

ADMINISTRATIVE PANEL DECISION

The Gap Inc., Gap (Apparel), LLC, Gap (ITM) Inc. v. Shoaib Ahmad, Bestow LLC, Privacy Protected by Withheld for Privacy ehf / ahmad Akram, sports ghar, Ghulam Murtaza
Case No. D2022-3201

1. The Parties

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

The Respondents are Shoaib Ahmad, Bestow LLC, United States, Privacy Protected by Withheld for Privacy ehf, Iceland / ahmad Akram, sports ghar, Pakistan, and Ghulam Murtaza, United Kingdom.

2. The Domain Names and Registrars

The disputed domain name <yeezygapofficial.com> is registered with Hosting Concepts B.V. d/b/a Registrar.eu., the disputed domain name <yeezygapofficial.net> is registered with Hostinger, UAB, and the disputed domain name <yeezygapus.com> is registered with NameCheap, Inc. (collectively “the Registrars”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 29, 2022. On August 30, 2022, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On August 30 and August 31, 2022, the Registrars transmitted by email to the Center the verification responses disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on August 31, 2022 providing the registrant and contact information disclosed by the Registrars, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on September 6, 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 September 15, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 5, 2022. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on October 6, 2022.

The Center appointed Kaya Köklü as the sole panelist in this matter on October 13, 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 First Complainant is a retailer of clothing, accessories, personal care products, and other merchandise since 1969 with its registered seat in the United States. It is internationally active with about 1,700 company-operated and franchise retail locations in 70 countries.

The Second Complainant and the Third Complainant are subsidiaries of the First Complainant and hold the majority of registrations for the trademark GAP, while there are some GAP trademark registrations still held by the First Complainant.

The GAP trademark is registered in a large number of jurisdictions, including but not limited to the United States Registration No. 2,719,435, registered on May 27, 2003 and United Kingdom Trademark No. UK00001493946, registered on June 11, 1993 (Exhibits G and H to the Complaint).

The Complainants further operate company websites at "www.gap.com", "www.gap.eu", "www.gap.co.uk" and others (Exhibit I to the Complaint).

The Respondents are reportedly located in the United States, Pakistan, and the United Kingdom.

The disputed domain name <yeezygapofficial.com> was registered on March 23, 2022, the disputed domain name <yeezygapofficial.net> was registered on July 23, 2022, and the disputed domain name <yeezygapus.com> was registered on July 6, 2022.

The documents and screenshots, as provided by the Complainants (Exhibits N, R, and T to the Complaint) show that the disputed domain name <yeezygapofficial.com> was associated to a website that was being used to allegedly offer products of the Complainants from the collaboration with the luxury brand Balenciaga, and Kanye West (Exhibit N to the Complaint). The offered products, however, had not yet been released for sale to the public. Upon a complaint with the hosting provider (Exhibit O to the Complaint), the website was disconnected and removed. However, visitors of the disputed domain name were then redirected to the disputed domain name <yeezygapofficial.net> and an associated website, which was virtually identical to the website previously associated to the disputed domain name <yeezygapofficial.com> (Exhibit R to the Complaint). Upon a further complaint with the hosting provider, the associated website to the disputed domain name <yeezygapofficial.net> was also disconnected and removed as well (Exhibit S to the Complaint). However, visitors of the disputed domain names <yeezygapofficial.com> and <yeezygapofficial.net> were then redirected to the disputed domain name <yeezygapus.com> and the associated website, which again allegedly offered the Complainants apparel and merchandise products from their collaboration with Balenciaga and Kanye West (Exhibit T to the Complaint).

At the date of the Decision, none of the disputed domain names resolved to an active website anymore.

5. Parties' Contentions

A. Complainant

The Complainants request the transfer of the disputed domain names to the First Complainant. They further

request consolidation of the Respondents arguing that the registrants of the disputed domain names are connected to one another and should be considered as the same domain name holder for the purpose of this administrative proceeding.

The Complainants are of the opinion that the disputed domain names are confusingly similar to their registered GAP trademark.

Furthermore, they argue that the Respondents have no rights or legitimate interests in respect of the disputed domain names and that that the Respondents have registered and are using the disputed domain names in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1. Consolidation of Complainants

The Complaint demonstrates that the Complainants are related companies with a common grievance against the Respondents. While the Second Complainant and the Third Complaint are subsidiaries of the First Complainant, all three companies own registered rights in the GAP trademark.

Taking into consideration that the Respondent has not rebutted a consolidation of the Complainants, the Panel finds that the Complainants have established a *prima facie* case that the Complaint can be consolidated based on a common grievance and interest of the Complainants. The Panel is convinced that it is fair and equitable in the circumstances of the case to order the consolidation as requested (see section 4.11.1 of the [WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition \("WIPO Overview 3.0"\)](#))).

