



## DECISION

SCCY Industries, LLC v. Susan Romanov

Claim Number: FA2404002093890

### PARTIES

Complainant is **SCCY Industries, LLC** (“Complainant”), represented by **Christopher Renzulli** of **Renzulli Law Firm, LLP**, New York, USA.

Respondent is **Susan Romanov** (“Respondent”), Tennessee, USA.

### REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is **<scrypatriot.com>** (the “Domain Name”), registered with **NameCheap, Inc.**

### PANEL

The undersigned certifies that they have acted independently and impartially and to the best of their knowledge have no known conflict in serving as Panelist in this proceeding.

David L. Kreider, Chartered Arbitrator (UK), as Panelist.

### PROCEDURAL HISTORY

Complainant submitted a Complaint to FORUM electronically on April 18, 2024; FORUM received payment on April 18, 2024.

On April 18, 2024, NameCheap, Inc. confirmed by e-mail to FORUM that the **<scrypatriot.com>** domain name is registered with NameCheap, Inc. and that Respondent is the current registrant of the name. NameCheap, Inc. has verified that Respondent is bound by the NameCheap, Inc. registration agreement and has thereby agreed to resolve domain disputes brought by third parties in accordance with ICANN’s Uniform Domain Name Dispute Resolution Policy (the “Policy”).

On April 19, 2024, FORUM served the Complaint and all Annexes, including a Written Notice of the Complaint, setting a deadline of May 9,

2024, by which Respondent could file a Response to the Complaint, via e-mail to all entities and persons listed on Respondent's registration as technical, administrative, and billing contacts, and to postmaster@sccypatriot.com. Also on April 19, 2024, the Written Notice of the Complaint, notifying Respondent of the e-mail addresses served and the deadline for a Response, was transmitted to Respondent via post and fax, to all entities and persons listed on Respondent's registration as technical, administrative and billing contacts.

A timely Response was received and determined to be complete on May 6, 2024.

On May 7, 2024, pursuant to Complainant's request to have the dispute decided by a single-member Panel, FORUM appointed David L. Kreider as Panelist.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that FORUM has discharged its responsibility under Paragraph 2(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") "to employ reasonably available means calculated to achieve actual notice to Respondent" through submission of Electronic and Written Notices, as defined in Rule 1 and Rule 2.

## **RELIEF SOUGHT**

Complainant requests that the domain name be transferred from Respondent to Complainant.

## **PARTIES' CONTENTIONS**

### **A. Complainant**

The Complainant, SCCY Industries, LLC, located in Florida, USA, is a manufacturer and distributor of firearms, among them the "SCCY Patriot DVG-1" (hereinafter for convenience the "Patriot") handgun, which it launched for sale in January 2024.

The Respondent, Susan Romanov, of Tennessee, USA, is the Founder and President of "Shooting for Women Alliance" ("SFWA"), as appears on her business letterhead along with the email address "susan@mysfwa.com". SFWA purports to be a non-profit association, exempt from federal income taxes under section 501(c)(3) of the U.S. Internal Revenue Code.

It is common ground between the parties that the Complainant's Patriot handgun was initially marketed by the Complainant and the Respondent jointly, as the "Patriot Package" – the concept of the joint promotion project apparently being that, in addition to the Patriot handgun, some purchasers of the package would be entitled to receive certain perks and benefits, including *inter alia* firearms training, offered and/or sponsored by SFWA.

The business "alliance" or "partnership" between the parties was short lived. The Complaint states: ""Due to Respondent's lack of urgency in rectifying the misleading aspects of the project and ongoing exposure to Complainant, a decision was made to terminate the Patriot Package".

The Complainant's Exhibit G is a print-out of the home page to which the Domain Name <scrypatriot.com> resolves. The Complaint alleges:

"Respondent is using the Disputed Domain Name to redirect consumers to a website which advertises Complainant's products and provides links to SFWA's website (embedded within the text that reads "Women of a Different Caliber" and "Men's Top Gun") while simultaneously indicating to consumers 'SFWA is no longer affiliated with SCCY Firearms or SCCY Industries'".

The Complaint concludes:

"Respondent's use of the Disputed Domain Name to advertise firearms products and services, with links to SFWA's website, directly competes

with and disrupts Complainant's sale of firearms and related services, which demonstrates Respondent's bad faith".

## B. Respondent

The Respondent confirms that there was an agreed upon business relationship between the Complainant, the Respondent, and SFWA, which gave rise to the need for the Domain Name. The Respondent claims the Domain Name was registered with the knowledge of the Complainant and was first used by the Complainant to promote the sale of products for the benefit of the Complainant that were sponsored by SFWA.

