



Asian Domain Name Dispute Resolution Centre

beijing

ADMINISTRATIVE PANEL DECISION

Case No. CN-2201509

Complainant: ROKA SPORTS, INC
Respondent: Xu LiHua
Domain Name: rokasportstore.com
Registrar: Name.com, Inc.

1. Procedural History

On 13 October 2022, the Complainant submitted a Complaint in English to the Beijing Office of the Asian Domain Name Dispute Resolution Center (the ADNDRC Beijing Office) and elected this case to be dealt with by a one-person panel, in accordance with the Uniform Domain Name Dispute Resolution Policy (the Policy) and the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules) approved by the Internet Corporation for Assigned Names and Numbers (ICANN), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the ADNDRC Supplemental Rules) approved by the ADNDRC.

On 31 October 2022, the ADNDRC Beijing Office sent to the Complainant by email an acknowledgement of the receipt of the Complaint and transmitted by email to ICANN and the Registrar, Name.com Inc, a request for registrar verification in connection with the disputed domain name.

On 1 November 2022, the Registrar transmitted by email to the ADNDRC Beijing Office its verification response, confirming that the Respondent is listed as the registrant and providing the contact details.

On 7 November 2022, the ADNDRC notified the Complainant that the Complaint has been confirmed and transmitted to the Respondent and the case officially commenced. On the same day, the ADNDRC Beijing Office transmitted the Written Notice of the Complaint to the Respondent, which informed that the Complainant had filed a Complaint against the disputed domain name and the ADNDRC Beijing Office had sent the complaint and its attachments through both email and express mail according to the Rules and the Supplemental Rules. On the same day, the ADNDRC Beijing Office notified ICANN and registrar, Name.com Inc, of the commencement of the

proceedings.

The Respondent failed to submit a Response within the specified time period. On 28 November 2022, the ADNDRC Beijing Office notified the Respondent's default. Since the Respondent did not mention the Panel selection in accordance with the time specified in the Rules, the ADNDRC Supplemental Rules, and the Notification, the ADNDRC Beijing Office informed the Complainant and the Respondent that the ADNDRC Beijing Office would appoint a one-person panel to proceed to render the decision.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Dr. Timothy Sze, the ADNDRC Beijing Office notified the parties on 2 December 2022 that the Panel in this case had been selected, with Dr. Timothy Sze acting as the sole panelist. The Panel determines that the appointment was made in accordance with Paragraph 6 of the Rules and Articles 8 and 9 of the Supplemental Rules, and the Panel has acted impartially in reaching its conclusion.

On 2 December 2022, the Panel received the file from the ADNDRC Beijing Office and should render the Decision within 14 days, i.e., on or before 16 December 2022.

On 15 December 2022, ADNDRC Beijing Office informed the Complainant and the Respondent that because of the specific situation of the case proceedings, the Panel is unable to render the Decision on or before 16 December 2022. According to Article 10(c) of the Rules, the Panel has decided to extend the time limit of rendering the Decision to 23 December 2022.

Pursuant to Paragraph 11 (a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding. The language of the current disputed domain name Registration Agreement is English, thus the Panel determines English as the language of the proceedings.

2. Factual Background

A. The Complainant

The Complainant in this case is ROKA SPORTS, INC. The registered address is 2214-A West Braker Lane, Austin, Texas 78758, United States of America. The authorized representatives in this case are Mr. Tian Xiaodong and Mr. Zhang Tao of An, Tian, Zhang & Partners.

B. The Respondent

The Respondent in this case is Xu LiHua. The registered address is Kang Qiao Lu

1500 hao Shang Hai Jian Qiao Xue Yuan, PuDongXin District, Shanghai City, China.

The Respondent is the current registrant of the disputed domain name “rokasportstore.com”, which was registered on 15 June 2022 according to the WHOIS information. The registrar of the disputed domain name is Name.com, Inc.

3. Parties' Contentions

A. The Complainant

1. The disputed domain name is identical or extremely similar to the trademark or service mark owned by the Complainant, which is likely to cause confusion

(1) “ROKA” is the trademark and trade name of the Complainant, and has been registered as a domain name by the Complainant.

First of all, the Complainant is a world-renowned sports equipment manufacturer, founded in 2011, and based in Austin, Texas, and one of the leading eyewear and technical apparel brands in the world. Since its establishment, ROKA athletes have won more than ten world championships and played an important role in designing and developing a number of unprecedented patents and award-winning products. “ROKA” is a very important trademark of the Complainant. The Complainant has applied for and registered the “ROKA” trademark in dozens of countries and regions, including Argentina, Australia, Brazil, Canada, China, Colombia, EU, India, Indonesia, Japan, Macau, Mexico, New Zealand, Norway, Peru, South Africa, South Korea, Switzerland, UK, US.

