

ADMINISTRATIVE PANEL DECISION

Boyajian Products LLC dba Wild Flower v. Li Chen Case No. D2023-2035

1. The Parties

The Complainant is Boyajian Products LLC dba Wild Flower, United States of America (“United States”), represented by Grant Attorneys at Law, PLLC, United States of America.

The Respondent is Li Chen, China.

2. The Domain Name and Registrar

The disputed domain name <wildflowersale.com> (the “Disputed 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 May 5, 2023. On May 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On May 9, 2023, 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 and contact information in the Complaint.

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 May 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 14, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 16, 2023.

The Center appointed Nicholas Weston as the sole panelist in this matter on June 23, 2023. 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 a United States corporation that since 2017 has operated a business promoting and selling adult sexual pleasure products and adult sexual health products and sex toys. The Complainant holds registrations for the trademark WILD FLOWER and variations of it in numerous countries, including in the United States pursuant to the Registration No. 5838951, registered on August 20, 2019.

The Complainant is also the owner of, *inter alia*, the domain name <wildflowersex.com>, which it registered resolves to the company's main website.

The Disputed Domain Name <wildflowersale.com> was registered on August 6, 2022 and resolved to a website containing content lifted from the Complainant's official website, including its trademark, and offering for sale sexual pleasure products similar to the products offered by Complainant on Complainant's official website. The Disputed Domain Name subsequently resolved to an inactive webpage.

5. Parties' Contentions

A. Complainant

The Complainant cites its trademark registrations for WILD FLOWER in various formats as *prima facie* evidence of ownership.

The Complainant submits that the trademark WILD FLOWER has "acquired trademark and service mark rights to WILD FLOWER through extensive use in the United States and international jurisdictions, including Europe, and Australia since July 2017" and that its rights in that trademark predate the Respondent's registration of the Disputed Domain Name <wildflowersale.com>. It submits that the Disputed Domain Name is confusingly similar to its trademark, because the Disputed Domain Name incorporates in its entirety the WILD FLOWER trademark and that the similarity is not removed by the addition of the word "sale".

The Complainant contends that the Respondent has no authorized rights or legitimate interests in respect of the Disputed Domain Name and that "Respondent is not affiliated with Complainant in any way and has not been authorized by Complainant to use and register its WILD FLOWER Marks or to seek the registration of any domain name incorporating the WILD FLOWER Marks". The Complainant also submits "Respondent's website is not making a legitimate noncommercial use of the Domain [Name], but rather, the Domain [Name] is intended for commercial gain at the expense of the goodwill in the WILD FLOWER Marks. There is no evidence that, prior to the filing of this Complaint, the Respondent used or demonstrated preparations to use the Domain [Name] or any name corresponding to the Domain [Name] in connection with a *bona fide* offering of goods or services".

Finally, the Complainant alleges that the registration and use of the Disputed Domain Name was, and currently is, in bad faith, contrary to the Policy and the Rules. It submits that "Respondent has copied Complainant's design mark depicted on its website wildflowersex.com and used it on the wildflowersale.com website" and that the "Respondent's demonstrated pattern of acting in opportunistic bad faith by registering a domain [name] that is confusingly similar to that of a trademark registrant under similar sets of circumstances" citing: *HUGO BOSS Trade Mark Management GmbH & Co. KG and HUGO BOSS AG v. Li Chen*, WIPO Case No. [D2016-1623](#); *Cube Limited v. Li Chen*, WIPO Case No. [D2016-0981](#); and *International Business Machines Corporation v. 李晨 (li chen)*, WIPO Case No. [D2020-0009](#), as evidence of the Respondent's bad faith pattern of conduct.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant has the burden of proving the following:

- (i) that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- (iii) that the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has produced sufficient evidence to demonstrate that it has registered trademark rights in the mark WILD FLOWER. The domain name may be compared to a trademark registered in any country (see WIPO Overview of WIPO Panel Views on Selected URDP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 1.2.1).

Turning to whether the Disputed Domain Name is identical or confusingly similar to the WILD FLOWER trademark, the Panel observes that the Disputed Domain Name comprises: (a) an exact reproduction of the Complainant’s WILD FLOWER trademark; (b) followed by the word “sale”; (c) followed by the generic Top-Level Domain (“gTLD”) “.com”.

It is well established that the gTLD used as technical part of a domain name may be disregarded (see section 1.11.1 of the [WIPO Overview 3.0](#)). The relevant comparison to be made is with the second-level portion of the Disputed Domain Name, specifically: “wildflowersale”.

It is also well-established that in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing (see [WIPO Overview 3.0](#), section 1.7).

This Panel accepts that the addition of the word “sale” does not preclude a finding of confusing similarity to the Complainant’s trademark (see [WIPO Overview 3.0](#), section 1.8).

