

ADMINISTRATIVE PANEL DECISION

The Gap, Inc., Gap (Apparel), LLC, and Gap (ITM) Inc. v. wangjianlong
Case No. D2022-2721

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”), represented by Fross Zelnick Lehrman & Zissu, P.C., United States.

The Respondent is wangjianlong, China.

2. The Domain Name and Registrar

The disputed domain name <gaapfactory.com> (the “Domain Name”) is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 25, 2022. On July 26, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 27, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 July 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 18, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 19, 2022.

The Center appointed Jeremy Speres as the sole panelist in this matter on August 23, 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 has traded as a retailer of clothing, accessories, personal care products and other merchandise since 1969 under the GAP trade mark via stores in the United States and numerous other countries, as well as via its website at “www.gap.com”. The Complainant’s GAP trade mark has been recognised as well-known by prior UDRP panels. In addition to its many GAP stores, the Complainant has, since 2011, operated numerous factory outlet stores under the GAP FACTORY mark, as well as via its website at “www.gapfactory.com”. At least one prior UDRP panel has recognised the Complainant’s goodwill in an earlier variant of the GAP FACTORY mark, being GAP FACTORY STORE (*Gap (Apparel) LLC and Gap (ITM) Inc. v. Chunyuan Jiang*, WIPO Case No. [D2014-1773](#)).

The Complainant’s GAP and GAP FACTORY marks are registered in many jurisdictions. Most relevant to this matter, given the Respondent’s country, are China registration no. 43773472 GAP in class 43, registered October 28, 2020; China registration no. 22706921 GAP FACTORY STORE in class 35, registered January 28, 2020; and United States registration no. 5140510 GAP FACTORY in class 35, registered February 14, 2017.

The Domain Name was registered on April 9, 2022 and resolves to a Chinese language gambling and pornographic website.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to its GAP and GAP FACTORY marks, that the Respondent has no rights or legitimate interests in the Domain Name, and the Domain Name was registered and used in bad faith given that it takes unfair advantage of the repute of the Complainant’s marks in order to redirect users to adult content, which will tarnish the Complainant’s reputation, for the Respondent’s commercial gain.

B. Respondent

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

6. Discussion and Findings

A. Preliminary Issue – Consolidation of Multiple Complainants

The Panel notes that the Complainants are three entities within a group of related companies and finds that the Complainants have a specific common grievance: the Complainants all own various GAP and GAP FACTORY marks, the Domain Name targets all three Complainants and takes unfair advantage of their trade marks. It would be equitable and procedurally efficient to allow consolidation in these circumstances (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.11.1).

B. Identical or Confusingly Similar

Where the trade mark is recognisable within the domain name, the domain name will normally be considered confusingly similar to the mark ([WIPO Overview 3.0](#), section 1.7). Previous UDRP panels have held that where a repeated vowel in a disputed domain name (which repeated vowel is not found in a complainant’s trade mark) does not significantly affect the appearance or pronunciation of the trade mark, such conduct constitutes typosquatting (*Humana, Inc. v. Unasi Inc. a/k/a Domaincar*, WIPO Case No. [D2006-0119](#)).

In this case the repeated vowel “a” in the Domain Name does not significantly affect the appearance or the pronunciation of the GAP FACTORY mark, which remains recognisable within the Domain Name. The Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

C. Rights or Legitimate Interests

The Complainant’s un rebutted evidence establishes that its GAP FACTORY mark was registered and well-known long prior to registration of the Domain Name. The Domain Name is confusingly similar to the Complainant’s GAP FACTORY mark and the Complainant has certified that the Domain Name is unauthorised by it.

The Respondent has provided no explanation as to why it chose the Domain Name. There is no semantic relationship or any other obvious connection between the Domain Name and the pornographic and gambling content to which it resolves which may have imbued the Respondent’s actions with *bona fides*. It does not make much sense to use a domain name incorporating English words for a purely Chinese website that does not have any clear connection to those English words (*IPI Italia S.p.A. v. gennymoda.com*, WIPO Case No. [D2003-0866](#)). In the circumstances, and given what is stated below in relation to bad faith, the likelihood is that the Respondent intended to take advantage of the Complainant’s trade mark to divert users to a pornographic and gambling website for its commercial gain, which cannot confer rights or legitimate interests.

The Complainant has satisfied paragraph 4(a)(ii) of the Policy by virtue of having made out an un rebutted *prima facie* case ([WIPO Overview 3.0](#), section 2.1).

D. Registered and Used in Bad Faith

The Panel notes the composition of the Domain Name, and its use, the Complainant’s goodwill in GAP and GAP FACTORY, and the similarity between the Domain Name and the Complainant’s domain name <gapfactory.com>. These factors indicate that the Respondent a) either knew or should have known that the Domain Name was confusingly similar to the Complainant’s mark ([WIPO Overview 3.0](#), section 3.2.2); and b) that the Domain Name was registered and used to intentionally direct traffic to the Respondent’s website by creating a likelihood of confusion with the Complainant, in line with paragraph 4(b)(iv) of the Policy.

It is widely accepted in UDRP jurisprudence that using a domain name that is confusingly similar to a well-known mark for pornography can tarnish the trade mark, which is an indicator of bad faith ([WIPO Overview 3.0](#) at section 3.12; *International Business Machines Corporation v. Domain Admin, Privacy Protect, LLC (PrivacyProtect.org) / Xie Gege*, WIPO Case No. [D2021-0245](#)).

The Panel draws an adverse inference from the Respondent’s failure to take part in the present proceeding where an explanation is certainly called for ([WIPO Overview 3.0](#), section 4.3).

The Complainant has satisfied 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 <gaapfactory.com> be transferred to the Complainant The Gap, Inc.

/Jeremy Speres/
Jeremy Speres

Sole Panelist

Date: August 30, 2022