

ADMINISTRATIVE PANEL DECISION

LC Waikiki Mağazacılık Hizmetleri Ticaret Anonim Şirketi v. Malik Aboshkiwa,

LC Waikiki IN USA & CANADA

Case No. D2023-4504

1. The Parties

The Complainant is LC Waikiki Mağazacılık Hizmetleri Ticaret Anonim Şirketi, Türkiye, represented by Muhtaralar Attorney Partnership, Türkiye.

The Respondent is Malik Aboshkiwa, LC Waikiki IN USA & CANADA, Canada.

2. The Domain Name and Registrar

The disputed domain name <usalcwaikiki.com> is registered with Tucows Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on October 30, 2023. On October 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 30, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Contact Privacy Inc. Customer 0162959668) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 9, 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 amendment to the Complaint on November 13, 2023.

The Center verified that the Complaint together with the amendment to 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 November 22, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 12, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 13, 2023.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on December 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 fashion company that has been operating since the year 1997 in Türkiye and several other jurisdictions. The Complainant operates in 56 countries with 546 stores including Albania, Armenia, Belarus, Bosnia and Herzegovina, Bulgaria, Indonesia, Morocco, Ghana, South Africa, Georgia, Croatia, Iran (Islamic Republic of), Iraq, Montenegro, Poland, Romania, and Greece.

The Complainant also owns a domain name located at “www.lcwaikiki.com”.

The Complainant is the owner of the trademarks WAÏKIKI and LC WAÏKIKI registered in numerous jurisdictions around the world including the following:

Mark	Jurisdiction	Registration number	Date of registration
WAÏKIKI	European Union	000833236	May 18, 2000
LC WAÏKIKI	European Union	000833293	May 18, 2000
LCW	Türkiye	2000 01737	May 16, 2001
LC WAÏKIKI	Türkiye	2000 01738	May 16, 2001

The disputed domain name was registered on November 5, 2021. The disputed domain name resolves to a website where an online store using the trademark and original content of the Complainant was set up simulating an online store of the Complainant. In addition, the Respondent has been using social media accounts including the mark LC WAÏKIKI.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that:

- the disputed domain name is confusingly similar to its trademarks;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name;
- the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements, which a complainant must satisfy in order to succeed. The Complainant must satisfy that:

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

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark LC WAÏKIKI for the purposes of the Policy.

[WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms like "usa" (for United States of America) may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy.

[WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegal activity like the passing off as the Complainant can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Furthermore, the composition of the disputed domain name, comprising the Complainant's trademarks in their entirety and the addition of the geographical term "usa", together with the content of the website at the disputed domain name carries a risk of Internet user confusion. The Panel also notes that the name LC Waikiki IN USA & CANADA was provided for the registration of the disputed domain name, which supports the Panel's finding on the Respondent's intentions to impersonate the Complainant.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that:

- The Complainant trademark has been in use since 1997.
- The Respondent registered the disputed domain name in the year 2021, long after the Complainant's trademark registrations.
- The disputed domain name purported to be an online store of the Complainant including the reproduction of the LC WAÏKIKI trademark of the Complainant, the content imitating the Complainant's website and with no disclaimers of any kind.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have held that the use of a domain name for illegal activity such as impersonation/passing off, or other types of fraud constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Based on the available record, the Panel finds that the Complainant has established the third element 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 <usalcwaikiki.com> be transferred to the Complainant.

/Pablo A. Palazzi/
Pablo A. Palazzi
Sole Panelist
Date: December 27, 2023