

## **ADMINISTRATIVE PANEL DECISION**

Get Weird, LLC v. Withheld for Privacy ehf, Privacy service provided by  
Withheld for Privacy ehf / Asif Ali, Kaamy Group  
Case No. D2022-0346

### **1. The Parties**

The Complainant is Get Weird, LLC, United States of America (“United States”), represented by K&L Gates LLP, United States.

The Respondent is Withheld for Privacy ehf, Privacy service provided by Withheld for Privacy ehf, Iceland / Asif Ali, Kaamy Group, Pakistan.

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

The disputed domain name <antisocialsocialclubshop.com> (the “Disputed Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 1, 2022. On February 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On February 1, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on February 4, 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 8, 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 9, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 1, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 2, 2022.

The Center appointed Antony Gold as the sole panelist in this matter on March 11, 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 a designer and retailer of streetwear clothing which has been trading since 2015. The Complainant's trading name is "Anti Social Social Club" and these words also appear in a variety of stylizations on many of its garments. The Complainant has secured trade mark registrations for ANTI SOCIAL SOCIAL CLUB in several jurisdictions including, by way of example, United States Trade Mark, registration number, 5,046,740, registered on September 20, 2016, in class 25, including short-sleeved or long-sleeved t-shirts and hooded sweatshirts. The Complainant also owns and operates the domain name <antisocialsocialclub.com>.

The Disputed Domain Name was registered on April 20, 2021. As at the time of filing the Complaint, it resolved to a website, branded as "Anti Social Social Club", which sold garments, including t-shirts and hoodies, many of which featured the words "Anti Social Social Club" and/or its acronym, "ASSC". The website also featured a section titled "The Ego", which contained critical comment about the Complainant. The screenshots of the Respondent's website provided by the Complainant contain a header to each webpage, namely; "Anti Social Social Club | Official ASSC Shop | Limited Stock".

The Disputed Domain Name presently redirects to a website at <streetwearbasket.com><sup>1</sup>. This website is also branded as "Anti Social Social Club" and is in essentially the same form as that to which the Disputed Domain Name previously resolved directly. At the foot of the home page, is a copyright notice; "Copyright Anti Social Social Club © 2021". The home page contains a claim that; "Basically, there is the trend of Anti Social Social Club Hoodies & logo trend on the hoodies. So that people liked to buy these types of hoodies. The stock is totally up to the mark, and you will find every ASSC hoodie here in the quantity you want. The quality which you are not getting from the official site will be available to you here. You can also have different variations according to the colors and sizes". The details of the underlying registrant of the domain name <streetwearbasket.com> are protected by a privacy service. However, as the website at "www.streetwearbasket.com" and the earlier website appear to be substantially the same, both websites are referred to below as "the Respondent's website".

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

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

The Complainant says that the Disputed Domain Name is identical or confusingly similar to a trade mark in which it has rights. It refers to its trade marks for ANTI SOCIAL SOCIAL CLUB, full details of one of these marks having been set out above, and says that, as a result of its widespread use of these marks, they are identified by consumers exclusively with the Complainant. The Disputed Domain Name is confusingly similar to the Complainant's marks, the only difference being the addition of the word "shop". The addition of this generic word does not prevent a finding of confusing similarity.

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<sup>1</sup> As explained at section 4.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision. The Panel has accordingly visited the website to which the Disputed Domain Name resolves and the Complainant's website in order to establish the use which is presently being made of them as well as checking the Whois record for the domain name <streetwearbasket.com>.

The Complainant says also that the Respondent has no rights or legitimate interests in the Disputed Domain Name. To the best of the Complainant's knowledge, the Respondent does not own any trade mark registrations for ANTI SOCIAL SOCIAL CLUB, nor does it believe that the Respondent has registered this term as a corporate name in any jurisdiction. The Respondent is not using the Disputed Domain Name in connection with a *bona fide* offering of goods and services as it is being used in order to sell goods which directly compete with those of the Complainant and is pretending to be a genuine retailer of the Complainant's goods for its own commercial gain. The Complainant has never licensed or approved the use of its marks by the Respondent. The notice on the Respondent's website which claims that it sells better quality goods than the Complainant establishes that the Respondent's purposes has been to impersonate, replace and counterfeit the Complainant's products.

