

## **ADMINISTRATIVE PANEL DECISION**

The Gap, Inc., Gap (Apparel), LLC, and Gap (ITM) Inc. v. yu zhang, zhangyu  
Case No. D2022-0289

### **1. The Parties**

The Complainants are The Gap, Inc., Gap (Apparel), LLC, and Gap (ITM) Inc. (collectively, “the Complainant”), United States of America (“United States” or “U.S.”), represented by Fross Zelnick Lehrman & Zissu, P.C., United States.

The Respondent is yu zhang, zhangyu, Philippines.

### **2. The Domain Name and Registrar**

The disputed domain name <gapinic.com> (the “Domain Name”) is registered with CNOBIN Information Technology Limited (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 27, 2022. On January 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 31, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on January 31, 2022, 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 February 10, 2022.

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 February 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 3, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 4, 2022.

The Center appointed Mathias Lilleengen as the sole panelist in this matter on March 8, 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 to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

The Complainant The Gap, Inc. and its subsidiaries Gap (Apparel), LLC and Gap (ITM) Inc. comprise one of the world's leading retailers of clothing, accessories, personal care products, and other merchandise. Since 1969, the Complainant has offered its products from GAP stores and subsequently through its websites such as "www.gap.com" to customers around the world. The Complainant is a publicly listed company on the New York Stock Exchange and sales for the GAP brand totaled almost USD 1.1 billion the last fiscal quarter.

The Complainant owns numerous U.S. trademark registrations for GAP, such as U.S. Trademark Registration No. 1,129,294, registered January 15, 1980; and U.S. Trademark Registration No. 1,745,875, registered January 12, 1993. The Complainant owns numerous trademark registrations in many jurisdictions around the world. The Complainant operates several websites, such as "www.gap.com", "www.gap.eu", "www.gap.co.uk", "www.gap.cn", "www.gapcanada.ca", "www.gap.co.jp", and "www.gapinc.com". The Complainant's trademarks and the aforementioned domain names were registered before the registration of the Domain Name. The Complainant has a strong presence in social media.

The Domain Name was registered on December 8, 2021. The Complainant has documented that the Domain Name resolves to a pornographic website.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant provides evidence of trademark registrations, and argues that it also has common law rights in the GAP trademark. The Complainant submits *inter alia* that the Domain Name is confusingly similar to the Complainant's trademark, and in fact, it is a typosquatted version of the Complainant's corporate domain name <gapinc.com>. The additional letters "inic" to the GAP trademark does not avoid confusing similarity.

The Complainant asserts that it has no association with the Respondent and has never authorized or licensed the Respondent to use its trademark. There is no evidence indicating that the Respondent has been commonly known by the Domain Name. Moreover, the Respondent's use of the Domain Name cannot be a *bona fide* offering of goods or services. The Respondent offers pornography at the website of the Domain Name, a use that tarnishes the Complainant.

The Complainant submits that the Respondent must have been aware of the Complainant prior to registering the Domain Name. The fact that the Complainant's trademark rights predate the Respondent's registration of the Domain Name, proves that the Respondent knew of the Complainant and its business. The Complainant argues that the Respondent's use of the Domain Name is in bad faith, as it tarnishes the Complainant's trademark by diverting Internet users to an adult website that bears no logical relationship to the Domain Name.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **A. Identical or Confusingly Similar**

The Complainant has established that it has rights in the trademark GAP. The test for confusing similarity involves a comparison between the trademark and the Domain Name. The Domain Name incorporates the Complainant's trademark in its entirety with the additional element "inic". The addition of these letters does not prevent a finding of confusing similarity between the Domain Name and the trademark.

For the purpose of assessing under paragraph 4(a)(i) of the Policy, the Panel may ignore the generic Top-Level Domains ("gTLDs"), see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.11.1.

The Panel finds that the Domain Name is confusingly similar to a trademark in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

### **B. Rights or Legitimate Interests**

The Complainant has made unrebutted assertions that it has not granted any authorization to the Respondent to register a domain name containing the Complainant's trademark or otherwise make use of the Complainant's mark. There is no evidence that the Respondent has registered the Domain Name as a trademark or acquired unregistered rights. There is no evidence that the Respondent has been commonly known by the Domain Name. The Respondent has not offered any explanation as to the registration of the Domain Name, which incorporates the Complainant's GAP trademark in its entirety, and has not provided any evidence of good-faith use of the Domain Name. The Panel agrees with the Complainant that the Respondent's use of the Domain Name for a pornographic website is not *bona fide*, but rather evidence of bad faith. See section 6.C below.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name in accordance with paragraph 4(a)(ii) of the Policy.

### **C. Registered and Used in Bad Faith**

The Panel finds it probable that the Respondent was aware of the Complainant when the Respondent registered the Domain Name. The Complainant's trademark registrations predate the registration of the Domain Name, and the Complainant has used the GAP trademark to promote its business since 1969.

The Domain Name wholly incorporates the Complainant's trademark, and is almost identical to the Complainant's corporate domain name <gapinc.com>. The Panel finds that the Respondent's intent in registering the Domain Name was most likely to profit in some fashion from or otherwise exploit the reputation of the Complainant's widely-known trademark, possibly for commercial gain by creating a likelihood of confusion with the Complainant's trademark. See [WIPO Overview 3.0](#), section 3.1.

The Respondent has not provided any evidence of actual or contemplated good-faith use of the Domain Name, and has not responded to the Complaint. The Respondent's use of the Domain Name tarnishes the Complainant's trademark by diverting Internet users to a pornographic website.

For the reasons set out above, the Panel concludes that the Domain Name was registered and is being used in bad faith, within the meaning 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 Domain Name <gapinic.com> be transferred to the Complainant, The Gap, Inc..

*/Mathias Lilleengen/*

**Mathias Lilleengen**

Sole Panelist

Date: March 22, 2022