



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2301782
Complainant:	SEGWAY INC.
Respondent:	Segway Firenze Srl
Disputed Domain Name(s):	<ITALYSEGWAYTOURS.COM>

I. The Parties and Contested Domain Name

1. The Complainant is Segway Inc., of Bedford, NH 03110, USA.
2. The Respondent is Segway Firenze Srl, of Via dei Cimatori 9R, Firenze, FI, Italy.
3. The domain name at issue is <italysegwaytours.com>, registered by the Respondent with Tucows Domains Inc, of 96 Mowat Avenue, Toronto, Canada.

II. Procedural History

4. The Complainant filed this complaint with the Asian Domain Name Dispute Resolution Centre (ADNDRC) (Hong Kong Office) (“Centre”) on 24 July 2023, pursuant to the Uniform Domain Name Dispute Resolution Policy (“Policy”) approved by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on 24 October 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (“Rules”), approved by ICANN Board of Directors on 28 September 2013 and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (“Supplemental Rules”) effective from 31 July 2015.
5. On 24 July 2023, the Centre transmitted by email to the Registrar a request for confirmation of the WHOIS records of the Disputed Domain Name and other related information. On 18 August 2023, the Registrar confirmed by email that it is the registrar of the Disputed Domain Name that was registered by the Respondent; and that the Policy is applicable to the dispute relating to the Disputed Domain Name and the language of the Registration Agreement of the Disputed Domain Name is English and provided to the Centre the Respondent’ email address and other WHOIS information of the Disputed Domain Name.
6. A copy of the Complaint was sent to the Respondent on 29 August 2023. The due date for the Respondent to submit a Response to the Complaint was 18 September 2023. The

Respondent failed to file a response within the time limit and on 20 September 2023 the Centre issued a notification that the Respondent was in default.

7. On 20 September 2023, after confirming that he was able to act independently and impartially between the parties, the ADNDRC appointed David Allison as the Panelist in this matter.

III. Factual background

8. The Complainant, Segway Inc., describes itself as the worldwide leader in personal transportation. Founded in 1999 by renowned inventor, Dean Kamen, Segway has always strived to provide high-quality, safe, and reliable products for its customers. In 2015, Ninebot merged with Segway, which is based in Bedford, USA. The new company is immediately focused on research and development, design, manufacturing, distribution and sales of short-distance travel products. The new company has strategic locations in the United States, the Netherlands and Beijing, and has production facilities in the United States and China.
9. The Complainant has registered a large number of trademarks for SEGWAY in various countries worldwide, including in the EU, predominantly in Classes 9, 12 and 28.
10. The Complainant has also registered several domain names including <SEGWAY.COM>.
11. The Respondent did not file a response to the complaint and does not appear to hold any trademarks. Nevertheless, as evidenced by the Respondent's website and evidence supplied by the Complainant as to previous versions to the Respondent's website, the Respondent appears to have been operated a thriving tour company located in several cities throughout Italy since at least 2005. A key feature of the Respondent's tours is that it utilizes Segway vehicles to transport its guests during the tour which obviates the need for guests to walk.

IV. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

- i. The disputed domain name prominently features the element SEGWAY which is identical to the Complainant's trademarks;
- ii. The respondent has no legitimate rights to the disputed domain name and is attempting to cause confusion with the public; and
- iii. The registration and use of the disputed domain name is inherently unfair.

B. Respondent

The Respondent has failed to file a response to the complaint.

V. Findings

12. The Complainant bears the burden of establishing each of the elements of paragraph 4(a) of the Policy. Accordingly, despite the Respondent failing to file a response, each element must nevertheless, be assessed in turn in order to establish the Complainant's case.
13. The ICANN UDRP Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:
 - i. Respondent's domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
 - ii. Respondent has no rights or legitimate interests in respect of the domain name; and
 - iii. Respondent's domain name has been registered and is being used in bad faith.

A) Identical / Confusingly Similar

14. The Complainant contends that when examining the disputed domain name and comparing it with the Complainant's trademarks, only the element SEGWAY should be compared since the elements ITALY and TOURS are relatively generic, descriptive terms and as such do little to distinguish the disputed domain name.
15. This contention is in line with the WIPO consensus opinion which states 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. The nature of such additional term(s) may however bear on assessment of the second and third elements.” (WIPO Jurisprudential Overview 3.0 para 1.8)”

16. In the current case, consumers will readily appreciate that the disputed domain name comprises of three distinct elements, namely ITALY, SEGWAY and TOURS. The element SEGWAY is recognizable within the disputed domain name and is identical to the Complainant's many trademarks. Accordingly, the Panel holds that the first element is easily made out by the Complainant.
17. It should be stressed however, that while the elements ITALY and TOURS were disregarded for the purpose of establishing identical or confusing similarity, they are nevertheless, highly relevant in relation to the discussion of the second and third elements below.