Lastly, the Complainant says that the Disputed Domain Name was registered and is being used in bad faith. Bad faith is presumed where, as here, the Respondent had prior notice of a complainant's trade marks at the time of registration of a domain name. Bad faith is also evident from the Respondent's attempts to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's marks, namely by using the Complainant's mark and simply adding the generic word "shop". The Respondent's use of a privacy service to conceal its identity is, in the current circumstances, a further indicator of bad faith. Moreover, the Complainant has examined one of the Respondent's products and the use of a different material, a different label and a different country of manufacture from those used by the Complainant establishes that it is counterfeit. Misuse of the Complainant's mark in order to sell inferior counterfeits also establishes bad faith registration and use.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy provides that the Complainant proves each of the following three elements in order to succeed in its Complaint:

- (i) the Disputed Domain Name is identical or confusingly similar to a trade mark 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**

The Complainant has provided details of its trade mark registrations it owns for ANTI SOCIAL SOCIAL CLUB, including the registration referenced above, which thereby establish its rights in this mark.

The generic Top-Level-Domain ("gTLD"), that is ".com" in the case of the Disputed Domain Name, is typically disregarded when assessing confusing similarity as it is a technical requirement of registration. The Disputed Domain Name comprises the entirety of the Complainant's ANTI SOCIAL SOCIAL CLUB mark together with the word "shop". Notwithstanding this additional word, the Disputed Domain Name is capable of being considered confusingly similar to the Complainant's mark. As explained at section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), if a trade mark is recognizable within a domain name, the addition of other terms would not prevent a finding of confusing similarity under the first element.

The Complainant's ANTI SOCIAL SOCIAL CLUB mark is clearly recognizable within the Disputed Domain Name and the Panel therefore finds that it is confusingly similar to a trade mark in which the Complainant has rights.

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

The Policy sets out at paragraph 4(c) examples of circumstances, without limitation, by which a respondent may demonstrate rights or legitimate interests in a disputed domain name. These are, in summary: (i) if the respondent has been using the domain name in connection with a genuine offering of goods and services or has made demonstrable preparations to do so; (ii) if the respondent has been commonly known by the domain name; or (iii) if the respondent has been making a legitimate noncommercial or fair use of the domain name. If a complainant establishes a *prima facie* case that a respondent lacks rights or a legitimate interest in a domain name, the burden of production shifts to the respondent; see section 2.1 of the [WIPO Overview 3.0](#).

In order to determine whether the Respondent might be said to be using the Disputed Domain Name in connection with a *bona fide* offering of goods and services, it is necessary to consider the following. First, it is evident from the screenshots of the Complainant's website annexed to the complaint, that the Complainant's own website is presently not offering garments for sale, in the sense that only a limited number of products are displayed on the website and each of them has superimposed over it a "Sold Out" button. In contrast, the Respondent's website appears to be fully functional. Additionally, its home page contains a purported justification for its use of "Anti Social Social Club", namely the assertions that the Complainant has lost interest in customer service, in particular in delivering ordered products promptly, and that the Complainant's products are of low quality, with the consequence that consumers no longer have confidence in it.

These factors have to be balanced against the following considerations. First, as acknowledged by the statements on the Respondent's website, the Complainant was the first to use the brand ANTI SOCIAL SOCIAL CLUB, which it has protected by trade mark registrations in several jurisdictions. Second, the fact that the Complainant does not presently appear to be making any meaningful use of its website at <antisocialsocialclub.com> does not signify that it has, in any sense, abandoned its rights in its ANTI SOCIAL SOCIAL CLUB marks. Third, the Respondent has chosen not to serve a reply to the Complaint and therefore the Complainant's assertions are unchallenged by it. As set out at paragraph 14(b) of the Rules, if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under these Rules, the Panel shall be entitled to draw such inferences from this omission, as it considers appropriate. Finally, unsubstantiated claims on the Respondent's website that consumers are dissatisfied with the Complainant do not provide a justification for the Respondent to use the Complainant's mark, without permission or authorization, as the primary component of the Disputed Domain Name, nor as the brand for its own online business selling goods which are identical in nature to those covered by the Complainant's trade mark registration.

