

Decision for dispute CAC-UDRP-104594

Case number	CAC-UDRP-104594
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Time of filing	2022-05-19 09:16:06
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Domain names	snobiety.com
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Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	Titel Media GmbH
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Complainant representative

Organization	Lubberger Lehment
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Respondent

Name	Chunkit Tang
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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 is the owner of the German trademark HIGHSNOBIETY, No. 302016000502, registered from March 3, 2016, and the IR trademark HIGHSNOBIETY, No. 1306247, registered from March 9, 2016, which are registered inter alia for downloadable software applications in class 09, printed matter in class 16, clothing in class 25 and Commercial trading and consumer information services in class 35.

The disputed domain name <snobiety.com> was registered on May 28, 2018, and acquired by the Respondent on January 6, 2022.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT:

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. Its main website currently receives 3 – 4 million unique visits per month. The website highsnobiety.com has steadily built a strong brand in the online

fashion and lifestyle world. Today the blog and print magazines sit among the most visited global sources for inspiration in the areas of fashion, sneakers, music, art, and lifestyle culture. The Complainant is headquartered in Berlin with offices in New York, Los Angeles, London, Hong Kong, Sydney, Tokyo and Milan.

The trademark of the Complainant is widely known and has a global reach via internet, social media and search engines. The corresponding Instagram account has 4.5 million followers this year. The trademark HIGHSNOBIETY occurs prominently simply by entering the sign “snobiety” as a keyword in a search engine. The trademark HIGHSNOBIETY is widely-known in the fashion and lifestyle market, in particular for its collaboration with well-known brands.

In 2022, the Complainant launched “Highsnobiety NFT Studio”, its offer of culture-focused NFT projects. A non-fungible token (NFT) is a non-interchangeable unit of data stored on a blockchain, a form of digital ledger, that can be sold and traded. NFT data units may be associated with digital files such as photos, videos, and audio. The NFT sector has various parallels to the fashion-oriented core business of the Complainant. The products in the present case are regularly launched as exclusive collaborations. Generally, NFTs (as also for, e.g., limited sneaker products) sell out very quickly and are traded on secondary markets with high price increases.

The Highsnobiety NFT studio develops and executes brand-led NFT and Web3 projects, consults with luxury and lifestyle brands on how to strategically execute within the NFT space as well as advises and connects Web3 entities with brands within the luxury and lifestyle space. Complainant’s NFT Studio follows a series of successful NFT projects. In June 2021, the Complainant released a highly coveted series of NFTs in collaboration with RTFKT, the studio which would later be acquired by the shoe and clothing manufacturer Nike to lead the brand’s Web3 projects. In January 2022, Complainant released a limited run of tokens in partnership with the well-known brand Moon Boot and an artist Geoffrey Lilemon.

The Respondent is the owner of the domain <snobiety.com> in which culture related NFT’s are offered, advertised in connection with lifestyle brands. The Respondent uses fonts for the sign “snobiety”, highly similar to the fonts used by the Complainant for the sign “Highsnobiety” as well as further elements of the corporate design of the Complainant.

a) The domain is identical or confusingly similar to a trademark or a service mark in which the Complainant has rights

The domain name <snobiety.com> is confusingly similar to the German and IR trademark HIGHSNOBIETY of the Complainant. The sign “snobiety” is the dominant element in the trademark Highsnobiety and is used in an identical manner by the Respondent. Furthermore, there is identity regarding the goods and services. The Complainant’s trademark is registered in class 9 for “downloadable software applications”. The contested account holder offers NFT and software app-related goods and services.

The presence of the “.com” generic top-level-domain is negligible.

b) Respondent has no rights or legitimate interests in respect of the domain name

The Respondent has no rights or legitimate interests in respect of the domain name <snobiety.com> (Paragraph 4 (a) (ii) UDNDRP). The Respondent is not making legitimate non-commercial or fair use of the domain name.

The Complainant has not authorized the Respondent to use the trademark HIGHSNOBIETY. The registration of the protected trademarks precedes the registration of the domain name <snobiety.com>.

Therefore, the burden of proof is on the Respondent to demonstrate that such a right or legitimate interest exists at all (cf. WIPO Case No. D2000-1228).

c) The domain name was registered and is being used in bad faith

The domain name was registered and is used in bad faith (Paragraph 4 (a) (iii) UDNDRP). The overriding objective of the UDRP is to curb the abusive registration of domain names in circumstances where the registrant seeks to profit from and exploit the

trademark of another.

The Respondent registered the disputed domain name primarily for the intentional purpose of attracting, for commercial gain, internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or product or service (Paragraph 4 (b) (iv) UDNDRP). Bad faith exists where a respondent has created a website that is nearly identical to the website of a or that creates a likelihood of confusion with a complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on your website or location.

