



ADMINISTRATIVE PANEL DECISION

Case No.:	HK-2201631
Complainant:	SEGWAY INC.
Respondent:	Marcus Warner
Disputed Domain Name:	<melbournesegway.com>

1. The Parties and Contested Domain Name

The Complainant is SEGWAY INC. Address: BEDFORD, NH 03110, UNITED STATES OF AMERICA.

The Respondent is Marcus Warner. Address: 54 Kent Street, Cannington, WA, AU. Email: segwaymelbourne@mail.com.

The domain name at issue is <melbournesegway.com> registered by the Respondent with Tucows Domains Inc. Address: 96 Mowat Avenue, Toronto, ON M6K 3M1. Canada. Email: domainabuse@tucows.com.

2. Procedural History

On 24 June, 2022, the Complainant's authorized representative, Beijing Chofn Intellectual Property Agency Co. Ltd submitted the Complaint with Annexes against the Respondent's registration of the Disputed Domain Name <melbournesegway.com> to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre ("ADNDRC") ("Centre"), in accordance with the Uniform Domain Name Dispute Resolution Policy ("Policy") adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN") on 24 October, 1999, the Rules for UDRP ("Rules") approved by the ICANN Board of Directors on 28 September, 2013, and ADNDRC Supplemental Rules to the ICANN Uniform Domain Name Dispute Resolution Policy ("Supplemental Rules") effective from 31 July, 2015. The Complainant requested a single person panel.

In response to the Centre's email of 24 June, 2022 to the Registrar, the Registrar responded on 24 June, 2022 to the Centre, confirming that:

- (1) the disputed domain name is being registered with the Registrar,
- (2) the Respondent is the current registrant or holder of the disputed domain name,
- (3) ICANN's UDRP Policy applies to the Complaint,
- (4) the language of the Registration Agreement of the disputed domain name is English,

(5) the date of expiration of the registration is 2023-05-17;
(6) the disputed domain name would not be transferred to another holder until the conclusion of the administrative proceeding pursuant to paragraph 11 of UDRP, and
(7) the relevant information of the disputed domain name from the Registrar's Whois database, including the particulars of the registrant Respondent.

On 27 June, 2022, the Centre notified the Complainant of the formal deficiency of its Complaint. On 27 June, 2022, the Complainant submitted to the Centre a rectified version of the Complaint. On 28 June, 2022, the Centre confirmed that the rectified version was in administrative compliance.

On 30 June, 2022, the Centre sent to the Respondent a written notice, informing the Respondent, among others, that it had to submit a Response within 20 days i.e. on or before 20 July, 2022, in accordance with Article 5 of the Rules and the Supplemental Rules. On 22 July, 2022, the Centre notified the Parties of the Respondent's default.

On 25 July, 2022, the Centre appointed Mr. Peter Cheung as the sole Panelist in the present dispute, who confirmed that he was available to act impartially and independently between the Parties in this matter.

The Panel finds that the Administrative Panel was properly constituted and appointed in accordance with the Rules and the Supplemental Rules.

3. Factual background

SEGWAY INC. is the world leader in personal transportation. Founded in 1999 by famed inventor Dean Kamen, Segway has always strived to provide high quality, safe and reliable products to its customers. In 2015, Ninebot merged with Segway, which is based in Bedford, USA. The new company 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 (Annex 4 to the Complaint: The Complainant's subject qualification certificate)

The Complainant is a world leader in the new short-distance power transportation and has more than 1000 basic patents globally. Its products including balance vehicles, scooters, robots, off-road vehicles, electric vehicles, rockers, go-karts etc are widely used in innovation short-distance transportation, robotics, cool entertainment and other fields, meeting the diverse and customized needs of users and continuing to drive the development of the industry.

For specific product information, <https://au.segway.com/> refers.

4. Parties' Contentions

A. Complainant

The Complainant's contentions are as follows:

Background

Rights of the Complainants

The Complainant had been conducting business in Australia long before the Disputed Domain Name was registered (Annex 6 to the Complaint: Some of SEGWAY's coverage in Australia). Moreover, prior to the registration of the Disputed Domain Name, the Complainant's SEGWAY brand had already acquired an extremely high level of global recognition. In 2002, the first batch of Segway PTs was sold publicly on Amazon.com. In 2008, the Beijing Olympic Games were outfitted with more than 100 Segway PTs for conference and airport security personnel, stadium logistics personnel, and representatives from various countries. Ninebot received a capital injection of more than US\$80 million from Xiaomi, Sequoia Capital, Shunwei Capital and Huashan Capital in 2014, and launched the "No. 9 Balance Bike" product in collaboration with Xiaomi. In 2015, ninebot completed its Segway acquisition; thus, the Complainant formally became a member of Xiaomi's ecological chain. In January 2017, CES 2017 officially opened in the United States, the Complainant with the full range of Segway products, and launched the first LOOMO companion robot. In August of the same year, the Complainant received \$100 million in Series C funds. In August 2018, the Complainant together with Meituan launched the Segway S1 robot delivery, the same year in the United States in Los Angeles officially held a global launch of new products, the launch of Segway Drift W1 and Nine Kart Kit two new products. In 2019, the Complainant launched the S2, X1 delivery robot, and T60 smart sharing scooter (The above information is taken from the Complainant's official website presentation, <https://uk-en.segway.com/about-the-brand>, <https://segway.com/about-us/>).