B) Rights and Legitimate Interests

18. The Complainant notes that the Respondent has no trademarks in Italy nor is the Respondent authorized by the Complainant. For these reasons, the Complainant asserts that the Respondent has no legitimate rights or interests in the disputed domain name.
19. The Panel does not agree. A perusal of the Respondent's website shows that although the Respondent's business makes use of Segway vehicles as a feature of its tours, the emphasis and thrust of the Respondent's business is obviously and clearly on tourism. There is

nothing on the website to suggest confusion between the Complainant's marks and the Respondent's business and the Panel holds that that the Respondent's use of the disputed domain name is legitimate fair use as it accurately and fairly describes its legitimate business in offering tours, in Italy, which use Segway vehicles.

20. Further, the Respondent's business has been in operation since at least 2005 and appears to have developed a great deal of goodwill and positive reputation as a legitimate tour company. Rather than 'free riding' on the fame and reputation of the Complainant, the Respondent's website and its numerous testimonials shows that the Respondent has developed its reputation and success through offering popular and interesting tours of Italy.
21. The Panel considered the reasoning in WIPO Case No. D2007-1524 <nascartours>. In that case, the panel noted: "*The respondent's business is NASCAR tours, just as the Domain name implies; this is not merely a 'bait and switch' use of the Domain Name*". The same reasoning can be applied in the current case.
22. One point of distinction with the <nascartours> case however, is that in that case, the Respondent clearly noted on its website that it was not in any way affiliated with Nascar. In the current case however, the Respondent has made no such similar statement or used a disclaimer. While such a disclaimer may have assisted in demonstrating that there is no relationship between the parties (and thus assisting to show that consumer confusion is unlikely), lack of such a disclaimer is not fatal to the Respondent's case. This is because the overwhelming evidence of the Respondent's legitimate business and fair use of the disputed domain name makes such a disclaimer unnecessary.
23. As such, the Panel finds that the Respondent has a legitimate interest in using the disputed domain name and therefore, the Complainant has failed to establish the second element.

C) Bad Faith

24. The Complainant advances three grounds for alleging bad faith on the part of the Respondent, namely:
 1. The Respondent started using the disputed domain name later than when the Complainant started using the SEGWAY trademark in Italy;
 2. The Respondent applied for the disputed domain name with 'malicious intent' because the Respondent uses the SEGWAY devices in its tours and thus knew or ought to have known about the Complainant and its trademarks prior to registering the disputed domain name; and
 3. The Respondent has attempted to profit from rental of the SEGWAY devices and this accordingly, satisfies UDRP paragraph 4(iv) and is evidence of bad faith.
25. As to the first contention, merely using a disputed domain name later than a Complainant files and uses a trademark is not determinative of bad faith. Likewise, in relation to the second contention, while prior knowledge of a Complainant's marks and business may in some cases provide further strength to an argument that a Respondent is using the disputed domain name in bad faith that is not the case here in light of the clear legitimate business interest demonstrated by the respondent and its fair use of the disputed domain name.
26. In relation to the third ground, the Complainant relies on UDRP paragraph 4 (iv) to demonstrate that the Respondent registered and is using the disputed domain name in bad faith. Paragraph 4 (iv) relevantly states:

“By using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 or service on the respondent’s website or location.”

27. The key to understanding this provision however, is “*likelihood of confusion*” with the Complainant’s marks and business/ services. As noted above, in this case there is almost no likelihood of confusion between the Respondent’s business and the trademarks or business of the Complainant. This conclusion is supported by both a review of the disputed domain name itself as well as the contents of the Respondent’s website.
28. The disputed domain name is <italysegwaytours.com>. While it was proper to ignore the elements ITALY and TOURS for the purpose of comparison of the disputed domain name and the Complainant’s trademarks, these elements are highly relevant when discussing bad faith. When assessed on its plain meaning, the disputed domain name merely and clearly suggests that the Respondent is offering *tours*, in Italy, using a segway device.
29. Likewise, and as described above, a perusal of the Respondent’s website, including former versions of the website provided by the Complainant in evidence, shows that the Respondent is, and has always been since at least 2005, a tour company offering tours in Italy. While use of the Segway device is an important feature of the tours that are offered, there is nothing on the website to suggest a relationship, sponsorship or affiliation with the Complainant. The look and feel of the website is in no way similar to that of the Complainant’s and there is nothing on the website that suggest the Respondent is attempting to mislead or confuse internet consumers for commercial gain.
30. Overall, this leads to a conclusion that the Respondent is not using the disputed domain name in bad faith but rather in a legitimate and fair manner.
31. Accordingly, the Complainant has not established the third element of its complaint.

6. Decision

32. For the reasons outlined above, the Complaint is denied.

David Allison

David Allison
Panelist

Dated: 06 October 2023