

ADMINISTRATIVE PANEL DECISION

Knud Jepsen A/S v. Rick Schwartz, Virtual Dates Inc
Case No. D2017-0679

1. The Parties

The Complainant is Knud Jepsen A/S of Hinnerup, Denmark, represented by Patrade A/S, Denmark.

The Respondent is Rick Schwartz, Virtual Dates Inc of Boca Raton, Florida, United States of America (“US”), represented by Muscovitch Law P.C., Canada.

2. The Domain Name and Registrar

The disputed domain name <queen.com> is registered with DNC Holdings, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 4, 2017. On the same date, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 10, 2017, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 April 12, 2017. In accordance with the Rules, paragraph 5, the due date for Response was May 2, 2017. The Response was filed with the Center April 26, 2017.

The Center appointed Hub J. Harmeling, Evan D. Brown and Adam Taylor as panelists in this matter on May 23, 2017. The Panel finds that it was properly constituted. Each member of 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

The Complainant is a Danish company active in the flower growing industry, specializing in the growing of the Kalanchoe plant.

The Complainant has first registered the word/logo trademark QUEEN on August 12, 1994 in Denmark, which trademark has currently expired. It subsequently applied for the same word/logo trademark QUEEN in the US and the European Union ("EU") in 1999. The 1999 US trademark application was abandoned. In the EU, the trademark was registered on April 4, 2001. The Complainant has acquired various other trademark rights with respect to QUEEN and KALANCHOE QUEEN, including in Norway, Turkey, Australia and South Korea. See list of the Complainant's trademarks below:

Trade mark	Registration office	Registration date	(Nice) Classification
QUEEN	Denmark (DK)	August 12, 1994 (currently expired)	31
QUEEN	United States (US)	Application abandoned	31
QUEEN	Europe (EM)	April 4, 2001	26, 31
KALANCHOË QUEEN	Norway (NO)	January 25, 2008	31, 35, 42
QUEEN	Turkey (TR)	March 26, 2014	31, 35
QUEEN	Australia	February 6, 2014	31, 35
QUEEN	EU (EM)	November 15, 2010	31, 35, 42, 44
QUEEN	Korea (KR)	February 6, 2014	31, 35
QUEEN	EU (EM)	February 5, 2012	31, 35, 42, 44
QUEEN	EU (EM)	January 8, 2014	31, 35, 42, 44
QUEEN	United States (US)	January 8, 2014	31, 35, 42, 44
KALANCHOË QUEEN	United States (US)	October 21, 2003	31
KALANCHOË QUEEN	EU (EM)	September 4, 2008	31, 35, 42
KALANCHOË QUEEN	Norway (NO)	January 15, 2008	31, 35, 42

The Respondent is in the business of investing and trading in domain names, with a view to using them for advertising purposes and, in some cases, for sale at a profit. The Respondent has accumulated a substantial catalogue of domain names since the infancy days of the Internet, including the disputed domain name <queen.com> (the "Disputed Domain Name"), which was registered on August 22, 1997.

The Disputed Domain Name has been used to redirect to a website offering pornographic content as well as advertisements for pornographic and other sites.

By email of May 5, 2015, the Complainant approached the Respondent indicating that it was very interested in buying or leasing the Disputed Domain Name, and requesting the Respondent to offer a price. The Respondent subsequently offered a purchase price of USD 2 million or USD 15,000 per month to lease. To this, the Complainant replied with "Are you kidding me?" on June 2, 2015. No further communication took place between the parties.

5. Parties' Contentions

A. Complainant

The Complainant argues that the Disputed Domain Name is identical to its trademarks QUEEN, and that the Disputed Domain is also confusingly similar to its KALANCHOE QUEEN trademarks, as "Kalanchoe" is merely descriptive of the type of flower.

The Complainant further submits that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, as the Respondent is not known by the name "Queen" and does not have any

interest in the name “Queen”. Furthermore, the Disputed Domain Name is not used to host content, but rather to redirect to a website with explicit adult material, in relation to which Queen does not have any meaning according to the Complainant. Moreover, it is the Complainant’s submission that offering adult and pornographic content cannot be considered a *bona fide* offering of goods or services, in support of which it refers to *AREVA Société Anyonyme à Directoire et Conseil de Surveillance v. wangyongqiang*, WIPO Case No. D2016-1100.

