Decision for dispute CAC-UDRP-101673

Case number	CAC-UDRP-101673
Time of filing	2017-09-26 10:19:04
Domain names	highsnobietys.top

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	Titel Media GmbH

Complainant representative

Organization	Lubberger Lehment

Respondent

Name	chen yunfu

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that relate to the Disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the registered owner of international word trademark reg. no. 1306247 “High Snobiety”, with priority date of 13 January 2016, registered in classes 9, 16, 25, 35, 38 and 41 and EU figurative trademark reg. no. 15143498 “HIGH SNOBIETY”, with filing date of 24 February 2016, in classes 9, 16, 25, 35, 38 and 41. (“Complainant’s Trademarks”).

FACTUAL BACKGROUND

As the Respondent did not file any response to the complaint, the Panel took into account the following facts asserted by the Complainant (and supported by the documentary evidence submitted by the Complainant) and unchallenged by the Respondent:

(a) In 2005, the Complainant launched the website <highsnobiety.com> – an online platform covering forthcoming trends and news in fashion, art, music and culture. Its first corresponding print issue was published in summer 2010. The website <hisghsnobiety.com> has steadily built a strong brand in the online fashion and lifestyle world. Sneakers and footwear represents a big part of the fashion-section. Today the blog and print magazines are among the most visited global sources for inspiration in the areas of fashion, sneakers, music, art and lifestyle culture;

(b) the Complainant is the owner of the Complainant's Trademarks;

(c) the Disputed domain name was registered on 12 January 2017; and

(d) the Respondent has offered counterfeit products (sneakers) on the website operated under the Disputed domain name. The Respondent, thus, obviously tries to sell counterfeit products to consumers under the well-known Complainant's Trademarks.

The Complainant seeks transfer of the Disputed domain name to the Complainant.

PARTIES CONTENTIONS

THE COMPLAINANT:

In addition to the above factual assertions, the Complainant also contends the following:

(i) Disputed domain name is confusingly similar to Complainant's Trademarks;

(ii) the Respondent is not affiliated with the Complainant nor authorized by it in any way to use Complainant's Trademarks. The Complainant does not carry out any activity for, nor has any business with the Respondent. Therefore the Respondent has no legitimate interest in the Disputed domain name;

(iii) the use of Disputed domain name could easily mislead and make consumers believe that the domain belongs to the Complainant. This is even more applicable when considering that under the domain in question, <highsnobietys.top>, sneakers and other footwear are being offered, which also constitutes a big part of the content which is available on the original online-platform of the Complainant <highsnobiety.com>. This in connection with the fact that the Respondent sells counterfeit products under the Disputed domain name clearly evidences bad faith of the Respondent upon registration and use of the Disputed domain name.

THE RESPONDENT:

The Respondent did not provide any response to the complaint.

RIGHTS

The Panel concluded that the Disputed domain name is confusingly similar to Complainant's Trademarks within the meaning of paragraph 4(a)(i) of the Uniform Domain Name Dispute Resolution Policy ("UDRP" or "Policy").

For details, please see "Principal Reasons for the Decision".

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the Disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy.

For details, please see "Principal Reasons for the Decision".

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown that the Disputed domain name has been registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

For details, please see "Principal Reasons for the Decision".

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Paragraph 4(a) of the UDRP Policy requires that the Complainant proves each of the following three elements to obtain an order that the Disputed domain name should be transferred or revoked:

(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.

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

RIGHTS

The Disputed domain name is clearly confusingly similar to Complainant's Trademarks. The Panel agrees with the Complainant that the main part of the Disputed domain name "highsnobietys" is almost identical with the Complainant's Trademarks, as it consists of the identical term "highsnobiety" plus an "s".

For sake of completeness, the Panel asserts that the top-level suffix in the domain name (i.e. the ".top") must be disregarded under the identity / confusing similarity test as it is a necessary technical requirement of registration.

Therefore, the Panel concludes that the Complainant satisfied the requirement under paragraph 4(a)(i) of the UDRP.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP (please see, for example, WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd. <croatiaairlines.com>).

As asserted by the Complainant (and unchallenged by the Respondent), the Respondent is not commonly known by the Disputed domain name. Neither is the Respondent in any way related to the Complainant. The Respondent failed to provide any information and evidence that it has relevant rights or legitimate interests in respect of the Disputed domain name (within the meaning of paragraph 4(a) (ii) of the Policy).

Therefore, the Panel concludes that the Respondent did not establish any right or legitimate interest to the Disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

As it ensues from the documentary evidence provided by the Complainant (and unchallenged by the Respondent) a website has been operated under the Disputed domain name where the products (sneakers) similar to the ones being discussed at Complainant's original website <highsnobiety.com> are offered for sale. Therefore, Respondent has been taking unfair advantage of Complainant Trademarks' reputation by misleading the internet users to believe that the website operated under the Disputed domain name is associated with the Complainant. Moreover, as Complainant established, some of these products are counterfeit and therefore the Respondent also infringes trademarks of third parties. Use of a domain name for

such unlawful purposes is a clear evidence of Respondent's bad faith (please see CAC case no. 100419, AATC Trading AG v. Zhang San <alaiashoes.com>).

As a result, the Panel found that the Disputed domain name has been registered and used by the Respondent in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **HIGHSNOBIETYS.TOP**: Transferred

PANELLISTS

Name	**Michal Matějka**

DATE OF PANEL DECISION 2017-11-09

Publish the Decision