Since its foundation, the Complainant's products have been sold in more than 60 countries and regions (including Australia). The Complainant also has won many awards for its excellent product design and friendly user experience (Annex 7 to the Complaint: Media coverage of world-class awards).

In December 2020, the Complainant was listed on the Science and Technology Council of the Shanghai Stock Exchange (Annex 8 to the Complaint: Specific information on the Claimant's listing on the Shanghai Stock Exchange).

i) The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights:

Based on the above, it can be seen that the Complainant has a high reputation and influence. As the Complainant's corporate name and core product trademark, SEGWAY has been widely known to the public in Australia and around the world through years of actual use and promotion. The Complainant believes that when comparing the Disputed Domain Name and the Complainant's trademark in this case, the relevant comparison should only focus on the second-level part of the domain name (the main identifying part mentioned below) and the Complainant's trademark (Annex 9 to the Complaint: Rollerblade, Inc. v. Chris McCrady, Case No. D2000-0429).

The Disputed Domain Name <melbournesegway.com> without the suffix .com is melbournesegway, The English word melbourne is the name of a city in Australia that lacks significance, and this word is a commonly used word, which is not compared with the trademark in this case to determine confusion. Therefore, the main identifying part of the Disputed Domain Name is segway, which is completely consistent with the Complainant's English trademarks SEGWAY. With respect to the test of confusion under the first element, a Disputed Domain Name whose primary identifying part contains all or at least one of the main features of a trade mark is normally considered confusing. Further, based on the above reference to the global popularity of SEGWAY, the Complainant believes that the Disputed Domain Name is likely to cause confusion.

In summary, the major identifying aspects of the Disputed Domain Name are sufficiently similar to the Complainant's SEGWAY trademarks to cause confusion for consumers.

ii) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name:

The Respondent has no rights or legitimate interests in respect of the domain name. The Complainant searched the trademark database in Australia and confirmed that no trademark

applications were found under the name of the Respondent Marcus Warner. According to the Complainant's feedback, the Respondent is not in the identity of the Complainant's distributor or partner, and the Complainant has never directly or indirectly authorized the Respondent to use the SEGWAY trademarks and domain name in any form. The name of the Respondent is Marcus Warner. Obviously, it is impossible for him to enjoy the relevant name rights for SEGWAY.

In summary, the Respondent does not have any rights or legitimate interest in the domain name.

iii) The Disputed Domain Name has been registered and is being used in bad faith:

The Complainant believes that the registration time of the Disputed Domain Name <melbournesegway.com> was 2022-05-17, which was far later than the time when the Complainant applied for and used the trademarks SEGWAY in the world. Prior to the registration of the Disputed Domain Name, the Complainant had acquired trademark rights in Australia and conducted a series of commercial activities which were reported in the media. The Complainant believes that the Respondent applied for the domain name with malicious intent. The goods sold in the website to which the Disputed Domain Name used to refer are similar to the Complainant's goods. This clearly shows that the Respondent knew or should have known the Complainant's business name and trademark when registering the domain name. By the Respondent's use of the Disputed Domain Name, it is inferred in turn that the Respondent registered the Disputed Domain Name in bad faith. In the case that the Complainant's trademark is highly distinctive and well-known, there is almost no possibility of the Disputed Domain Name being coupled with it. The Complainant believes that the Respondent's application for a domain name shall be governed by the provisions of Article 4(b) of the "Policy", which is to determine the fact that the Disputed Domain Name has been "maliciously registered". The Respondent's true intention in registering the Disputed Domain Name was to profit from the sale of goods and that the goods were similar to the Complainant's goods. The Respondent has not highlighted on its website that there is no connection between it and the Complainant. The Complainant is unable to identify whether the products sold by the Respondent are counterfeit products, and then real users are even more unable to distinguish them (Annex 10 to the Complaint: The page the Disputed Domain Name used to point to). The Respondent attracts Internet users to its website through the possibility of confusion with the Complainant's trademark, and in such a way as to "hitchhike", "rub the

traffic" and "rub the popularity". The Complainant believes that the Respondent has infringed the rights of others in order to obtain commercial benefits. The Complainant believes that the Respondent's use of the Disputed Domain Name does not demonstrate sufficient "good faith" and the Complainant believes that the above qualifies as "bad faith use" for purposes of Section 4(b)(iv) of the Policy: by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site 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 your web site or location or of a product or service on your web site or location.

