Decision for dispute CAC-UDRP-106664

Case number	**CAC-UDRP-106664**
Time of filing	**2024-07-08 09:59:39**
Domain names	**highsnobiety.website**

Case administrator

Name	**Olga Slanařová (Case admin)**

Complainant

Organization	**Titel Media GmbH**

Complainant representative

Organization	**Lubberger Lehment Rechtsanwälte Partnerschaft mbB**

Respondent

Name	**john doue**

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 several trademarks consisting of the term “HIGHSNOBIETY®”, such as:

- International Registration no. 1306247 “HIGHSNOBIETY” in classes 9, 16, 25, 35, 38, and 41 registered on March 9, 2016;
- International Registration no. 1756626 “HIGHSNOBIETY” in classes 9,35, 38, 41 and 42, registered on November 9, 2022;
- US trademark no. 5238644 “HIGHSNOBIETY” in classes 41, 9, 16, 38, 25, 35 registered on July 11, 2017, among others.

The Complainant is the owner of the domain name <highsnobiety.com> registered on June 15, 2005.

FACTUAL BACKGROUND

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

The Complainant is the owner of the global fashion and lifestyle media brand HIGHSNOBIETY®. The company was founded in 2005 by David Fischer. It has rapidly grown since then and is an established media and lifestyle brand, well-known not only in Europe and Germany, where the company has its seat, but also in other parts of the world, such as the United States or Japan.

The Complainant was bought by online fashion company Zalando in 2022. It is headquartered in Berlin and has offices in Amsterdam, London, Milan, New Work, Los Angeles and Sydney. The Complainant is running a flagship store in one of Berlin's most prestigious boulevards. Moreover, the Complainant is acting as an agency. The Highsnobiety agency offers an end- to-end solution for brands, from consumer insights, strategy and consultancy, creative concepts and production and media.

The Complainant is operating the website www.highsnobiety.com. The Complainant's domain <highsnobiety.com> was registered already in 2005.

The Complainant, is the owner of several trademarks consisting of the term "HIGHSNOBIETY®", such as: International Registration no. 1306247 "HIGHSNOBIETY" in classes 9, 16, 25, 35, 38, and 41 registered on March 9, 2016; International Registration no. 1756626 "HIGHSNOBIETY" in classes 9,35, 38, 41 and 42, registered on November 9, 2022; the US trademark no. 5238644 "HIGHSNOBIETY" in classes 41, 9, 16, 38, 25, 35 registered on July 11, 2017, among others.

The disputed domain name <highsnobiety.website> was registered on December 21, 2023 (hereinafter, the "Disputed Domain Name").

The Complainant indicates that the Disputed Domain Name resolves to an inactive website.

According to Complainant's non-contested allegations, the Respondent has no rights or legitimate interest in respect of the Disputed Domain Name and the Complainant is not related in any way to the Complainant's business.

For the purpose of this case, the Registrar confirmed that the Respondent is the current registrant of the Disputed Domain Name and that the language of the registration agreement is English.

The facts asserted by the Complainant are not contested by the Respondent.

PARTIES CONTENTIONS

COMPLAINANT:

First element: Similarity

The Complainant states that the Disputed Domain Name is identical to its trademark "HIGHSNOBIETY®".

The Complainant asserts that the Disputed Domain Name "highsnobiety.website" is identical to the protected sign "HIGHSNOBIETY®". The Disputed Domain Name consists exclusively of the "HIGHSNOBIETY®" trademark. The TLD ".website" is to be ignored for the purpose of assessing the identity, because it only plays a technical function.

Second element: Rights or legitimate interest

The Complainant contends that no authorization has been given to anyone to make any use or apply for registration of the Disputed Domain Name and have no affiliation at all with the Respondent.

In particular, the Respondent is not making a legitimate non-commercial or fair use of the Disputed Domain Name. The Complainant has not licensed or otherwise permitted the Respondent to use its trademark. There is no relationship between the Complainant and the Respondent. In addition, the term "Highsnobiety" is an invented word and as such the Respondent selected the term to create an impression of an association with the Complainant.

Third element: Bad faith

The Complainant states that the Disputed Domain Name is identical to its trademark HIGHSNOBIETY®.

In addition, the Complainant's brand HIGHSNOBIETY® is well-known to significant parts of the public in the EU, USA and Japan. The brand is associated exclusively with the Complainant. Thus, the Respondent should have known about the Complainant at the time of the registration of the Disputed Domain Name.