The Respondent alleges that she purchased the Domain Name and "used it as intended by the parties by agreement" and without dispute prior to this Complaint, which arose only after the parties had ceased to maintain a business relationship.

As regards the Complainant's motive for instituting these UDRP proceedings, the Respondent claims:

"SCCY's online store [store.sccy.com] boasts the forthcoming next generation of the "Patriot" and confirms the strong-armed bad faith being used to acquire the [Domain Name] which is needed by SCCY to successfully promote the promised forthcoming next generation".

## FINDINGS

The Complaint and the Response present very different accounts of the facts. What is apparent to this Panel, however, is that a vexed commercial dispute has arisen between the parties, resulting in exchanges of numerous "cease and desist" letters and threats of lawsuits sounding in "trademark infringement", "fraudulent misrepresentation", and other claims or purported claims. The Complainant alleges the Domain Name was registered by the Respondent without its knowledge or consent, while the Respondent alleges the contrary, and further asserts

that she designed artwork appearing on the website and used in connection with the promotion of the “Patriot”, with the assent and approval of the Complainant.

## DISCUSSION

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

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

- (1) the domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (2) Respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered and is being used in bad faith.

### **Preliminary Issue: Business Dispute Outside the Scope of the UDRP**

It is well-established in UDRP jurisprudence that the scope of the procedure is limited, such that it is available only in respect of deliberate, bad faith, abusive, domain name registrations or “cybersquatting” and is not applicable to disputes between parties with competing rights acting in good faith. See, Final Report of the WIPO Internet Domain Name Process, *THE MANAGEMENT OF INTERNET NAMES AND ADDRESSES: INTELLECTUAL PROPERTY ISSUES*, <<http://wipo2.wipo.int>> (April 30, 1999), par. 135(i).

UDRP administrative proceedings are available to trademark owners to resolve disputes involving abusive trademark registrations, but not for

commercial disputes, such as that between the parties in the present case, in which domain names are incidental to the real claims between the parties, or for claims of trademark infringement. “Only cases of abusive registrations are intended to be subject to the streamlined administrative dispute resolution procedure”. See, ICANN *Second Staff Report on Implementation Documents for the Uniform Dispute Resolution Policy* (October 25, 1999), paragraph 4.1(c).

Thus, the Policy’s scope is limited to abusive registrations made with bad faith intent to profit commercially from others’ trademarks. Claims for breach of contract and fiduciary duty requiring the Panel to delve into the parties’ legal relations are generally outside the scope of the Policy, although the line of demarcation separating those disputes within from those outside the scope of the Policy can be elusive. See, e.g., *Courtney Love v. Brooke Barnett*, FA0703000944826 (Forum, May 14, 2007) (dissenting panelist concurred with the result but disagreed that the issue was beyond the scope of the Policy); see also *The Thread.com, LLC v. Jeffrey S. Poploff*, D2000-1470 (WIPO January 5, 2001).

When the parties differ markedly with respect to the basic facts, and there is no clear and conclusive written evidence, it is difficult for a Panel operating under the Rules to determine which presentation of the facts is more credible. National courts are better equipped to take evidence and to evaluate its credibility.

Further, as explained above, the purpose of the Policy is to protect trademark owners from *cybersquatters*, that is, from people who abuse the domain name system in a very specific way, which specific way is outlined in Paragraph 4(a) of the Policy. The purpose is not to resolve disputes between parties who might each have legitimate rights in a domain name.

Here, the Respondent alleges: "...[T]he intended purpose of the [Domain Name] was by agreement purposefully 'descriptive' in nature and meant

to avoid any such confusion that SFWA's sponsorship of the 'SCCY PATRIOT' was related to any other SFWA sponsorship or that any other SCCY products would receive the same benefit package". Such allegations, in the view of this Panel, arguably reflect that each of the parties may have legitimate rights in the Domain Name.

Finally, the Respondent purports to act for a non-profit association, the SFWA, "which has been a nationally acclaimed non-profit training entity for more than 20 years", and alleges that neither the Respondent, nor SFWA, has profited from the Domain Name. Where there is no intent "to profit commercially from others' trademarks" there can be no bad faith.

The present dispute falls outside the intended scope of the UDRP.

#### **DECISION**

For the reasons presented above, the Panel concludes that relief shall be **DENIED**.

Accordingly, the Complaint is **DISMISSED**.

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David L. Kreider, Panelist

Dated: May 8, 2024