In summary, the Respondent has acted in bad faith in the registration and use of the disputed domain name.

The Annexes mentioned above refer to the annexes to the Complaint which are not attached to this Decision.

Remedies sought:

In accordance with Paragraph 4(b)(i) of the Policy, for the reasons described above, the Complainant requests the Panel appointed in this administrative proceeding to issue a decision that the Disputed Domain Name shall be transferred to the Complainant.

B. Respondent

The Respondent is Marcus Warner. Address: 54 Kent Street, Cannington, WA, AU. Email: segwaymelbourne@mail.com.

The Respondent did not file any Response in reply to the Complainant's contentions.

5. Findings

The UDRP provides, at Paragraph 4(a) (Applicable Disputes), that each of three findings must be made in order for a Complainant to prevail:

- i. the Respondent's domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- ii. the Respondent has no rights or legitimate interests in respect of the domain name; and

- iii. the Respondent's domain name has been registered and is being used in bad faith.

A) Identical / Confusingly Similar

The Disputed Domain Name is <melbournesegway.com>. It contains two elements: "melbourne" and "segway", and also the generic top-level domain ".com". It is trite rule that the generic top-level domain name suffix ".com" is technical in nature, does not have any proprietary significance, cannot confer any distinctiveness and is incapable of differentiating the Disputed Domain Name from others' proprietary rights, and as such, is disregarded under confusing similarity test. See para.1.11 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0").

Trademarks are not case sensitive. Within the Disputed Domain Name is the word "segway". It is identical to the Complainant's "SEGWAY" trademarks. The addition of the descriptive geographical location of "melbourne" as the prefix to the portion of the Disputed Domain Name does not draw a reasonable Internet user's attention away from the principal element of the Disputed Domain Name. It is a well-established rule that the addition of a descriptive term does not negate confusing similarity but often tend to emphasize it, and is irrelevant to consider in the determination of Paragraph 4(a)(i) of UDRP. See paras.1.7 & 1.8 of WIPO Jurisprudential Overview 3.0.

Considering the Disputed Domain Name as a whole, the Panel takes the view that the addition of the descriptive geographical term of "melbourne" before "segway", is confusingly similar to the Complainant's "SEGWAY" trademarks. It does not confer to the whole of the mark any new meaning and does not dispel confusing similarity between the Disputed Domain Name and the Complainant's proprietary trademarks. See paras.1.2 of WIPO Jurisprudential Overview 3.0.

The Panel takes the view that the addition of the descriptive geographical term further increases the likelihood of confusion due to the Complainant's notable presence in the field of electric transportation devices, as the general public are likely to believe that the Disputed Domain Name relates to Complainant's electric transportation devices and would further divert Internet users away from the Complainant's official website. See para.1.15 of WIPO Jurisprudential Overview 3.0.

The Panel notes that the Complainant has demonstrated that it registered its "SEGWAY" trademarks in Europe (Registration date: 30 March, 2005) and in Australia (registration date: 30 November, 2018) well before the Respondent registered the Disputed Domain Name: <melbournesegway.com> (Creation date: 17 May, 2022). Given the established registered right in the "SEGWAY" trademarks, and the above facts, the Panel finds that the Disputed Domain Name is either identical or confusingly similar to a trade mark in which the Complainant has rights, satisfying paragraph 4(a) (i) of UDRP.

B) Rights and Legitimate Interests

The Panel also notes that the Respondent is not authorized by the Complainant to use its SEGWAY trademarks. The Disputed Domain Name is being used in connection with the website used by the Respondent in profit-making, commercial ventures under the trademark SEGWAY. The Panel takes the view that such an unlicensed or unauthorized use of the Complainant's trademarks could never vest any right or legitimate interest in the Respondent.

As proving a negative is always difficult, it is a well-established rule that any Complainant's burden of proof on this element is light. The Panel rules that there is *prima facie* evidence to support that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. It is up to the Respondent to discharge the evidential burden to prove it has rights or legitimate interests in respect of the Disputed Domain Name. See para.2.1 of WIPO Jurisprudential Overview 3.0.

The Respondent did not file any Response in reply to the Complainant's contentions.

It is trite rule that the mere registration of the Disputed Domain Name by the Respondent is not sufficient to establish that it owns rights and legitimate interests. Intellectual property infringement including passing off the goodwill and reputation of others are contrary to the object and purpose of UDRP and cannot derive any rights or legitimate interests.