In addition, “ROKA” is also an English trade name that the Complainant has used for many years. After many years of development, the term “ROKA” has become a distinctive code name for the Complainant.

The Complainant also registered domain names containing “ROKA” to promote its business: “roka.com”, the registration date is 6 August 1995; “rokasports.com”, the registration date is 21 September 2011.

(2) The dominant part of the disputed domain name is identical to the trademark of the Complainant, which is likely to cause confusion.

The suffix “.com” of the disputed domain name “rokasportstore.com” in this case is a common global top-level domain name suffix, which has no influence on the distinctiveness of the domain name. In addition, “sportstore” means sports store and sports product store, which is not distinctive. Therefore, it can be determined that the distinctive part of the disputed domain name is “roka”, which fully includes the Complainant’s registered trademark “ROKA”. The letters of “ROKA” and “roka” are exactly the same but only differ between the uppercase and lowercase letters. This is due to the limitation of the domain name registration system that uppercase and

lowercase letters are interchangeable, while spaces and special characters cannot be used. This nuance is not enough to make the relevant public distinguish the two words. According to the provisions of Article 3(1) of Part III of the “Trademark Examination and Trial Standards” (hereinafter referred to as “Standards”) jointly published by the Trademark Office of the State Administration for Industry and Commerce of the People’s Republic of China and the Trademark Review and Adjudication Board, “Due to the font, the capitalization of letters or the arrangement of characters is divided into horizontal and vertical rows, which makes the two trademarks slightly different, they shall still be judged as the same trademark”. Therefore, the disputed domain name completely incorporates the trademark that the complainant enjoys the prior rights.

Further, the use of “sportstore” after “roka” may lead the relevant public to mistakenly believe that the domain name refers to the Complainant’s sports store website, which may easily lead the relevant public to misunderstand the source of goods or services. This falls into the category of Article 4.1.14 of Part Three of the Standards: “A trademark is only composed of other’s prior trademarks, adjectives or adverbs, and other words that are less distinctive in the trademark while the meaning of the expression is basically the same, and it is easy for the relevant public to misunderstand the origin of the goods or services, it is judged to be similar trademark”. Therefore, the main significant part of the disputed domain name “roka” is confusingly similar to “ROKA”. No matter whether “.com” has other meanings or is meaningless, due to the popularity and distinctiveness of the trademark “ROKA”, the domain name will fall into Article 3.4.1 of Part 3 of the Standard “Completely contain other’s prior well-known or distinctive word trademarks, which are likely to cause the relevant public to believe that they belong to a series of trademarks and misunderstand the origin of goods or services, and they are judged to be similar trademarks”.

In view of the above, the distinctive part of the disputed domain name is identical with the trademark and trade name that the Complainant enjoys prior rights, which is easy to cause confusion with the Complainant’s registered trademark and tradename.

2. The Respondent does not have the rights or legitimate interests in the disputed domain name

According to the Complainant’s search results on the Internet and the China Trademark Office database, the Respondent does not have any rights related to the disputed domain name.

There is no commercial relationship between the Complainant and the Respondent, and the Respondent has never been authorized to use Complainant’s trademark or trade name.

Therefore, it can be determined that the Respondent does not have any rights or legitimate interests in the disputed domain name.

3. The disputed domain name has been registered maliciously and is being used maliciously.

(1) The Respondent publicized and sold products of the same type as the Complainant's on the website of the disputed domain name.

The website of the disputed domain name promoted and sold a large number of sports equipment, including diving suits, goggles, sunglasses, swimming circles, sweatshirts, hats and other products. These products are identical to the types of products operated by the Complainant, and also belong to the categories of goods approved for use by the Complainant's registered trademark.

(2) The Respondent directly used Complainant's trademark " RŌKΛ " on the website of the disputed domain name for promotion. The layout of the website is very similar to that of the Complainant's website.

At the top of the home page of the website of the disputed domain name, the Respondent directly used the " RŌKΛ " logo which is identical to the Complainant's trademark, and called it "ROKA Sales Store" in the About Us column of the website. In addition, the website of the disputed domain name adopts the website style marked with " RŌKΛ " on the top, listing sales items horizontally, and interspersed with various sports photos, which is very similar to the website style of the complainant.