First of all, the Complainant's trademark HIGHSNOBIETY is widely-known in the sector of fashion and lifestyle sector. The Respondent cannot claim to be unaware of the Complainant's trademark with regard to the presence and reach of the trademark HIGHSNOBIETY. The Respondent was aware of Complainant's rights at the time the domain name was registered. Furthermore, the Respondent is seeking to cause confusion for its commercial benefit by adopting the fonts of the sign "Highsnobiety" and corporate design. Besides, the Respondent started its business activities via the domain name <snobiety.com> following the announcement and launch of the Complainant's businesses with NFTs. Additionally, the Respondent targets the same area of commerce, intended consumers and geographical location. Therefore, the relevant targeted groups are assuming that they will find offers by the Complainant under the domain name <snobiety.com> (or at least assume a business relation between the parties).

PARTIES CONTENTIONS

FACTS ASSERTED BY THE RESPONDENT:

The Respondent holds the domain in trust on behalf of our business Web 3 Technologies Ltd (Co Reg. 13894192) a registered company in England. The Respondent stated, that he is a 30 years old internet entrepreneur who has experience in building digital products and ventures. For the past 2 years he has been actively buying and selling NFT (digital art and non-fungible tokens) and decided to start his own business that connects the ownership of NFTs to in real life lifestyle benefits.

In and around November 2021 (the Respondent repeatedly use the years 2022/2023 when he obviously talks about years 2021/2022 and this Panel therefore, uses the most likely years in this decision) and the Respondent established the concept and created a brand name that represented a snobberish lifestyle, upper echelon, combining two words together "Snob" commonly used term and "Society". Consequently, the word Snobiety was formed.

On the January 1, 2022, the Respondent conducted a trademark search on the IPO office in the UK, searching term "Snobiety" and no registered trademarks were found. The Respondent further conducted a trade mark search on the WIPO portal Brand, again with no results for word "Snobiety". As a consequence of not finding any conflict of trademark, the Respondent proceed to register domain name <SnobietyNFT.com> on the January 1, 2022, and acquired disputed domain name from a domain seller on the January 6, 2022, for the sum of 1,488 USD thus meaning this domain was available should the claimant wish to buy it.

Therefore, the Respondent conducted due diligence and found no registered trademarks and certainty no use classes that reflect Complainant's business affairs within the NFT space. Further, the word "Snobiety" is a commonly used expression in cultural languages and other forms of expressions.

The Complainant's trademarks are known as HIGH SNOBIETY not HIGHSNOBIETY nor SNOBIETY as shown on the Complainant's website and registered trademark logo.

The Respondent further refers to the fact that its registration predates any public announcements made by the Complainant on their intentions to venture into offering NFT (non-fungible tokens) as the articles on www.businessoffashion.com and www.nftculture.com related to the Complainant and its NFT activities are dated on March 8 and March 25, 2022.

The Respondent finally declared that he does not agree with the complaint as he did not infringe any trademarks. The Complainant has never made any contact with the Respondent prior to filing of the Complaint and the first ever notification was the email the Respondent received on the June 16, 2022 from the Claimant's lawyers.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is 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

On June 16, 2022, the Respondent indicated that it would like to file a response as the letter announcing this proceeding has been just received by the Respondent. On June 17, 2022, the Respondent provided the response and noted that it received the letter announcing the proceeding on June 16, 2022.

The deadline for the filing of the Respondent's response expired on June 12, 2022. The Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") stipulate under Section 5(f) that if a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint. On the other hand, in all cases the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case (Section 10(b) of the Rules).

The Panel has a sole discretion on the decision if the late submission shall be allowed. In this case, the late delivery of the letter announcing the proceeding could be such exceptional circumstance that prevented the Respondent from the earlier submission.

Although the response was received by e-mail and not through an online platform, its admission will enable the Panel to have a more complete appreciation of the positions of the Parties, in order to reach its decision.

With the above in mind, this Panel decided to admit, in its sole discretion, the late response presented by the Respondent.

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

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

- (i) The 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 domain name; and
- (iii) The domain name has been registered and is being used in bad faith.

I. Identical or Confusingly Similar

The Complainant has established the fact that it has valid rights for the German trademark HIGHSNOBIETY, No. 302016000502, registered from March 3, 2016, and the IR trademark HIGHSNOBIETY, No. 1306247, registered from March 9, 2016, which are registered inter alia for downloadable software applications in class 09, printed matter in class 16, clothing in class 25 and Commercial trading and consumer information services in class 35.

The disputed domain name has been registered on May 28, 2018, i.e. about 2 years after the Complainant's trademarks registrations and has been acquired by the Respondent on January 6, 2022 (the Respondent provided the date January 6,

2023, but unless he has the time machine, the Panel is of the opinion that it should be January 6, 2022).

As stated in the WIPO Jurisprudential Overview 3.0 at Section 1.2. the threshold test for confusing similarity under the UDRP involves a comparison between the trademark and the domain name itself to determine likelihood of Internet user confusion. In order to satisfy this test, the relevant trademark would generally need to be recognizable as such within the domain name.

The Complainant's trademarks consist of two words – HIGH and SNOBIETY. The disputed domain name incorporates one word of the Complainant's trademarks - SNOBIETY. As the space between the words is not an allowed character within the domain names and is usually replaced by the deletion of the space, the Panel must disregard the fact that the trademarks consist from two words while the disputed domain name from the only one word. Moreover, the Complainant's trademarks use the designation as one word (i.e. without any space). The number of words therefore does not constitute the difference between the domain name and the Complainant's trademarks.

