be referred to the jurisdiction of the Courts of the location of the principal office of the Registrar. In this case, the principal office of the Registrar is in Arizona, the United States.

It is moreover noted that, for the reasons which are set out later in this Decision, the Panel has no serious doubt (albeit in the absence of a formal Response) that the Respondent has registered and is using the disputed domain names in bad faith and with the intention of unfairly targeting the Complainant’s goodwill in its trademark.

On this basis, the Panel concludes that it is appropriate to issue the present decision on the substance of the dispute.

### **A. Identical or Confusingly Similar**

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of the SNIFFIES trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1

The Panel finds the entirety of the SNIFFIES trademark is reproduced within the disputed domain names and is recognizable within them. While the addition of other terms (here, "app" and "hub"), may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain names and the SNIFFIES trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

### **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names.

The Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made demonstrable preparations to use, the disputed domain names or a name corresponding to the disputed domain names in connection with a *bona fide* offering of goods or services. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2;
- the Respondent (as an individual, business, or other organization) has not been commonly known by the disputed domain names. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3;
- the Respondent is not making a legitimate noncommercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4;

– the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain names.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The evidence supports a conclusion that the disputed domain names and the Respondent's websites associated to them are designed to appear as being affiliated to the Complainant through the incorporation and use of the SNIFFIES trademark and logo, of marketing language and photographs. These websites lead consumers to click on links offering them to download a non-existent SNIFFIES desktop application. The fact that the Respondent has made the effort to do this raises the risk that it may be attempting to mislead visitors to visit unsafe locations or download malicious software. Such conduct cannot confer rights or legitimate interests of the Respondent in the disputed domain names.

Based on the available record, the Panel finds the second element of the Policy has been established.

### **C. Registered and Used in Bad Faith**

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Panel considers that the record of this case reflects that:

The Respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 the Respondent's web site or location or of a product or service on the Respondent's web site or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

In the present case, the disputed domain names are confusingly similar to the Complainant's SNIFFIES trademark and resolve to websites that use the Complainant's SNIFFIES trademark and logo, include marketing text and photos that make them appear as being affiliated to the Complainant, and offer visitors to download an actually non-existent desktop application for the use of the Complainant's SNIFFIES online platform. It is unclear what visitors of the Respondent's websites would download or access if they follow the download links there, and this may expose them to dangerous or unsafe content. The websites at the disputed domain names contain in internal webpages certain statements that they have been created by fans of the Complainant's SNIFFIES platform, but do not disclose the lack of endorsement by the Complainant of the alleged desktop application that is offered to be downloaded from them. The Respondent has not provided any explanation why it has registered the disputed domain names and does not allege having plans to use them for any legitimate activity.

In these circumstances, the Panel finds the Respondent's registration and use of the disputed domain names constitutes bad faith under the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

## 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 names <sniffies-app.com> and <sniffieshub.com> be transferred to the Complainant.

*/Assen Alexiev/*

**Assen Alexiev**

Sole Panelist

Date: May 30, 2023