The Panel takes notice that after widespread commercial use, the SEGWAY trademarks have acquired the recognition of the relevant sector of the public. The Complainant and the Respondent have no prior connection. The SEGWAY trademarks are not a term commonly used in the English language. Further, the Respondent has submitted no evidence to demonstrate that it has been commonly known by the Disputed Domain Name.

Nobody has any right to represent his or her goods or services as the goods or services of somebody else. The Complainant has not licensed or otherwise permitted the Respondent to use the Disputed Domain Name or use any domain name incorporating the Complainant's registered trademarks. The Panel considers that there is no evidence that would tend to establish that the Respondent has rights or legitimate interests in respect of the Disputed Domain Name.

The Panel draws the irresistible inference that the Respondent is not using the Disputed Domain Name on a non-commercial or fair use basis without intent to misleadingly divert the relevant sector of the public to its operation. On the contrary, the Respondent is using the Disputed Domain Name to tarnish the goodwill and reputation of the Complainant's trademark.

The Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name, satisfying paragraph 4 (a) (ii) of UDRP.

C) Bad Faith

Paragraph 4 (b) (Evidence of Registration and Use in Bad Faith) of UDRP provides that for the purposes of Paragraph 4 (a) (iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) *circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the 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 your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor, or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site 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 your web site or location or of a product or service on your web site or location.

The Panel takes notice that the Complainant is a leading electric transportation supplier in Australia and its distinctive SEGWAY trademarks is well-known in the field due to its extensive use. On the other hand, the Respondent does not have any rights or legitimate interest in registering and/or using the Disputed Domain Name.

The Panel also notes that the Disputed Domain Name was created on 17 May 2022. Within it, it contains the SEGWAY trademark in its entirety. Given the fame and reputation of the Complainant's SEGWAY trademarks in Europe and in Australia, the Panel considers that it is virtually impossible for the Respondent to have selected the Disputed Domain Name without knowing it. The Respondent should have been well aware of the Complainant and the SEGWAY trademarks prior to registration, and the Panel accepts that the Disputed Domain Name has clearly been registered and are being used in bad faith.

By registering and using the Disputed Domain Name, the Panel takes the view that the Respondent has prevented the Complainant from using its mark in the corresponding domain name, and disrupted the business of the Complainant. Worst still, it has also created confusion among the general public in respect of the relationship between the Respondent's website and the Complainant's. Such would further increase the likelihood of confusion since the activities featured on the Respondent's website are closely related to the products offered by the Complainant, and/or confuse the public into thinking that the Respondent is a licensee or sponsor of the SEGWAY trademarks when in fact this is not the case. See para.3.1.3 of WIPO Jurisprudential Overview 3.0.

As no reasonable explanation was offered by the Respondent for its continued registration and use of the Disputed Domain Name, the Panel infers that the Respondent has done so with the obvious intent to trade on the Complainant's goodwill in its SEGWAY trademarks, and lead Internet users into believing that the Disputed Domain Name and/or the Respondent's website or the business and activities are associated with, endorsed or sponsored by the Complainant in some way, or that the Respondent's use of the Disputed Domain Name is authorized by the Complainant, or to attract Internet traffic by capitalizing on the association with the Complainant's SEGWAY trademarks, further keeping the Disputed Domain Name from being used by the Complainant. It is a trite rule that use of the Disputed Domain Name merely intended to divert the public to the Respondent's website cannot be considered as a bona fide offering of goods and services. Accordingly, the Panel

considers the Respondent's continued registration and use of the Disputed Domain Name are clear acts of bad faith. See para.3.1.4 of WIPO Jurisprudential Overview 3.0.

It is trite rule that use which intentionally trades on the fame of another cannot constitute a "bona fide" offering of goods or services. Further, the Respondent has provided no evidence to demonstrate use of the Disputed Domain Name are in good faith. The Panel draws the irresistible inference that the Respondent must have prior knowledge of the Complainant's SEGWAY trademarks. The Panel takes the view that the Respondent, by registering the Disputed Domain Name, is a dishonest misappropriation of the Complainant's registered trademarks, making the Respondent's cybersquatting an instrument of fraud. See para.3.2.2 of WIPO Jurisprudential Overview 3.0.

The Panel therefore finds that the Respondent's domain name has been registered and is being used in bad faith, satisfying paragraph 4 (a) (iii) of UDRP.

6. Decision

For all the foregoing reasons, the Panel concludes that the Complainant has provided sufficient proof of its contentions, has proven each of the three elements of paragraph 4 of UDRP with respect to the Disputed Domain Name and has established a case upon which the relief sought must be granted. The Panel therefore orders that the registration of the Disputed Domain Name <melbournesegway.com>be transferred to the Complainant, as sought.

Sole Panelist: Peter Cheung *P. Cheung*

Date: 5 August, 2022