The term SNOBIETY is obviously the neoplasm created most probably from the words SNOB and SOCIETY. The term HIGHSNOBIETY (or HIGH SNOBIETY) seems to be the variant of HIGH SOCIETY for the posh people with snobbish attitudes. It is not clear who used the term SNOBIETY first, but neither the Complainant nor the Respondent claims its authorship of this word. Therefore, this Panel is of the opinion, that the term SNOBIETY should be considered as the descriptive or generic term.

The missing word HIGH, which is in the trademarks but not in the disputed domain name, is not sufficient to escape the finding that the domain name is confusingly similar to the Complainants trademarks HIGHSNOBIETY. Deleting non-distinctive terms like HIGH does not sufficiently distinguish a domain name from a mark to prevent a finding of confusing similarity under a Policy paragraph 4(a)(i) analysis.

The generic top-level domain ".COM" should be disregarded in the assessment under the Policy when comparing disputed domain name and trademark and does not change the overall impression of the designation as being connected to Complainant's trademarks.

The Panel therefore considers the disputed domain name to be confusingly similar to the Complainant's trademarks HIGHSNOBIETY which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

II. Rights or Legitimate Interests

As stated in the WIPO Jurisprudential Overview 3.0 at Section 2.1, while 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 often impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

The Complainant has established a prima facie case that the Respondent has no rights nor legitimate interests in the disputed domain name, is not making legitimate non-commercial or fair use of the domain and that the Complainant has not authorized the Respondent to use the trademark HIGHSNOBIETY. Therefore, the burden of proof is on the Respondent to demonstrate that such a right or legitimate interest exists at all.

The Respondent described the start of its business with the brand representing a snobbish lifestyle. But he did not provide any evidence why exactly the combination of words "SNOB" and "SOCIETY" has been chosen for the NFT business he was involved in.

The rights or legitimate interests to the disputed domain name can be proved on (without limitation) certain circumstances as described in paragraph 4(c) of the Policy. But there is no indication nor evidence that the Respondent is commonly known by the term "SNOBIETY" or its variations. And there is no evidence nor indication that the Respondent was making a legitimate non-

commercial or fair use of the disputed domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

It is a question if the Respondent before any notice of the dispute used or make preparations to use the disputed domain name in connection with a bona fide offering of goods or services. As the Panel is allowed to make further investigation, it reviewed the WaybackMachine on web.archive.org site. The first website snapshot crawled by this service after the acquisition of the disputed domain name by the Respondent is dated on January 14, 2022. The website contained the “coming real soon” announcement with text “Be part of an exclusive society for people with a love for art, fashion & luxury experiences. Snobiety is not an attitude, it is a lifestyle. Debut NFT with IRL benefits drooping Q1 2022”. It is evident, that the Respondent was using the disputed domain name in the same manner as the Complainant used its trademarks, i.e. for the art, fashion and luxury. Moreover, the Panel is not convinced that the Respondent had no knowledge of the Complainant and its activities, and therefore could not be in good faith using the term SNOBIETY and the disputed domain name.

Therefore, it is not possible to conclude that the Respondent was using the disputed domain name in connection with a bona fide offering of goods or services. The Panel therefore considers that the Respondent has no rights or legitimate interests in respect of the disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy.

III. Registered and Used in Bad Faith

The Panel cannot confirm that the website of the Respondent is nearly identical to the website of the Complainant. However, it is evident that the Respondent was aware of the Complainant’s trademarks. He stated that he made research within the WIPO database when he decided to make a brand SNOBIETY, but the Complainant’s IR trademark HIGHSNOBIETY, No. 1306247, was visible within this database in that time. Moreover, if the Respondent would make a quick internet search using any search engine like google.com, it would see that Complainant’s trademarks are reported by the search engine.

Considering the fact that the Respondent is, according to his own words, an entrepreneur with the experience in building digital products and ventures, the Panel could hardly believe, that he did not make any other research of the potential trademarks or tradenames when considering the new brand name for his products or services. It is therefore unlikely that the Respondent was not aware of the Complainant and its trademarks when it acquired the disputed domain name.

It is evident, that the Respondent acquired and use the disputed domain name in the same manner as the Complainant used its trademarks, i.e. for the art, fashion and luxury and now, during 2022, for the NFTs (non fungible tokens).

The Panel therefore considers that the disputed domain name has been registered (acquired) and is being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

The Panel finally considers that the Complainant has shown that the disputed domain name is confusingly similar to the trademarks in which the Complainant has rights, the Respondent has no rights or legitimate interests in respect of the disputed domain name and the disputed domain name has been registered and is being used in bad faith. The Complainant has thus established all three elements of paragraph 4(a) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **SNOBIETY.COM**: Transferred

PANELLISTS

Name	JUDr. Petr Hostaš
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2022.06.20

DATE OF PANEL DECISION 2022-08-29

Publish the Decision