The Respondent is concealing its identity by neither providing an imprint on the website not revealing its name in the Whois, but rather using a privacy service. Finally, there is no plausible good faith use of the domain name by the Respondent. The term "highsnobiety" is a neologism alluding to the term high society. It has no meaning and therefore is not a generic term. Also, from the perspective of the relevant public, the sign "highsnobiety" is exclusively associated with the Complainant.

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

According to Paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to obtain an order that a domain name should be transferred or cancelled:

(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 are being used in bad faith.

The Panel has reviewed in detail the evidence available to it and has come to the following conclusions concerning the satisfaction of the three elements of paragraph 4(a) of the Policy in the proceeding:

(A) THE COMPLAINANT'S RIGHTS AND CONFUSING SIMILARITY OF THE DISPUTED DOMAIN NAME TO THE COMPLAINANT'S RIGHTS.

Paragraph 4(a)(i) of the Policy establishes the obligation of the Complainant to demonstrate that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant submitted copies of the following trademark registrations:

- International Registration no. 1306247 "HIGHSNOBIETY" in classes 9, 16, 25, 35, 38, and 41, based on the German trademark no. 302016000502 (with priority 13 January 2016);
- International Registration no. 1464218 "HIGHSNOBIETY" in classes 9, 14, and 18, based on the German trademark no. 3020180195179 (with priority 10 August 2018);
- International Registration no. 1756626 "HIGHSNOBIETY" in classes 35, 38, 9, 41, and 42, based on the EUTM no. 018699372 (with priority 09 May 2022), with protection inter alia in the United States; and
- US trademark no. 5238644 "HIGHSNOBIETY" in classes 41, 9, 16, 38, 25, 35;
- Japanese trademark no. 2017-358164 "HIGHSNOBIETY".

The Complainant's trademarks were registered prior to 2023, the year of the creation date of the Disputed Domain Name.

In the current case, the Disputed Domain Name fully incorporates the trademark HIGHSNOBIETY®. In assessing confusing similarity, the Panel finds the Disputed Domain Name is indeed identical to the Complainant's trademark HIGHSNOBIETY® which it seems to be a neologism alluding to the term high society with no meaning and, therefore, it is only associated with the Complainant. In this vein, UDRP past panels agree that where the relevant trademark is recognizable within the Disputed Domain Name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. See paragraph 1.8. of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition 3.0 ("WIPO Jurisprudential Overview 3.0.).

UDRP panels agree that the TLD may usually be ignored for the purpose of determination of identity or confusing similarity between a domain name and the Complainant's trademark as it is technical requirement of registration. See paragraph 1.11.1 of WIPO Jurisprudential Overview 3.0.

Therefore, the Panel concludes that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy and the Disputed Domain Name is identical to Complainant's "HIGHSNOBIETY®» trademark.

(B) RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN THE DISPUTED DOMAIN NAME.

The second element of the Policy requires that the Complainant establishes that the Respondent has no rights or legitimate interests in the Disputed Domain Name. The generally adopted approach, when considering the second element, is that if a complainant makes out a prima facie case, the burden of proof shifts to the respondent to rebut it with relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name; see, for example, CAC Case No. 102333, Amedei S.r.l. v sun xin. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy (see e.g. WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.)

In this regard, Paragraph 4 (c) provides with circumstances which could prove rights or legitimate interest in the Disputed Domain Name on behalf of the Respondent such as:

(i) before any notice to Respondent of the dispute, Respondent is using or provides with demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) The Respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the Respondent has acquired no trademark or service mark rights; or

(iii) The Respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent did not reply to the Complaint despite the efforts made by this Center to notify the Complaint. In this regard, the Complainant has confirmed in the Complaint that the Disputed Domain Name is not connected with or authorized by the Complainant in any way.

From the information provided by the Complainant, there is no evidence or reason to believe that the Respondent (as individual, business or other organization) has been commonly known by the Disputed Domain Name.

The Respondent's name "John Doue" is all what it links the Disputed Domain Name with the Respondent. Absent of any other evidence such as a personal name, nickname or corporate identifier, the Panel is of the opinion that the Respondent is not commonly known by the Disputed Domain Name.

The Complainant indicates that they have not granted authorization to the Respondent to use their "HIGHSNOBIETY®" trademarks. Furthermore, the Complainant asserts that the Respondent is not affiliated with him nor authorized in any way to use the trademark "HIGHSNOBIETY®".

