

ADMINISTRATIVE PANEL DECISION

Sniffies, LLC v. Pinu Roy, India

Case No. D2023-3193

1. The Parties

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

The Respondent is Pinu Roy, India.

2. The Domain Name and Registrar

The disputed domain name <sniffiesapp.org> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 25, 2023. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 8, 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 amendment to the Complaint on August 9, 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 the Respondent of the Complaint, and the proceedings commenced on August 11, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 31, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 1, 2023.

The Center appointed Mihaela Maravela as the sole panelist in this matter on September 6, 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

According to information in the Complaint, the Complainant has offered since at least February 2017 a popular SNIFFIES-branded online dating, and social meetup platform. The Complainant's SNIFFIES platform allows users to send direct messages to each other based on their geographic proximity, as well as post messages on a board that is visible to other users nearby and post listings for scheduled meet-up events.

The Complainant is the owner of the U.S. trademark registration No. 6820819 for SNIFFIES, registered on August 16, 2022. The Complainant owns and operates the domain name <sniffies.com>, which it uses as its primary official presence of and access point for consumers using the SNIFFIES platform.

The disputed domain name was registered on July 9, 2023 and resolves to an error page. According to evidence from the Complainant, the disputed domain name was used to resolve to a website that provided links to an app on the Google Play Store called "Sniffies", which appeared to be a gay male dating app.

5. Parties' Contentions

A. Complainant

The Complainant argues that the disputed domain name is confusingly similar to the Complainant's SNIFFIES trademark, as the disputed domain name is the SNIFFIES trademark appended only with the descriptive word "app" and the generic Top-Level Domain ("gTLD") ".org". The disputed domain name differs from the SNIFFIES trademark and the Complainant's <sniffies.com> domain name by only few letters which consumers are likely to perceive as evocative or suggestive of the Complainant's dating services.

As regards the second element, the Complainant argues that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not known by "sniffies" or "sniffiesapp.org", nor could the Respondent have developed any common-law trademark rights in the Complainant's senior and well-known trademarks. The Respondent is not affiliated with the Complainant, and the Complainant has not licensed or permitted the Respondent to use the SNIFFIES trademark, any other of the Complainant's trademark, or any domain names incorporating them. According to the Complainant, the Respondent's website provided links to an app on the Google Play Store called SNIFFIES, which appears to be a gay male dating app, respectively identical services with those of the Complainant. As such, the Respondent has employed the disputed domain name as part of a fraudulent scheme to pass off as or impersonate the Complainant on the Complainant's own SNIFFIES Platform and deceive the Complainant's users into visiting the disputed domain name under the deliberately mistaken assumption that the disputed domain name is associated with or controlled by the Complainant.

With respect to the third element, the Complainant argues that the Respondent was clearly aware of the Complainant and its prior trademark rights, as the reputation and renown of the Complainant was instrumental to the Respondent's deceptive scheme. Indeed, given the adult nature of the Complainant's dating and introduction services, the clear inference is that the Respondent intended to deceive and divert the Complainant's users who may believe the Complainant has an affiliation with another social-networking and meetup service.

B. Respondent

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

6. Discussion and Findings

No response has been received from the Respondent in this case. Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules. The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (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.

A. Identical or Confusingly Similar

Under paragraph 4(a)(i) of the Policy, the Complainant must prove that it has rights to a trademark, and that the disputed domain name is identical or confusingly similar to that trademark. This first element under the Policy functions primarily as a standing requirement. [WIPO Overview 3.0](#), section 1.7.

The Complainant has provided evidence of its rights in the SNIFFIES trademark by providing evidence of its trademark registrations.

As regards the second limb of the first element, the test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain name. It is well established that the generic Top-Level Domain ("gTLD") may be ignored when assessing the confusing similarity between the disputed domain name and the Complainant's trademarks as it is viewed as a standard registration requirement. See section 1.11.1 of the [WIPO Overview 3.0](#).

The disputed domain name consists of the SNIFFIES trademark, in addition to the term "app" and the gTLD ".org". The addition of the mentioned term does not prevent a finding of confusing similarity with the Complainant's trademark. The fact that a domain name wholly incorporates a complainant's trademark is sufficient to establish identity or confusing similarity for the purpose of the Policy, despite the addition of other words to such trademarks. The addition of another term (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity. See section 1.8 of the [WIPO Overview 3.0](#).

The Panel finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing 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 in the disputed domain name.

As established by previous UDRP panels, it is sufficient for the complainant to make a *prima facie* case demonstrating that the respondent has no rights or legitimate interests in the disputed domain name in order to place the burden of production of evidence on the respondent (see section 2.1 of the [WIPO Overview 3.0](#)). In the present case, the Complainant has proved it holds rights over the trademark SNIFFIES, and claims that the Respondent has no legitimate reason to acquire the disputed domain name. There is no evidence that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services, nor does the Respondent appear to engage in any legitimate noncommercial or fair use of the disputed domain names within the meaning of paragraphs 4(c)(i) and (iii) of the Policy.

Rather, according to the unrebutted evidence put forward by the Complainant, the disputed domain name resolved to a webpage displaying the Complainant's trademark and logo, and offering for download an app with the same name, and for the same services as those of the Complainant. Such use does not confer in the Panel's view rights or legitimate interests on the Respondent.

Also, there is no evidence that the Respondent is commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy.

The Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent failed to rebut that *prima facie* case because the Respondent did not respond to the Complainant's contentions.

Furthermore, the nature of the disputed domain name carries a risk of implied affiliation and cannot constitute a fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

With the evidence on file, the Panel finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

Under paragraph 4(a)(ii) of the Policy, the Complainant must prove that the disputed domain name was registered and is being used in bad faith.

According to the unrebutted assertions of the Complainant, its SNIFFIES trademarks were used in commerce well before the registration of the disputed domain name. The disputed domain name is confusingly similar to the Complainant's trademarks. Also, the disputed domain name resolved to a website offering for download an app for identical services with those of the Complainant and dispelled the Complainant's trademark and logo. Under these circumstances, it is most likely that the Respondent was aware of the Complainant's trademarks at the registration date of the disputed domain name.

As regards the use of the disputed domain name, from the evidence put forward by the Complainant and not rebutted by the Respondent, the disputed domain name directed Internet traffic to a website displaying the SNIFFIES trademark and logo and purportedly offering for download an app for identical services with those of the Complainant. Under the circumstances of this case, the Panel considers that the Respondent intentionally tried to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation of its website.

The disputed domain name currently resolves to an error page. The Panel finds that the passive holding of the disputed domain name does not in the circumstances of this case prevent a finding of bad faith.

With the evidence on file, the Panel finds that the disputed domain name was registered and is being used in bad faith, and that the requirements of paragraph 4(a)(iii) of the Policy are satisfied.

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 <sniffiesapp.org> be transferred to the Complainant.

/Mihaela Maravela/

Mihaela Maravela

Sole Panelist

Date: September 20, 2023