

ADMINISTRATIVE PANEL DECISION

Loft Ipco LLC v. Super Privacy Service LTD c/o Dynadot and Blue Face
Case No. D2022-2286

1. The Parties

The Complainant is Loft Ipco LLC, United States of America (“United States”), represented by Fross Zelnick Lehrman & Zissu, PC, United States of America.

The Respondents are Super Privacy Service LTD c/o Dynadot, and Blue Face, United Kingdom.

2. The Domain Names and Registrars

The disputed domain names <loftonlinestore.com> and <loftswimandbeach.com> are registered with 1API GmbH (the “First Registrar”). The disputed domain name <theloftusa.com> is registered with Dynadot, LLC (the “Second Registrar”).

The First and Second Registrars will hereinafter together be referred to as the “Registrars” and the disputed domain names <loftonlinestore.com>, <loftswimandbeach.com> and <theloftusa.com> will hereinafter together be referred to as the “Domain Names”.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 23, 2022. On June 24, 2022, the Center transmitted by email to the Registrars a request for registrar verification in connection with the Domain Names. On June 27, 2022, the Registrars transmitted by email to the Center their verification response disclosing registrant and contact information for the Domain Names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on July 5, 2022, providing the registrant and contact information for multiple underlying registrants disclosed by the Registrars, and inviting the Complainant to either amend the Complaint adding the Registrars-disclosed registrants as the formal Respondents and provide relevant arguments or evidence demonstrating that all the named Respondents are, in fact, the same entity and/or that all domain names are under common control and indicate which domain names will no longer be included in the current Complaint. The Complainant filed an amended Complaint on July 10, 2022, including comments on the consolidation.

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 July 12, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 1, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 2, 2022. The Complainant filed a supplemental filing on July 28, 2022.

The Center appointed Willem J. H. Leppink as the sole panelist in this matter on August 15, 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 following facts are undisputed.

The Complainant and its affiliated entities comprise a retail entity focused on women's fashions and accessories. The Complainant's LOFT brand was developed in the mid-1990s. The Complainant operates more than 500 LOFT and LOFT OUTLET stores.

The Complainant is owner of several LOFT trademarks, including but not limited to the United States trademark registration with registration No. 3,488,664 for LOFT in class 25, registered on August 19, 2008, hereinafter referred to as the "LOFT Trademark".

The Complainant is also the registrant of the domain name <loft.com> that it uses in connection with a website for selling clothing and beachwear. The Complainant's website has averaged more than 12 million visitors per month to date in 2022; in 2021, the website had more than 140 million visitors. The Complainant's website offers shipping to more than 180 countries internationally.

The Complainant also sells clothing under the Complainant's brand LOU & GREY through its LOFT stores and website.

The Domain Names are all registered between July 7, 2021 and April 27, 2022. The Domain Names resolve to websites on which Complainant's LOFT and LOU & GREY products are offered for sale (the "Websites").

5. Parties' Contentions

A. Complainant

Insofar as relevant, the Complainant contends the following.

Despite the fact that the Domain Names are registered by different Registrars, the Domain Names are under the ownership and control of the same registrant for several reasons. The Domain Names <loftswimandbeach.com> and <loftonlinestore.com> are registered with the same registrar. Furthermore, the same ISP is used to host the websites associated with the Domain Names <theloftusa.com> and <loftonlinestore.com>. Moreover, the Domain Names resolve to websites which are using the same template and the Domain Names <theloftusa.com> and <loftonlinestores.com> use the exact same "About Us" webpage and text. Therefore, the Domain Names are combined in one Complaint and should be dealt with together in this decision.

The Domain Names are confusingly similar to the LOFT Trademark. All three Domain Names incorporate the LOFT Trademark in its entirety, adding the descriptive words “onlinestore” and “beachandswim” and the name of the country in which the Complainant has its headquarters, “USA”.

The Website to which the Domain Names resolve, are passing themselves off as the Complainant’s websites, purportedly offering the Complainant’s clothing and copying the Complainant’s images to do so. The Respondent’s websites unquestionably trade on the fame of the LOFT Trademark and as such could not constitute a *bona fide* use. There is no relationship between the Complainant and the Respondent. The Respondent is in no way affiliated with the Complainant, nor has the Respondent any other authorization and never requested the permission to use the LOFT Trademark. Moreover, even if the goods being sold at the Respondent’s websites are genuine LOFT merchandise (and there is no evidence that this is the case), the Respondent’s use of the Domain Names would still not be *bona fide*. Under the majority view, for a reseller to make a *bona fide* use of a trademarked term in a domain name, the Respondent must *inter alia*: (1) sell only the trademarked goods or services; and (2) accurately disclose the Respondent’s relationship with the trademark owner.

The Domain Names were registered and are being used in bad faith. The Respondent must have been aware of the LOFT Trademark. The Complainant is a recognizable and famous brand. The Domain Names, are being used in connection with websites that mimic the Complainant’s own website and use Complainant’s own product images without authorization. By registering the Domain Names containing the well-known LOFT Trademark, the Respondent deliberately chooses to use the Domain Names in connection with the Websites which trade on the goodwill of the LOFT Trademark and therefore constitutes bad faith.