(3) The Complainant and the trademarks have a high reputation.

The Complainant started the business from a garage in Austin, Texas, and the company's business is extremely concentrated. The Complainant's mission is to unleash human potential, provide athletes with equipment, empower and inspire them. The Complainant serves people who are committed to redefining standards and pushing them to challenge the limits of different projects in different locations. Since its establishment, ROKA athletes have won more than ten world championships and played an important role in designing and developing a number of unprecedented patents and award-winning products. In 2016, The Complainant was honored to send 18 athletes to Rio de Janeiro Olympic Games to win gold and bronze medals. The Complainant made persistent efforts in the Pingchang Winter Olympic Games, and the selected athletes wore their performance glasses to win the Olympic gold and bronze medals. Outstanding athletes from all over the world rely on ROKA sports equipment in large venues and major events such as running, cycling, triathlon, speed skating, Dakar Rally, etc. ROKA has extensive consumer coverage and attraction, and cooperates with well-known companies and celebrities, including IRONMAN®, Joe Rogan, Lance Armstrong, Andrew Huberman, Lex friedman, Strava, Tim Kennedy, etc., to help promote their industry-leading sports equipment to various audiences.

The Complainant promoted its products and services worldwide through many

well-known media and websites, including THE WALL STREET JOURNAL, PELOTON MAGAZINE, INC VELONEWS and other media and websites. In China and around the world, the above trademarks are important assets of the Complainant ROKA. Through years of promotion, advertising and extensive use, Complainant's trademarks have gained high reputation in China and the world.

In summary, the Respondent maliciously took the advantages of the reputation of the Complainant in China and the world which has a serious adverse effect on the reputation of the Complainant.

The Respondent registered and used the domain name containing the Complainant's trade name and the trademark "ROKA" in order to use the Complainant's reputation to deliberately mislead and attract Internet users to gain commercial benefits. Therefore, the Respondent's registration and use of the disputed domain name fell into the malicious behavior specified in Article 4b(iv) of the Policy.

The date of registration and use of the domain name was far behind the Complainant's business name and trademark registration and promotion. The Respondent knew that his behavior of registering the disputed domain name would prevent the Complainant from obtaining the domain name corresponding to the mark, and the Respondent still registered the disputed domain name. Such behavior is clearly a malicious behavior as stipulated in Article 4b(ii) of the Policy.

The Respondent registered and used the domain name containing the Complainant's business name and the trademark "ROKA" without authorization and did not obtain the Complainant's permission. Due to the possibility of confusion mentioned above, the relevant public has misidentified the domain name and used its products and found that the expected results have not been achieved. This may result in doubts about the Complainant's service attitude and ability, thus causing the Complainant to lose some of clients. This is a malicious act of disrupting the business of a competitor as stipulated in Article 4(b)(iii) of the Policy.

In summary, the Respondent's registration and use of the disputed domain name is obviously malicious.

B. The Respondent

The Respondent did not reply to the Complainant's contentions within the specified time period.

4. Discussions and Findings

Paragraph 4(a) of the Policy provides that in order to be entitled to a transfer of the disputed domain name, the Complainant shall prove the following three elements:

(i) The disputed domain name is identical or confusingly similar to a trademark or

service mark in which the Complainant has rights;

(ii) The registrant 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 Policy and the Rules provides that “[i]f a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint.” The Panel finds that no exceptional circumstances exist. Accordingly, the Panel will decide the dispute based upon the Complaint and the evidence submitted therewith.

A. Identity or Confusing Similarity

In the present case, the preliminary issue is whether the Complainant has protectable rights in the mark to which it contends Respondent’s domain name are confusingly similar.

The Panel confirms that the Complainant is trademark owner of the mark “ROKA”, in the present administrative proceedings. The Panel notes that according to the evidence provided, as early as 2016, the Complainant has applied for registration for a number of trademarks, and is entitled to claim trademark rights in the mark “ROKA” in any domain name dispute resolution proceedings under the Policy against alleged trademark infringer. Hence, the Panel concludes that the Complainant has satisfied the threshold requirement of being eligible to claim rights in the trademark “ROKA”.

In this regard, the Panel confirms the Complainant owns numerous trademark registrations for or incorporating “ROKA” in a wide range of categories, in the People’s Republic of China and Asia. The Panel finds that the Complainant has rights in the “ROKA” mark acquired through registration.