The Complainant established that the Disputed Domain Name resolves to a Apache2 Ubuntu Default Page without further content – however, the Complainant did not provide with the relevant evidence. Based on this minimal evidence, the Panel has decided to use its general powers articulated in paragraphs 10 and 12 of the UDRP Rules to conduct a limited online search regarding the use of the Disputed Domain Name and it was able to confirm that the Disputed Domain Name is indeed inactive.

Different Panels have confirmed that the lack of content at the Disputed Domain Name can be considered as a finding that Respondent does not have bona fide offering of goods and services (see, for example, Forum Case No. FA 1773444, Ashley Furniture Industries, Inc v. Joannet Macket/JM Consultants).

In light of the reasons above mentioned and absent of Respondent's reply, the Panel concludes that the Complainant has satisfied the second element of the Policy.

(C) BAD FAITH REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME.

Paragraph 4(a)(iii) of the Policy indicates that the Complainant must assert that the Respondent registered and is using the Disputed Domain Name in bad faith. In this sense, Paragraph 4(b) of the Policy sets out four circumstances which if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- circumstances indicating that the Respondent has registered or acquired the Disputed Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Disputed Domain Name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the domain name; or
- The Respondent has registered the Disputed Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding Disputed Domain Name, provided that Respondent has engaged in a pattern of such conduct; or
- The Respondent has registered the Disputed Domain Name primarily for the purpose of disrupting the business of a competitor; or
- by using the Disputed Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website 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 the Respondent's website or location or of a product.

In accordance with the evidence provided by the Complainant, the Disputed Domain Name is currently not in use. It is well established at different UDRP panel resolutions that the lack of use of a domain name does not prevent from finding bad faith (e.g. Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. 2000-0003).

In this vein, WIPO Jurisprudential Overview, version 3.0. at paragraph 3.3. provides some factors that have been considered relevant in applying the passive holding doctrine such as: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.

For the current case, the evidence at hand confirms that Complainant's "HIGHSNOBIETY®" trademarks are distinctive and the Complainant has a strong reputation in the fashion and lifestyle media industry in Europe, USA and Japan. Furthermore, the Complainant has provided evidence that the Respondent should have found information over the internet about Complainant's trademarks rights over its trademark rights before registering the Disputed Domain Name.

In addition to the above described and from the Panel perspective, the following circumstances also confirm Respondent's bad faith in the registration of the Disputed Domain Name:

(a) By conducting a search over the Internet, the Respondent should have been made aware of Complainant's trademarks "HIGHSNOBIETY®" trademarks as well as their reputation in the fashion and lifestyle media industry;

(b) The Disputed Domain Name fully incorporates the trademark HIGHSNOBIETY® which is a unique term alluding to the term high society with no meaning and, therefore, it is only associated with the Complainant

(c) The Complainant's trademark rights over "HIGHSNOBIETY®" predate the date of registration of the Disputed Domain Name;

(d) The website associated with the Disputed Domain Name is inactive;

These factors make the Panel believe that the Disputed Domain Name was registered with the intention to attract, for commercial gain, Internet users to the Respondent's website 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 the Respondent's website or location or of a product.

One additional argument presented by the Complaint relates to the fact that Respondent was concealing its identity by neither providing an imprint on the website not revealing its name in the Whois, but rather using a privacy service. Here again the Complainant did not include any specific evidence – however, the Panel decided to use its general powers articulated in paragraphs 10 and 12 of the UDRP Rules to conduct a limited online search regarding the "whois" linked to the Disputed Domain Name. The search confirmed that the Disputed Domain Name was registered using a Privacy service.

In light of the evidence presented to the Panel, including: a) the likelihood of confusion between the Disputed Domain Name and the Complainant's "HIGHSNOBIETY®" trademarks, b) the lack of reply to this Complaint by Respondent, c) the fact that the Disputed Domain Name is being passively held, d) the fact that the Respondent registered the Disputed Domain Name using a privacy service, the Panel draws the inference that the Disputed Domain Name was registered is being used in bad faith.

Therefore, the Panel concludes that Respondent registered and is using the Disputed Domain Name in bad faith and thus has satisfied the requirement 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. **highsnobiety.website**: Transferred

PANELLISTS

Name	**Victor Garcia Padilla**

DATE OF PANEL DECISION 2024-08-08

Publish the Decision