

ADMINISTRATIVE PANEL DECISION

Sugartown Worldwide, LLC v. WeiWei Tu
Case No. D2023-2386

1. The Parties

The Complainant is Sugartown Worldwide, LLC, United States of America (“United States”), represented by Kilpatrick Townsend & Stockton LLP, United States of America.

The Respondent is WeiWei Tu, China.

2. The Domain Names and Registrar

The disputed domain names <ladylillypulitzer.com> and <lillypulitzerwear.com> (the “Domain Names”) are registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 1, 2023. On June 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On June 2, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed Domain Names which differed from the named Respondent (Whois Agent) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 6, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on June 7, 2023.

The Center verified that the Complaint together with the amended 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 June 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 3, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 10, 2023.

The Center appointed Gregor Vos as the sole panelist in this matter on July 18, 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 designer, marketer, and distributor of upscale collections of women's and girl's clothing and other products, such as furniture and bedding. The Complainant operates many retail stores throughout the United States.

The Complainant is the owner of *inter alia* the following trademark registrations (hereinafter jointly referred to as the "Trademarks"):

- United States Trade Mark reg. No. 1157374 for LILLY PULITZER registered on June 9, 1981;
- European Union Trade Mark reg. No. 000106781 for LILLY PULITZER registered on September 10, 1999;
- European Union Trade Mark reg. No. 010246197 for LILLY PULITZER registered on May 31, 2012;
- European Union Trade Mark reg. No. 013186093 for  registered on June 23, 2015.

The Domain Names were both registered on February 1, 2023 and at the time of filing of the Complaint resolved to a website that appeared to mimic the Complainant's website.

It is undisputed that the Complainant is the owner of the domain name <lilypulitzer.com>.

5. Parties' Contentions

A. Complainant

With the Complaint, the Complainant seeks that the Domain Names are transferred to the Complainant. The Complaint is based on the following factual and legal grounds: the Domain Names are identical or confusingly similar to the Trademarks, the Respondent has no rights or legitimate interests in the Domain Names, and the Domain Names have been registered and are being used in bad faith.

Firstly, according to the Complainant, the Domain Names are confusingly similar to the Trademarks. The Domain Names incorporate the Trademarks in their entirety. The only difference between the Trademarks and the Domain Names is the addition of the terms "wear" and "lady" respectively. According to the Complainant, these additions are insufficient to prevent confusing similarity and consumers may therefore be misled into thinking that the Respondent is related to the Complainant.

Secondly, according to the Complainant, the Respondent has no rights or legitimate interests in the Domain Names. There is no relationship between the Complainant and the Respondent, nor has the Complainant licensed or otherwise authorized the use of the Trademarks. Furthermore, there is no indication that the Respondent is commonly known by the Domain Names and according to the Complainant, the Respondent's use of the Domain Names is intended to cause consumer confusion that results in financial gain for the Respondent.

Finally, the Complainant states that the Respondent has registered and is using the Domain Names in bad faith. The Respondent is using the Domain Names for commercial gain and to benefit from the goodwill and fame associated with the Complainant's Trademarks. In light of the well-known character of the Trademarks, the Respondent must have had knowledge of the Trademarks before registering the Domain Names. This is

reinforced by the use of the Trademarks on the websites to which the Domain Names resolve. Further, the Respondent's bad faith is evidenced by the use of the Domain Names for the sale of unauthorized or counterfeit products from the Complainant to customers who believe that they are purchasing authentic products.

B. Respondent

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

6. Discussion and Findings

In view of the lack of a response filed by the Respondent as required under paragraph 5 of the Rules, this proceeding has proceeded by way of default. Hence, under paragraphs 5(f), 14(a), and 15(a) of the Rules, the Panel is directed to decide this administrative proceeding on the basis of the Complainant's undisputed factual presentations.

For the Complainant to succeed, it must prove, within the meaning of paragraph 4(a) of the Policy and on the balance of probabilities that:

- i. the Domain Names are identical or confusingly similar to a trademark or a service mark in which the Complainant has rights; and
- ii. the Respondent has no rights or legitimate interests in respect of the Domain Names; and
- iii. the Domain Names have been registered and are being used in bad faith.

Only if all three elements have been fulfilled, the Panel is able to grant the remedies requested by the Complainant. The Panel will deal with each of the requirements in turn.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the Domain Names are (i) identical or confusingly similar to a trademark or service mark, (ii) in which the Complainant has rights.

