

ADMINISTRATIVE PANEL DECISION

Navico Group Americas LLC v. Nan Xu
Case No. D2024-0668

1. The Parties

The Complainant is Navico Group Americas LLC, United States of America (“United States”), represented by Nelson Mullins Riley & Scarborough, L.L.P., United States.

The Respondent is Nan Xu, China.

2. The Domain Name and Registrar

The disputed domain name <ancor-us.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 February 13, 2024. On February 13, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 14, 2024, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on February 15, 2024, 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 16, 2024.

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 19, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 10, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 13, 2024.

The Center appointed Christian Gassauer-Fleissner as the sole panelist in this matter on March 19, 2024. 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 supplier of integrated systems and products to industries ranging from marine to recreational vehicle and beyond. The Complainant's portfolio of brands is comprised of industry brands in power management, digital control & monitoring, networked devices, and marine electronics, including the brand "ANCOR".

The Complainant is the owner of trademarks for ANCOR MARINE GRADE ("ANCOR MARINE GRADE trademark"), including:

- United States Trademark Registration ANCOR MARINE GRADE No. 5160032, registered on March 14, 2017; and
- International Trademark Registration ANCOR MARINE GRADE No. 1336938, registered on November 22, 2016, designated for Australia, the European Union, China, and New Zealand.

To the Panel's understanding, the term "ANCOR" is the most distinctive element of the ANCOR MARINE GRADE trademark since the designation "MARINE GRADE" refers to materials with resist corrosive effects.

The Complainant is also owner of domain names including the designation "ANCOR", such as the domain name <ancorproducts.com> ("ANCOR domain"), registered on January 12, 1997.

Further, the Complainant has established common law rights to the designation "ANCOR" ("unregistered ANCOR mark"). According to the assertions of the Complainant, such as the Complainant's "About Us" page on the website under the ANCOR domain name, the Complainant has been providing wire and electrical products designed for marine and mobile conditions and applications under the designation "ANCOR" in commerce for the past 40 years. The Whois query for the ANCOR domain name shows that it was registered on January 12, 1997. This shows that the Complainant has been offering products under the name "ANCOR" for at least 27 years. Further, the fact that the Complainant has a large public presence and the Respondent has been using the Complainant's unregistered ANCOR mark, supports the conclusion that the unregistered ANCOR mark has achieved significance as an indication of origin.

The disputed domain name was registered on September 16, 2022. At the time of the decision and when the amended Complaint was filed, the disputed domain name resolved to an active website displaying the unregistered ANCOR mark and containing highly discounted offers for products bearing the ANCOR MARINE GRADE trademark.

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 name.

Notably, the Complainant contends as follows:

On the first element of the Policy, the Complainant claims that it has rights to the unregistered ANCOR mark, as the Complainant has been providing wire and electrical products designed for marine and mobile conditions and applications under the designation "ANCOR" for the past 40 years, and the ANCOR MARINE GRADE trademark (both together "ANCOR mark"). The disputed domain name is confusingly similar to the

Complainant's ANCOR mark. The addition of the US abbreviation does not prevent from finding confusing similarity. If anything, as the Complainant's ANCOR brand is a global brand, the pairing of the designation "ANCOR" with the US abbreviation only serves to enhance confusion as the disputed domain name will be believed to be a US-specific web location for the Complainant's ANCOR brand.

On the second element of the Policy, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not commonly known by the name "ANCOR" or "ANCOR US". Moreover, the Complainant has not authorized the Respondent to use the ANCOR mark nor is the Respondent a licensee of the ANCOR mark, nor is the Respondent affiliated in any manner with the Complainant. The very nature of the Respondent's use of the disputed domain name is commercial as the Respondent is purporting to offer products for sale; therefore, the Respondent will not be able to offer any explanation that would support a finding that the Respondent is making a legitimate noncommercial use of the disputed domain name.

On the third element of the Policy, the Complainant asserts that the Respondent registered and used the disputed domain name in bad faith. The Respondent is using the disputed domain name in connection with hosting the website, which appears to be nothing more than an intentional infringement by the Respondent of the Complainant's trademarks and copyright protected images in an attempt to attract visitors to the website and to pass the website off as if it was a website operated by the Complainant to offer Complainant's products at a discount. Such clear and undeniable use of the disputed domain name to commit trademark infringement is evidence of both Respondent's bad faith registration and use of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules requires that the Panel's decision be made "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".

It has been a consensus view in previous UDRP decisions that a respondent's default (*i.e.*, failure to submit a response) would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.3.

The Complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the Complaint, namely that:

- (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. 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.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the Complainant has established unregistered trademark or service mark rights for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3.

The entirety of the (unregistered ANCOR) mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the (unregistered ANCOR) mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, the term “US”) may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. 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 name such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegal activity (here, impersonation/passing off, since the disputed domain name resolved to an active website displaying the unregistered ANCOR mark and containing highly discounted offers for products bearing the ANCOR MARINE GRADE trademark) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

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 (here, impersonation/passing off, since the disputed domain name resolved to an active website displaying the unregistered ANCOR mark and containing highly discounted offers for products bearing the ANCOR MARINE GRADE trademark) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel finds that the Complainant has established the third element 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 <ancor-us.com> be transferred to the Complainant.

/Christian Gassauer-Fleissner/

Christian Gassauer-Fleissner

Sole Panelist

Date: April 3, 2024