The Panel finds that the Complainant has established paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists the ways that the Respondent may demonstrate rights or legitimate interests in the Disputed Domain Name. The Policy also places the burden of proof on the Complainant to establish the absence of the Respondent’s rights or legitimate interests in the Disputed Domain Name. Because of the inherent difficulties in proving a negative, the consensus view is that the Complainant need only put forward a *prima facie* case that the Respondent lacks rights or legitimate interests. The burden of production then shifts to the Respondent to rebut that *prima facie* case (see [WIPO Overview 3.0](#), section 2.1).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because it has not licensed, permitted or authorized the Respondent to use the Complainant’s trademark or to sell its products and for those reasons, the Respondent is not making a *bona fide* offering of goods or services. The Complainant submits that “Respondent is not affiliated with Complainant in any way and has not been authorized by Complainant to use and register its WILD FLOWER Marks or to seek the registration of any domain name incorporating the WILD FLOWER Marks” and that “[t]here is no evidence that, prior to the filing of this Complaint, the Respondent used or demonstrated preparations to use the [Disputed] Domain [Name] or any name corresponding to the [Disputed] Domain [Name] in connection with a *bona fide* offering of goods or services. [The] Respondent’s use of a domain

address that is confusingly similar to the Respondent's domain [name], <wildflowersex.com> misleadingly diverts consumers to Respondent's website. Respondent has intentionally displayed Complainant's design mark on its website to deceptively suggest that the Complainant is the source of the Respondent's goods and services."

The composition of the Disputed Domain Name consists of the Complainant's trademark with the word "sale" added. The Panel notes that the dominant word element of the trademark is a commonly used descriptive or dictionary term and not particularly distinctive but the Panel finds that this not a respondent who has registered and used a domain name to attract Internet traffic based on the appeal of the common descriptive or dictionary term of "wild" and "flower". On the contrary, the website at the Disputed Domain Name offers for sale sex products, similar with the Complainant's products. In this Panel's view, the Complainant has made out an initial *prima facie* case that the Respondent lacks rights or legitimate interests because the evidence demonstrates that it has an awareness of the Complainant and its mark and intent to take unfair advantage of such, which does not support a finding of any rights or legitimate interests (see [WIPO Overview 3.0](#), section 2.1).

Further, this Panel accepts that the Respondent is not an authorized reseller with a legitimate interest in a domain name incorporating a Complainant's mark, and there is no disclaimer on the website the Disputed Domain Name resolve to, therefore it cannot meet the tests set out in *Okidata Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#). Nor, alternatively, is the Respondent commonly known by the Disputed Domain Name. Nor, alternatively, is the Respondent making use of, or demonstrable preparations to use, the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a *bona fide* offering of goods or services.

In the absence of a response, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because it is engaging in an illegitimate commercial use of the Disputed Domain Name by suggesting some association with the Complainant and misleading consumers who are seeking out the Complainant's mark WILD FLOWER to opportunistically divert Internet traffic to its web page.

The Panel finds for the Complainant on the second element of the Policy.

C. Registered and Used in Bad Faith

The third element of the Policy that a complainant must also demonstrate is that the disputed domain name in question has been registered and used in bad faith. Paragraph 4(b) of the Policy sets out certain circumstances to be construed as evidence of both.

The Panel finds that the evidence in the case shows the Respondent registered and has used the Disputed Domain Name in bad faith.

On the issue of registration, taking into account the composition of the Disputed Domain Name, the Panel is satisfied that the Respondent targeted the Complainant's trademark WILD FLOWER when it registered the Disputed Domain Name and the Panel is prepared to infer that the Respondent knew, or should have known, that its registration would be identical or confusingly similar to the Complainant's trademark despite the additional word "sale" (see [WIPO Overview 3.0](#), section 3.2.1).

On the issue of use, the uncontradicted evidence of record is that the Disputed Domain Name was used to resolve to a website bearing a reproduction of the Complainant's trademark in the form that it appears on the Complainant's official website, and offering similar products for sale. In line with prior UDRP panel decisions, the Panel finds that this misconduct is an intentional attempt to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website (see [WIPO Overview 3.0](#), section 3.1.4).

Also, it appears that the Respondent did not provide proper contact details when it registered the Domain Name by supplying a false address, in further evidence of bad faith (see [WIPO Overview 3.0](#), section 3.6).

There is also evidence that, subsequent to its use for a sex products website, the Disputed Domain Name was inactive and unconnected with any *bona fide* supply of goods or services by the Respondent. Previous UDRP panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. “While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the ‘passive holding’ doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put” (see [WIPO Overview 3.0](#), section 3.3). This Panel notes that the evidence is that all of these factors are present in this proceeding.

The Panel also observes that the Respondent has been the unsuccessful respondent in a number of other UDRP proceedings. The Panel therefore finds that that the Respondent is a serial offender who deliberately targeted the Complainant and is engaged in a pattern of bad faith conduct ([WIPO Overview 3.0](#), section 3.1.2).

This Panel finds that the Respondent has registered and used the Complainant’s trademark WILD FLOWER in the Disputed Domain Name, together with the word “sale”, without the Complainant’s consent or authorization, for the likely purpose of capitalizing on the reputation of the trademark to infringe upon the Complainant’s rights.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) of the Policy.

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 Disputed Domain Name <wildflowersale.com> be transferred to the Complainant.

/Nicholas Weston/

Nicholas Weston

Sole Panelist

Date: July 4, 2023