Lastly, the Complainant submits that the Disputed Domain Name was registered and is being used in bad faith, as the Respondent knew or should have known the existence of the Complainant’s trademark rights at the time of the registration of the Disputed Domain Name in 1997 and the subsequent renewals. It is also argued by the Complainant that Respondent’s use of the Disputed Domain Name – *i.e.*, (re-)directing users to pornographic content – qualifies as bad faith use, as it harms the Complainant’s reputation and tarnishes its registered trademarks. The Complainant refers to a number of decisions under the Policy in support of this contention.

Use in bad faith would also follow from the fact that the Disputed Domain Name redirects to another website, which would demonstrate that the Respondent is using the likelihood of confusion with the Complainant’s registered trademarks to realize financial gain by “click through revenue”. Finally, the Complainant contends that the Respondent has engaged in a pattern of registering domain names that are identical or strikingly similar to registered trademarks. This pattern would demonstrate bad faith on the part of the Respondent.

B. Respondent

The Respondent does not contest that the Complainant has trademark rights for QUEEN, and that these trademarks and the Disputed Domain Name are identical or confusingly similar. In this respect, however, the Complainant notes that the 1999 US trademark application was abandoned and that the Complainant only obtained a US trademark registration in 2015, 18 years after the Respondent’s Disputed Domain Name registration.

As to the alleged absence of rights and legitimate interests, the Respondent submits that the registrant of a generic domain name, when that registration has taken place in good faith, is entitled to that domain name, and that this is considered a legitimate interest. As the Disputed Domain Name is generic, and registration took place in good faith, the Respondent therefore has legitimate interests in the Disputed Domain Name. The Respondent refers to previous decisions under the Policy in support of its argument. The Respondent furthermore submits that redirecting the Disputed Domain Name to a website offering adult content is a natural and *bona fide* use of the Disputed Domain Name, given that the Disputed Domain Name is used as a synonym for a homosexual man and, used as such, is a descriptor of the website’s content. Lastly, the Respondent submits that trading in lawful domain names, which is the Respondent’s business, can constitute a legitimate interest under the Policy.

As to the alleged bad faith registration and use of the Disputed Domain Name, the Respondent submits that it is for the Complainant to prove that this generic domain name was registered solely for the purpose of benefiting from the Complainant’s trademark rights. Absent such proof, there can be no finding of bad faith registration and use. The Respondent contests the Complainant’s references to decisions in which redirecting to or offering adult content was considered bad faith, given that the circumstances and particularities of the domain names in question differed substantially from the case at hand. Lastly, the Respondent denies that it has engaged in a pattern of cybersquatting, as it has invested in over 10,000 domain names, has only been involved in eight UDRP proceedings and has won six of them.

The Respondent requests the Panel to make a finding of Reverse Domain Name Hijacking, as the Complainant has mischaracterized its trademark rights as conferring some sort of exclusivity over a generic term. It is submitted that the Complainant and its counsel could not have had a reasonable belief that it would succeed in these proceedings. Consequently, it is argued that the Complaint was filed in a bad faith attempt to deprive the Respondent of its Disputed Domain Name, after the Complainant failed to acquire the Disputed Domain Name in the marketplace, which it moreover failed to disclose in these proceedings.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel finds that the Disputed Domain Name is identical or confusingly similar to the trademarks registered by the Complainant. This is not in dispute.

B. Rights or Legitimate Interests

In order for Complainant's remedies requested under paragraph 4(i) of the Policy to be granted, the Complainant must demonstrate both that the Respondent has no rights or legitimate interests in the Disputed Domain Name, as well as that the Disputed Domain Name was registered and is being used in bad faith. If it does not succeed on either one of those elements, the requested remedies must be denied by this Panel.

The Panel finds that the Complainant has by a large margin failed to demonstrate that the Disputed Domain Name was registered and is being used in bad faith, as will be elaborated below. As a result, its claim will fail, regardless of Respondent's rights or legitimate interests (or indeed lack thereof) in the Disputed Domain Name. The Panel therefore considers it unnecessary to discuss this element.