B. Respondent

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

6. Discussion and Findings

Pursuant to paragraph 4(a) of the Policy, the Complainant must – for each of the Domain Names – prove each of the following three elements:

- (i) the 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 Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.11.2, addresses the issue of whether one proceeding can be brought against multiple respondents. It suggests that where a complaint is brought against more than one “respondent”, the question is whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. To determine whether such consolidation is appropriate, Panels have considered a range of factors, such as the nature of the marks at issue, any naming patterns in the disputed domain names and any (prior) pattern of similar respondent behaviour.

Certainly lacking a Response from the Respondent, the Panel finds that the Domain Names are believed to be under the common and control of the same registrant, based on the following reasons. First, the Domain Names <loftswimandbeach.com> and <loftonlinestore.com> are registered with the same registrar. Second, the same internet service provider is used to host the Websites associated with the Domain Names <theloftusa.com> and <loftonlinestore.com>. Third, the Domain Names resolve to website which are using the same template, and fourth, the Domain Names <theloftusa.com> and <loftonlinestores.com> use the exact same “About Us” webpage and text.

Therefore, the Panel finds it appropriate to consolidate the Complaint against multiple respondents as the circumstances in this case strongly indicate that the Domain Names are subject to common control and that the consolidation would be fair and equitable to all parties. The Panel will in light of the foregoing consider the Respondents as one Respondent and thus will continue to refer to these as “the Respondent” in singular.

A. Identical or Confusingly Similar

The Complainant must demonstrate that it has rights in the LOFT Trademark and, if so, the Domain Names must be identical or confusingly similar to the LOFT Trademark.

The Complainant has proven to have rights in the LOFT Trademark for the purposes of the Policy.

As set out in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7, the first element functions primarily as a standing requirement. The threshold test for confusing similarity between the Domain Names and the LOFT Trademark involves a relatively straightforward comparison.

The Domain Names all comprise of the LOFT Trademark. More specifically, the Domain Name <loftonlinestore.com> comprises of the LOFT Trademark followed by the terms “online store”. The Domain Name <loftbeachandswim.com> consists of the LOFT Trademark, followed by the terms “beach and swim” and the Domain Name <loftusa.com> consists of the LOFT Trademark followed by the country acronym in which the Complainant has its headquarters, namely the “USA”. The Panel therefore considers that the Trademark is recognizable in the Domain Names.

As stated in [WIPO Overview 3.0](#), section 1.11.1, the addition of the gTLD “.com” “is viewed as a standard registration requirement and as such is disregarded und the first element confusing similarity test”.

Thus, the Panel finds that the Domain Names are confusingly similar to the LOFT Trademark.

Therefore, based on the foregoing reasons, the first element of the Policy is met.

B. Rights or Legitimate Interests

The Panel has carefully considered the factual allegations that have been made by the Complainant and are supported by the submitted evidence.

In particular, the Respondent has failed to offer the Panel any of the types of evidence set forth in paragraph 4(c) of the Policy from which the Panel might conclude that the Respondent has rights or legitimate interests in the Domain Names, such as:

- (i) use or preparation to use the Domain Names or a name corresponding to the Domain Names in connection with a *bona fide* offering of goods or services prior to notice of the dispute; or
- (ii) being commonly known by the Domain Names (as an individual, business or other organization) even if the Respondent has not acquired any trademark or service mark rights; or
- (iii) making legitimate noncommercial or fair use of the Domain Names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Websites to which the Domain Names resolve mimic the Complainant’s websites, offering the same clothing and using the same images. This use cannot constitute *bona fide* use.

The Respondent does not seem to be affiliated with the Complainant in any way. There is no evidence that the Respondent is active under one of the name of the Domain Names or that the Respondent is commonly known under the name LOFT. There is also no evidence that the Respondent is, or has ever been, a

licensee of the Complainant or that the Respondent has ever asked, or has ever been permitted in any way by the Complainant to register or use the Trademark, or to apply for or use any domain name incorporating the Trademark.

Further, the Complainant's assertions have not been rebutted by the Respondent to indicate whether it has any rights or legitimate interests in the Domain Names. There was also no evidence put forward by the Respondent to indicate that the Respondent was licensed or authorized by the Complainant to use the Trademark.

The Panel finds that the Websites effectively impersonate or suggest endorsement by the Complainant given the prominent use on the Websites of the LOFT Trademark, the use of the same color schemes and product images found in the Complainant's websites, in addition to the lack of an adequate disclosure of the identity of the provider of the Websites.

Therefore, the Panel is satisfied that the second element of the Policy is met.

C. Registered and Used in Bad Faith

The Panel finds that the Domain Name was registered and is being used in bad faith.

The Panel refers to its considerations under section 6.B and adds the following.

In light of the evidence filed by the Complainant, the Panel finds that the LOFT Trademark and the Complainant's activities are well known. In addition, the fact that the Respondent uses the exact same images on the Websites and the use of the Complainant's LOFT and LOU & GREY lines of clothing, the Panel is convinced that the Respondent must have been aware of the Complainant's existence and rights at the time the Respondent registered the Domain Names.

The Panel finds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Websites or other online location, by creating a likelihood of confusion with the LOFT Trademark as to the source, sponsorship, affiliation, or endorsement of the Websites or location or of a product or service on the Websites or location. This is a circumstance of registration and use in bad faith pursuant to Policy, paragraph 4(b)(iv).

In light of the above circumstances, the Panel is satisfied that the third element of the Policy is met.

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, <loftonlinestore.com>, <loftswimandbeach.com>, and <theloftusa.com> be transferred to the Complainant.

/Willem J. H. Leppink/

Willem J. H. Leppink

Sole Panelist

Date: August 29, 2022