

ADMINISTRATIVE PANEL DECISION

Toteme AB v. Xiurong Ma
Case No. D2022-3631

1. The Parties

The Complainant is Toteme AB, Sweden, represented by Kanter Advokatbyrå, Sweden.

The Respondent is Xiurong Ma, China.

2. The Domain Name and Registrar

The disputed domain name <toteme-outlet.com> (“the Domain Name”) is registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 30, 2022. On September 30, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On October 2, 2022, 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 October 3, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 23, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 28, 2022.

The Center appointed Dawn Osborne as the sole panelist in this matter on November 3, 2022. The Panel finds that it was properly constituted. 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 the owner of the trade mark TOTÊME registered, *inter alia*, as trade mark No. 4,730, 273 in the United States of America since May 5, 2015.

The Domain Name registered in 2022 has been used to offer goods and services using the Complainant's mark with its circumflex as a masthead. The address used on the Respondent's web site has previously been associated with Internet scams.

5. Parties' Contentions

A. Complainant

The Complainant's contentions can be summarised as follows:

The Complainant is the owner of the trade mark TOTÊME registered, *inter alia*, as trade mark No. 4,730, 273 in the United States of America since May 5, 2015.

The Domain Name registered in 2022 is confusingly similar to the Complainant's mark incorporating that mark without its circumflex, and adding a hyphen, the generic word "outlet" and the generic Top-Level Domain ("gTLD") ".com", none of which prevents confusion between the Domain Name and the Complainant's mark.

The Respondent is not commonly known by the Domain Name and has no permission from the Complainant to use the Complainant's mark. The Domain Name has been used for a site purporting to offer goods and services using the Complainant's trade mark with its circumflex in its masthead to associate itself with the Complainant. The Respondent is using the Domain Name to impersonate the Complainant with the intent to lure consumers. The look and feel of the website at the Domain Name is likely to mislead consumers into believing that that the website belongs to or is associated with the Complainant. This cannot be a *bona fide* offering of goods and services or a noncommercial legitimate fair use. The Respondent has no rights or legitimate interests in the Domain Name.

The Respondent registered the Domain Name to direct it to a site which the Complainant's mark is incorporated in its masthead to confuse Internet users into believing the website at the Domain Name is associated with the Complainant. The website at the Domain Name offers Complainant's products (or similar products) at a much lower price. The Domain Name has been registered and used in bad faith to confuse Internet users for commercial gain and disrupt the Complainant's business.

In the "Term and Conditions" found on the site, there is a reference to "Toteme Sales Store LLC", a company that does not exist, and which address indicated under "Contact Us", is reported on a fraud alert site as used on more than a hundred fraudulent sites. The Complainant is concerned about possible phishing.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Domain Name consists of the Complainant's TOTÊME mark (registered in the United States of America for clothing since 2015), minus its circumflex, with the addition of a hyphen, the term "outlet" and the gTLD ".com".

The deletion or addition of punctuation such as a circumflex or a hyphen and the addition of a term like “outlet” and/or a gTLD does not prevent a finding of confusing similarity between the Domain Name and the Complainant’s trade mark pursuant to the Policy.

Accordingly, the Panel holds that the Domain Name is confusingly similar to the Complainant’s registered mark.

As such the Panel holds that paragraph 4(a)(i) of the Policy has been satisfied.

B. Rights or Legitimate Interests

The Complainant has not authorised the use of its mark and the Domain Name itself containing the Complainant’s mark carries an inherent risk of implied affiliation. There is no evidence or reason apart from the use complained of to suggest that the Respondent is commonly known by the Domain Name. The use is commercial so it cannot be legitimate noncommercial fair use.

The web site attached to the Domain Name purports to offer retail services in the clothing sector and products using the Complainant’s mark as its masthead with its circumflex intact. It does not make it clear that there is no connection with the Complainant who has an established reputation for such services and products. The Panel finds this use is confusing and therefore does not amount to a *bona fide* offering of goods or services.

The Respondent has not answered this Complaint to counter the *prima facie* case put forward by the Complainant as set out herein or provide any explanation to counter the serious allegation that the web site could be engaged in phishing because the company name given on the Respondent’s web site does not appear to exist and the address given on the Respondent’s site is associated with a large number of scams on the Internet.

As such the Panelist finds that the Respondent does not have rights or a legitimate interests in the Domain Name and that the Complainant has satisfied the second limb of the Policy.

C. Registered and Used in Bad Faith

In the opinion of the Panel the use made of the Domain Name in relation to the Respondent’s site is confusing and disruptive in that visitors to the site might reasonably believe it is connected to or approved by the Complainant as it uses the Complainant’s mark with its circumflex intact in its masthead. The Domain Name itself carries a risk of implied affiliation and the Respondent has not explained its choice of Domain Name. The Panel is entitled to draw adverse inferences from the lack of response from the Respondent. Specifically there has been no attempt to counter the serious allegation that the company name given on the Respondent’s site does not exist and the address provided by the Respondent on its web site is associated with Internet scams, and that the Respondent must have been aware of the Complainant who has an established name for clothing and associated services.

Accordingly, the Panel holds that the Respondent has intentionally attempted to attract for commercial gain Internet users to her web site by creating a likelihood of confusion with the Complainant’s trade mark as to the source, sponsorship, affiliation or endorsement of the web site and services and products offered on it under paragraph 4(b)(iv) of the Policy, and likely to disrupt the business of the Complainant under the paragraph 4(b)(iii) of the Policy. There also is evidence that the address on the site attached to the Domain Name is likely to be associated with a number of Internet scams and forms part of a pattern of fraudulent activity which are further indications of bad faith.

As such, the Panel believes that the Complainant has made out its case that the Domain Name was registered and used in bad faith and has satisfied the third limb of the Policy under paragraphs 4(b)(iii) and 4(b)(iv).

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name <toteme-outlet.com> be transferred to the Complainant.

/Dawn Osborne/

Dawn Osborne

Sole Panelist

Date: November 4, 2022