Decision for dispute CAC-UDRP-103758

Case number	**CAC-UDRP-103758**
Time of filing	**2021-04-26 09:04:27**
Domain names	**verifydanielwellington.com**

Case administrator

Organization	**Denisa Bilík (CAC) (Case admin)**

Complainant

Organization	**Daniel Wellington AB**

Complainant representative

Organization	**SILKA AB**

Respondent

Name	**Daniel Not known**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant owns International Registration 1135742 for the DANIEL WELLINGTON word mark registered on 3 July, 2012 and subsequently designated in numerous jurisdictions including in China.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant was founded in 2011 by Filip Tysander. Since its inception, the Complainant Wellington has established itself as one of the fastest growing and most beloved brands in the watch industry and is known for its sleek and minimalistic design. Today the brand DANIEL WELLINGTON has a very significant social media presence including in particular 4.9 million followers on Instagram. The Complainant has a broad presence in China which the Complainant says is evidenced by their local Chinese site at <danielwellington.cn>.

The Complainant has also registered several domain names, under various top level domain names, containing the term “danielwellington” see for example, <danielwellington.com> (created on February 16, 2011) and <danielwellington.asia>

(created on May 30, 2013).

The disputed domain name was registered on 9 December, 2019. According to the Registrar verification request submitted in the previous case, the name of the Respondent is merely “Daniel” and the Respondent is located in China. According to the Complainant, the disputed domain name formerly resolved to a verification site for DANIEL WELLINGTON watches but now resolves to a pay-per-click parking page.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED. The Complainant’s main contentions are noted in the "Principal Reasons For Decision" below.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

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).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown 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).

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

The Complainant has submitted that the disputed domain name incorporates the DANIEL WELLINGTON mark in its entirety. It says that the addition of the generic word ‘verify’ is insufficient to dispel the confusing similarity. It says further that the addition of the generic top level domain root “.com” does not add any distinctiveness to the disputed domain name. The Panel agrees with the Complainant and finds that the disputed domain is confusingly similar to the Complainant's DANIEL WELLINGTON registered trade mark as it wholly contains the mark. The Panel finds that neither the addition of the word "verify" nor the ".com" element, detracts from this finding. Accordingly, the Complaint succeeds under paragraph 4(a)(i) of the Policy.

The Complainant has submitted that there is no bona fide offering of goods or services since the disputed domain name incorporates a trade mark which is not owned by Respondent and it has asserted that the Respondent is not known by the name “Daniel Wellington”. It has submitted that the Respondent is not affiliated with it in any way and that the Respondent has not been authorised by the Complainant to register or use the disputed domain name, or to seek the registration of any domain name incorporating the DANIEL WELLINGTON mark. Further it has asserted that there is no evidence that the Respondent is commonly known by the disputed domain name or any similar name. In addition, the Complainant has submitted that the Respondent has not made demonstrable preparations to use the disputed domain name in connection with a bona fide offering of goods or services or for a legitimate, non-commercial use.

The Complainant's case is that the Respondent used the disputed domain name to induce consumers into visiting a website under the misapprehension that the website is endorsed by Complainant and that it enables the Complainant’s customer to enter the serial number of their watch so as to verify its authenticity. The Complainant maintains that previously the website at the disputed domain name had an identical layout to its own website, but that it now diverts to a pay per click parking page.

The Panel finds that the Complainant has made out a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has failed to rebut this case and as a result the Panel finds that the Complaint succeeds under paragraph 4(a)(ii) of the Policy.

As far as registration in bad faith is concerned, the Complainant has submitted that the DANIEL WELLINGTON mark is well-known in the fashion industry and that as a result it was highly unlikely that Respondent was not aware of the Complainant and its distinctive mark at the date of registration of the disputed domain name which was many years after the registration of the Complainant's trade mark and commencement of its business. The Complainant has noted that it has its own verification page under the official page <verify.danielwellington.com/en> and it appears to the Panel that the Respondent first sought to emulate this page by including its own DANIEL WELLINGTON verification page at the disputed domain name. That it did this and included the DANIEL WELLINGTON mark long after the Complainant commenced its international business suggests that the Respondent must have known of the Complainant's business and trade mark when it registered the disputed domain name in December 2019.

While the Complainant asserts that formerly the disputed domain name resolved to a fake verification website, it appears that it currently resolves to a pay- per-click parking site which features links to potential competitor watch brands.

Under paragraph 4(b)(iv) of the Policy the use of the disputed domain name to intentionally attempt to attract, for commercial gain, Internet users to a 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 a web site or location or of a product or service on the web site amounts to evidence of registration and use in bad faith.

According to the Complainant, which assertion remains unchallenged, the Respondent firstly sought to use the disputed domain name incorporating the Complainant’s DANIEL WELLINGTON mark for commercial gain to confuse and divert Internet users to a fake verification website that ostensibly belonged to, or was authorised by, the Complainant. Currently, the Respondent is using the disputed domain name to confuse Internet users and divert them to a pay-per-click site that features links to competitors' watch brands. This amounts to evidence of registration and use of the disputed domain name in bad faith under paragraph 4(b)(iv) of the Policy.

Accordingly, the Panel finds that the Complaint also succeeds under 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. **VERIFYDANIELWELLINGTON.COM**: Transferred

PANELLISTS

Name	**Alistair Payne**

DATE OF PANEL DECISION 2021-05-26

Publish the Decision