C. Registered and Used in Bad Faith

It is generally accepted under the Policy that, for a bad faith registration, (i) the Respondent must have been aware of the Complainant or its trademarks when it registered the Disputed Domain Name, and (ii) the registration must in some way have been targeted at the Complainant or its trademark, for example by seeking to capitalize on it (*The Perfect Potion v. Domain Administrator*, WIPO Case No. D2004-0743 and *Mediaset S.p.A. v. Didier Madiba, Fenicius LLC*, WIPO Case No. D2011-1954).

The Complainant has failed to explain why the Respondent knew or should have known of the existence of the Complainant's trademark rights at the time of registration of the Disputed Domain Name in 1997. No arguments have been put forward as to why the Respondent should at that time have been aware of the Complainant's (Danish) trademark rights. Furthermore, it was only in 1999 that the Complainant made its first US application, and the Complainant only obtained a US trademark registration in 2015. The Complainant has provided no evidence of fame in 1997 and the Respondent has moreover aptly demonstrated that indeed even a present day (Danish) Google search does not readily disclose the existence of the Complainant and its marks.

In any case, the Disputed Domain Name consists of a common term and the Respondent has used the Disputed Domain Name in a way which corresponds to one of the common meanings of that term. The Complainant has failed to give the Panel any reason to think that the Respondent registered the Disputed Domain Name to capitalize on the alleged fame of the Complainant's trademarks in any way, rather than in connection with one common meaning of the Disputed Domain Name.

The fact that the Disputed Domain Name redirects to adult material does not alter this finding. Where a domain name registrant tries to obtain financial gain by registering and using a non-generic domain name in which it has no rights or legitimate interests, the offering of adult content may be evidence of bad faith use, as decided in *Six Continents Hotels, Inc. v. Seweryn Nowak*, WIPO Case No. D2003-0022, *Eli Lilly and Company v. Domain Magic, LLC*, WIPO Case No. D2007-0144. However, as the Disputed Domain Name has a dictionary meaning, those cases do not apply.

Lastly, the Panel finds no grounds for the allegation that the Respondent engages in a pattern of cybersquatting. In light of the Respondent's area of business, the fact that the Respondent was ordered to transfer a domain name to complainants in two previous UDRP decisions is insufficient proof to find a pattern of cybersquatting, particularly in the context of a domain name portfolio which runs into the thousands.

D. Reverse Domain Name Hijacking (“RDNH”).

Paragraph 15(e) of the Rules provides that, if “after considering the submissions the panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding”. RDNH is defined under the Rules as “using the UDRP in bad faith to attempt to deprive a registered domain-name holder of a domain name”.

The Panel considers that the Complainant has been guilty of RDNH for the following reasons:

1. The Complainant has failed by a large margin. In the Panel’s opinion, the Complainant knew or at least should have known that it could not prove one of the essential UDRP elements. The disputed domain name comprises a single dictionary word. The Complainant has provided no evidence whatsoever which indicates that the Respondent was likely to have registered the Disputed Domain Name to target the Complainant’s Danish flower business rather than in connection with one of the Disputed Domain Name’s common meanings. For example, there is no evidence of trade mark fame and no evidence that the disputed domain name has ever been used in relation to flowers.
2. The Complaint lacks candour in that it makes no mention of the Complainant’s unsuccessful approach to buy the Disputed Domain Name from the Respondent.
3. In the Panel’s view, this is a classic “Plan B” case where a party, having been frustrated in its negotiations to buy a domain name, resorts to the ultimate option of a highly contrived and artificial claim not supported by any evidence or the plain wording of the UDRP. This stratagem has been described in many UDRP cases as “a highly improper purpose” and it has often contributed to findings of RDNH. See, e.g., *Patricks Universal Export Pty Ltd. v. David Greenblatt*, WIPO Case No. D2016-0653 and *BERNINA International AG v. Domain Administrator, Name Administration Inc. (BVI)*, WIPO Case No. D2016-1811.

7. Decision

For the foregoing reasons, the Complaint is denied and the Panel finds that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.

Hub J. Harmeling
Presiding Panelist

Evan D. Brown
Panelist

Adam Taylor
Panelist
Date: June 20, 2017