With respect to having rights pursuant to paragraph 4(a)(i) of the Policy, it is noted that the Complainant is registered as the owner of the Trademarks. Consequently, the Panel finds that the Complainant has proven that it has rights in the Trademarks.

With regard to the assessment of identity or confusing similarity of the Domain Names with the Trademarks, it is generally accepted that this test involves a reasoned but relatively straightforward comparison between the Complainant's Trademarks and the Domain Name (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#))). In cases where a domain name incorporates the entirety of a trademark, the domain name will normally be considered confusingly similar to that mark (see section 1.7 of the [WIPO Overview 3.0](#)).

In the present case, the Trademarks are incorporated in the Domain Names in their entirety. The addition of the terms "wear" and "lady" respectively does not prevent a finding of confusing similarity with the Trademarks (see sections 1.8 and 1.11 of the [WIPO Overview 3.0](#)).

Consequently, the Panel finds that the requirement under paragraph 4(a)(i) of the Policy has been satisfied.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate

interests in the Domain Name. The onus of proving this requirement, like each element, falls on the Complainant. Given the difficulty in proving a negative, however, it is usually sufficient for a complainant to make out a *prima facie* case that a respondent lacks rights or legitimate interests. If a complainant does establish a *prima facie* case, the burden of production shifts to the respondent (see, e.g. [WIPO Overview 3.0](#), section 2.1; *Sanofi v. Cimpress Schweiz GmbH*, WIPO Case No. [D2017-0522](#)).

Paragraph 4(c) of the Policy lists three nonlimitative examples of instances in which a respondent may establish rights or legitimate interests in the Domain Names.

The Complainant has substantiated that none of these circumstances apply in this case. Furthermore, the Respondent has failed to produce any evidence to demonstrate rights or legitimate interest in the Domain Names. The Panel notes that the websites to which the Domain Names resolve appear to mimic the Complainant's official website which confirms that the Respondent intends to mislead consumers into thinking that the Respondent and the products offered are related to the Complainant. The Panel does not see any further indication that any of the circumstances of paragraph 4(c) of the Policy are present. In addition, the Panel considers that the nature of the Domain Names carries a risk of implied affiliation.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Names. Paragraph 4(a)(ii) is thereby fulfilled.

C. Registered and Used in Bad Faith

Under paragraph 4(a)(iii) of the Policy, a complainant must show that the disputed domain names have been registered and are being used in bad faith. Paragraph 4(b) of the Policy lists four non-limitative circumstances which may be considered as evidence of registration and use in bad faith of a domain name.

In the present case, the Trademarks are registered by the Complainant and have been used worldwide for many years. The Complainant's rights to the Trademarks predate the registration date of the Domain Names. Moreover, the use made of the Domain Names that resolve to websites on which the Trademarks are depicted leaves no doubt about the Respondent's awareness of and intent to target the Complainant and its Trademarks (section 3.2.2, [WIPO Overview 3.0](#)). In combination with the well-known character of the Trademarks, the Panel finds it inconceivable that the Respondent registered the Domain Names without knowledge of the Trademarks of the Complainant. This well-known character has been confirmed by earlier Panels (see e.g. *Sugartown Worldwide, LLC v. Registration Private, Domains By Proxy, LLC / Justin Pennington, Avoiding Costly Auto Repair*, WIPO Case No. [D2022-3166](#); *Sugartown Worldwide, LLC v. Dragan Platic*, WIPO Case No. [D2014-0729](#)).

The Panel agrees with the Complainant that the use in bad faith of the Domain Names is supported by several findings, namely the absence of any license or permission from the Complainant to use its Trademarks, the fact that the Domain Names resolve to websites that appear to mimic the Complainant's website for commercial gain and the absence of any *bona fide* or legitimate use of the Domain Name in good faith. The Panel finds that the Respondent is using the Domain Names in an attempt to attract Internet users to the related websites by creating a likelihood of confusion with the Trademarks (section 3.2.1, [WIPO Overview 3.0](#)).

Therefore, the Panel finds that the Domain Name has been registered and is being used in bad faith and that the third element of paragraph 4(a)(iii) of the Policy is fulfilled.

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 Names <ladylillypultz.com> and <lillypultz.com> be transferred to the Complainant.

/Gregor Vos/

Gregor Vos

Sole Panelist

Date: July 24, 2023