The disputed domain name “rokasportstore.com” reproduces entirely the Complainant’s “ROKA” trademark, while adding the “sportstore”, which means sports store and sports product store. Although the disputed domain name does not separate “roka” from “sportstore”, Internet users will generally recognize “sportstore” as sports store or sports product store of “ROKA”. Even if Internet users do not recognize “sportstore”, the difference between the main part of the disputed domain name – “roka” and the Complainant’s trademark “ROKA” is completely negligible in the case that their appearances, pronunciations and lengths are highly similar.

Also, the gTLD “.com” is without legal significance in the present case since the use of a TLD is technically required to operate a domain name. Many previous cases provide 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”.

Furthermore, the mark “ROKA” is inherently distinctive mark which will attract Internet users’ attention. The evidence provided by the Complainant also shows that the “ROKA” mark has accumulated a considerable reputation by 2022 when the Respondent first registered the disputed domain name. Reproduction of the Complainant’s “ROKA” trademark in its entirety in the domain name in itself establishes that the domain name is confusingly similar to the Complainant’s trademarks.

The Panel therefore finds that the disputed domain name “rokasportstore.com” is confusingly similar to the Complainant’s registered marks. Accordingly, the Complainant has proven the element required by the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests of the Respondent

The Panel accepts that the Complainants has amply demonstrated that the Respondent lacks any rights or legitimate interests, and by virtue of its default, the Respondent has failed to come forward with any evidence to rebut that finding (including the examples listed in paragraph 4(c) of the Policy).

The Respondent has not used or made preparations to use the disputed domain name in connection with a *bona fide* offering of goods and services.

The Respondent was never commonly known as “ROKA”. A Google search turns up no results relating to the Respondent. On the other hand, Google results turn up many hits related to the Complainant, who owns the trademark in “ROKA”.

There is similarly no evidence that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name without intent for commercial gain.

Accordingly, the Panel finds that the Complainant has satisfied the second condition under paragraph 4(a)(ii) of the Policy.

C. Bad Faith

According to paragraph 4(b) of the Policy, the following circumstances, in particular but without limitation, shall be evidence of registration and use in bad faith:

- (i) Circumstances indicating that the Respondent has registered or the Respondent has acquired the domain names primarily for the purpose of selling, renting, or otherwise transferring the domain names 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 names; or
- (ii) the Respondent has registered the domain names in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct; or
- (iii) the Respondent has registered the domain names primarily for the purpose of

disrupting the business of a competitor; or

(iv) by using the domain names, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online 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 or service on its website or location.

The examples of bad faith registration and use set forth in paragraph 4(b) of the Policy are not meant to be exhaustive of all circumstances from which such bad faith may be found. The overriding objective of the Policy is to curb the abusive registration of domain names in circumstances where the registrant seeks to profit from and exploit the trademark of another.

For the reasons discussed under this and the preceding heading, the Panel considers that the Respondent's conduct in this case constitutes bad faith registration and use of the disputed domain name within the meaning of paragraphs 4(b)(iv) and 4(a)(iii) of the Policy. The Respondent clearly was aware of the Complainant and had the Complainant's "ROKA" mark in mind. The Complainant argues that the Respondent cannot ignore the fact that "ROKA" is a well-recognized company and its trade and service marks are commonly known, alleging that the Respondent was aware of that mark when it registered the disputed domain name. Further, the Complainant alleges that the Respondent cannot use the registered domain name without infringing on the trademark owner's rights.

The Panel notes that according to the evidence provided, the disputed domain website sells the same products as the Complainant, most of which are copied and imitated from the Complainant's products.

The Panel finds it highly probable that Respondent had Complainant's mark in mind when registering the domain name. Not only is "ROKA" an uncommon, if not unique, but the redirection of the dispute domain name to the same products of the Complainant suffices an act of bad faith.

The Panel finds that the Complainant has established that the Respondent registered and is using the disputed domain name in bad faith pursuant to Policy paragraph 4(b)(iv). The failure of the Respondent to respond to the Complainant further supports a finding of bad faith registration and use.

5. Decision

Based on the above analysis, the Panel decides that: the disputed domain name are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and the Respondent has no rights or legitimate interests in respect of the domain name; and the disputed domain name has been registered and is being used in bad faith.

Accordingly, pursuant to paragraph 4(a) of the Policy and 15 of the Rules, the Panel decides that the disputed domain name “rokasportstore.com” should be transferred to the Complainant ROKA SPORTS, INC.

A handwritten signature in Chinese characters, appearing to read 'Timothy Sze', written in black ink on a white background.

(Signature)

(Timothy Sze)

Dated: 23 December 2022