Those Internet users who scroll to the foot of the home page of the Respondent's website and read its explanation as to the circumstances in which it has chosen to use the trading style "Anti Social Social Club" may understand that the Respondent is claiming to offer differently manufactured products from those of the Complainant, albeit using the Complainant's trade mark without permission, and that it is not claiming to be an "official" website of the Complainant. But Internet users who do not take this step are apt to assume from the extensive use of "Anti Social Social Club" branding throughout the Respondent's website and its use of the copyright notice "Copyright Anti Social Social Club © 2021" that they have encountered the Complainant's website. Moreover, the fact that the Disputed Domain Name combines the Complainant's ANTISOCIALSOCIALCLUB mark with the word "shop" does not serve to distinguish the Respondent's offering from that of the Complainant but is more likely to increase the likelihood of confusion to Internet users.

As found by the panel in *Philipp Plein v. Privacy Protection Service INC d/b/a PrivacyProtect.org / Norma Brandon, cheapphilipplein*, WIPO Case No. [D2015-1050](#); “The Respondent’s use of a domain name that is confusingly similar to the Complainant’s trade marks in order to attract Internet users looking for genuine products of the Complainant’s company and to offer them unauthorized copies instead is a ‘bait and switch’ strategy that lacks *bona fides* and does not give rise to rights or a legitimate interests under the Policy”. See also section 2.13.1 of the [WIPO Overview 3.0](#) which explains that “Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent”. Having regard to the above considerations, the Panel finds that the Disputed Domain Name is not being used in connection with a *bona fide* offering of goods and services.

There is no evidence to indicate that the Respondent has been commonly known by the Disputed Domain Name and the second circumstance set out at paragraph 4(c) of the Policy is therefore inapplicable. Nor is the Respondent making a legitimate noncommercial use of the Disputed Domain Name and its characteristics are strongly suggestive of an affiliation or connection with the Complainant, which prevents its use from being considered fair.

The Complainant has made out a *prima facie* case that the Respondent does not have rights or legitimate interests in the Disputed Domain Name and the burden of production shifts to the Respondent to show that it does. In the absence of any response from the Respondent, the Panel finds that the Respondent has no rights or legitimate interests with respect to the Disputed Domain Name.

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

It is evident from the content on the Respondent’s website that the Respondent registered the Disputed Domain Name with an awareness of the Complainant’s mark and with the intention of establishing a website using the Complainant’s mark as a trading name and as a logo on garments. As explained by the panel in *Costco Wholesale Membership Inc. and Costco Wholesale Corporation v. Almantas Kakareka and Hostmaster Oneandone, 1&1 Internet, Inc.*, WIPO Case No. [D2007-1833](#); “Substantial authority exists to the effect that registration of a domain name that is confusingly similar to a famous trademark by any entity that has no relationship to that mark is itself sufficient evidence of bad faith registration and use”. The Panel therefore finds the Respondent’s registration of the Disputed Domain Name to have been in bad faith.

Paragraph 4(b) of the Policy sets out, without limitation, circumstances which, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The circumstance set out in paragraph 4(b)(iv) of the Policy is if a respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of its website. The use to which the Respondent has put the Disputed Domain Name falls within this circumstance in that the form and content of its website will lead many Internet users to believe that it is operated by the Complainant. Such a belief will be reinforced because of the confusing similarity between the Disputed Domain Name and the Complainant’s ANTI SOCIAL SOCIAL CLUB trade mark. There is no conceivable good faith use which the Respondent could make of the Disputed Domain Name nor has the Respondent made any attempt to rebut the Complainant’s assertions. The circumstances therefore point clearly to bad faith registration and use of the Disputed Domain Name; see, in similar circumstances, the decision of the panel in *Swarovski Aktiengesellschaft v. WhoisGuard Protected / Peter D. Person*, WIPO Case No. [D2014-1447](#).

The Panel accordingly finds that the Disputed Domain Name has been registered and is being used in bad faith.

## 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 <antisocialsocialclubshop.com> be transferred to the Complainant.

*/Antony Gold/*

**Antony Gold**

Sole Panelist

Date: March 25, 2022