

ADMINISTRATIVE PANEL DECISION

Loeffler Randall, Inc v. Xiuhua517 Sun
Case No. D2023-2136

1. The Parties

The Complainant is Loeffler Randall, Inc., United States of America (“United States”), represented by Tucker & Latifi, LLP, United States.

The Respondent is Xiuhua517 Sun, China.

2. The Domain Name and Registrar

The disputed domain name <loeffler-randall.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 May 15, 2023. On May 15, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 18, 2023, 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 May 31, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 20, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 22, 2023.

The Center appointed Federica Togo as the sole panelist in this matter on June 28, 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 in the fashion business and is the registered owner of several trademarks worldwide for LOEFFLER RANDALL, e.g., United States Trademark registration No. 6590702 registered on December 14, 2021, for goods in class 9.

The disputed domain name was registered on July 18, 2022.

Furthermore, the undisputed evidence provided by the Complainant proves that the disputed domain name resolves to a website displaying the Complainant's trademark LOEFFLER RANDALL and purportedly offering for sale products under the Complainant's trademarks.

5. Parties' Contentions

A. Complainant

It results from the Complainant's allegations that the Complainant was established in 2004 by Jessie Randall. The Complainant prides itself on making noteworthy, individual, and creative shoes, clothing, and accessories. Based out of New York City, the brands designs were a huge success, and their signature style makes them instantly recognizable by their consumers.

The Complainant uses the domain name <loefflerandall.com> in order to promote its products.

The Complainant further contends that the disputed domain name is identical to the Complainant's earlier trademark, since it simply hyphenated the LOEFFLER RANDALL trademark.

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name. According to the Complainant, the Respondent is in no way associated with the Complainant, which has not licensed, approved, or in any way consented to the Respondent's registration and use of the trademark in the disputed domain name. The Respondent is not commonly known by the disputed domain name. It is only operating the disputed domain name to purportedly sell LOEFFLER RANDALL branded goods, which are believed to be counterfeit. The Respondent seeks to create an impression of association, by prominently displaying the Complainants logo and brand name in an effort to damage the Complainant.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. According to the Complainant, Respondent is intentionally attempting to attract for commercial gain Internet users to the Respondent's website at the disputed domain name by creating a likelihood of confusion with the LOEFFLER RANDALL family of trademarks to falsely create the impression that Respondent's website and the goods and services being offered on Respondent's website at the disputed domain name are actually those of Complainant or somehow affiliated with the LOEFFLER RANDALL-branded goods of Complainant. Thus, Complainant believes that the disputed domain name has been registered and is being used in bad faith, solely to create a likelihood of confusion in the marketplace.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable". Paragraph 4(a) of the Policy requires a complainant to prove each of the following three elements in order to obtain an order that the disputed domain name be transferred or cancelled:

- (i) the disputed domain name is identical 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.

The Panel will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must establish rights in a trademark or service mark and secondly establish that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights.

It results from the evidence provided that the Complainant is the registered owner of several trademark registrations for LOEFFLER RANDALL. Reference is made in particular to United States Trademark registration No. 6590702 registered on December 14, 2021 for goods in class 9.

Prior UDRP panels have found that a disputed domain name is identical or confusingly similar to a complainant's trademark where the disputed domain name incorporates the complainant's trademark in its entirety (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") at section 1.7).

This Panel shares this view and notes that the Complainant's registered trademark LOEFFLER RANDALL is fully included in the disputed domain name.

Finally, the generic Top-Level Domain ("gTLD") ".com" of the disputed domain name may be disregarded under the first element confusing similarity test (see [WIPO Overview 3.0](#) at section 1.11.1).

In the light of the above, the Panel finds that the disputed domain name is identical to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must secondly establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests to the disputed domain name. In the Panel's view, based on the undisputed allegations stated above, the Complainant has made a *prima facie* case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights to or legitimate interests in the disputed domain name.

According to the Complaint, which has remained unchallenged, the Complainant has no relationship in any way with the Respondent and did, in particular, not authorize the Respondent's use of the trademark LOEFFLER RANDALL, e.g., by registering the disputed domain name comprising the said trademark entirely.

Furthermore, the Panel notes that there is no evidence showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

Moreover, the Panel notes that the nature of the disputed domain name carries a high risk of implied affiliation, since the disputed domain name is identical to the Complainant's trademark LOEFFLER

RANDALL and that the trademark LOEFFLER RANDALL is not a trademark that one would legitimately adopt as a domain name unless to suggest an affiliation with the Complainant. Generally speaking, previous UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation, see [WIPO Overview 3.0](#), at section 2.5.1.

It is acknowledged that once the Panel finds a *prima facie* case is made by a complainant, the burden of production under the second element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. Since the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name and the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds, in the circumstances of this case, that the Respondent has no rights or legitimate interests in the disputed domain name.

The Panel finds that the Complainant has therefore satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must thirdly establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith. One of these circumstances is that the Respondent by using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location (paragraph 4(b)(iv) of the Policy). It is the view of this Panel that these circumstances are met in the case at hand.

It results from the Complainant's documented allegations that the disputed domain name resolves to a website displaying the Complainant's trademark and purportedly offering for sale products under the Complainant's trademarks.

For the Panel, it is therefore evident that the Respondent positively knew the Complainant's mark. Consequently, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent also knew that the disputed domain name included the Complainant's trademark when it registered the disputed domain name. This is underlined by the fact that the disputed domain name is clearly constituted by the Complainant's trademark. Registration of a disputed domain name which contains a third party's mark, in awareness of said mark and in the absence of rights or legitimate interests amounts to registration in bad faith (see *e.g.*, *Marks & Spencer PLC v. Hongxia Li*, WIPO Case No. [D2022-2613](#)). In the circumstances of this case, the Panel finds that the registration of the disputed domain name was in bad faith.

Finally, the further circumstances surrounding the disputed domain name's registration and use confirm the findings that the Respondent has registered and is using the disputed domain name in bad faith (see [WIPO Overview 3.0](#) at section 3.2.1):

- (i) the nature of the disputed domain name (a domain name identical to the Complainant's mark);
- (ii) the content of the website to which the disputed domain name directs, displaying the Complainant's trademark and purportedly offering for sale products under the Complainant's trademark;
- (iii) a clear absence of rights or legitimate interests coupled with no response for the Respondent's choice of the disputed domain name.

In light of the above the Panel finds that the disputed domain name has been registered and is being used in bad faith pursuant to 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 <loeffler-randall.com> be transferred to the Complainant.

/Federica Togo/

Federica Togo

Sole Panelist

Date: July 12, 2023