Consequently, the Panel accepts the Complainants in this administrative proceeding and, for the ease of reference, will jointly refer to them as "the Complainant" in the following, whenever appropriate.

6.2. Consolidation of Respondents

As neither the Policy nor the Rules explicitly provides provisions for the consolidation of claims against multiple respondents into a single administrative proceeding, UDRP panels generally apply the principles for consolidation as set out at section 4.11.2 of the [WIPO Overview 3.0](#).

Section 4.11.2 of the [WIPO Overview 3.0](#) states the following: "Where a complaint is filed against multiple respondents, panels look at 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. Procedural efficiency would also underpin panel consideration of such a consolidation scenario". See also, *Speedo Holdings B.V. v. Programmer, Miss Kathy Beckerson, John Smitt, Matthew Simmons*, WIPO Case No. [D2010-0281](#).

In this regard, previous UDRP panels particularly considered the following aspects in determining whether consolidation is appropriate: similarities in or relevant aspects of (i) the registrants' contact information, (ii) the content or layout of websites corresponding to the disputed domain names, (iii) whether the registrants are targeting a specific sector, and (iv) the relevant language/scripts of the disputed domain names.

In light of the criteria set out above, there are strong indications that all disputed domain names are under common control.

In view of the Panel, the Complainant has provided sufficient evidence that the Respondents are at least connected to each other. This is particularly indicated by various undisputed facts, such as that all the disputed domain names previously resolved to practically identical websites, allegedly offering apparel and merchandise products of the Complainant from its cooperation with Balenciaga and Kanye West (Exhibits N, R, and T to the Complaint); the redirections set up between the disputed domain names in reaction to the Complainants' takedown requests; and the disputed domain names were all registered recently between March and July, 2022.

The Panel concludes that the Respondents must have acted collaboratively and, hence, accepts that all disputed domain names are under common control. Additionally, the Panel is convinced that in the present case consolidation of multiple respondents is procedurally efficient, fair, and reasonable to all Parties.

Moreover, the Respondents have not raised any objection to the Complainant's consolidation request.

The Panel therefore, for the purpose of this decision, accepts the case to be dealt with in a consolidated Complaint and will refer, whenever appropriate, to the Respondents as "the Respondent" below.

6.3 Substantive Issues

According to paragraphs 14(a) and 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable and on the basis of the Complaint where no formal Response has been submitted.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain names are identical or confusingly similar to the trademarks in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not formally replied to the Complaint. See *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See *Belupo d.d. v. WACHEM d.o.o.*, WIPO Case No. [D2004-0110](#).

It is further noted that the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the [WIPO Overview 3.0](#).

A. Identical or Confusingly Similar

To begin with, the Panel confirms that the Complainant has satisfied the threshold requirement of having trademark rights in GAP (Exhibits G and H to the Complaint).

The Panel further finds that the disputed domain names are confusingly similar to the Complainant's registered trademarks, as they fully incorporate the Complainant's GAP trademarks.

As stated at section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain names, the addition of other terms would generally not prevent a finding of confusing similarity. The addition of the third-party brand name "yeezy", the term "official", or the letters "us" does not,

in view of the Panel, serve to prevent a finding of confusing similarity between the disputed domain names and the Complainant's GAP trademark. See also sections 1.12 and 4.13 of the [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Panel further finds that the Respondent has failed to demonstrate any rights or legitimate interests in the disputed domain names.

While the burden of proof on this element remains with the Complainant, previous UDRP panels have recognized that this would result in the often impossible task of proving a negative, in particular as the evidence in this regard is often primarily within the knowledge of the Respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain names in order to meet the requirements of paragraph 4(a)(ii) of the Policy. See, *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

The Panel finds that the Complainant has satisfied this requirement, while the Respondent has failed to file any evidence or make any convincing argument to demonstrate rights or legitimate interests in the disputed domain names according to the Policy, paragraphs 4(a)(ii) and 4(c).

In its Complaint, the Complainant has provided uncontested *prima facie* evidence that the Respondent has no rights or legitimate interests to use the Complainant's GAP trademark in a confusingly similar way within the disputed domain names. There is also no indication in the current record that the Respondent is commonly known by the disputed domain names. In the absence of a formal response, the Respondent has particularly failed to demonstrate any of the other non-exclusive circumstances evidencing rights or legitimate interests under the Policy, paragraph 4(c) or other evidence of rights or legitimate interests in the disputed domain names.

Quite the contrary, it is evidenced by the Complainant that the Respondent used the disputed domain names to offer products under the trademark GAP, which are likely counterfeits (Exhibits P, Q, and S to the Complaint). In line with section 2.13 of the [WIPO Overview 3.0](#), the Panel is of the opinion that the sale of counterfeit goods can under no circumstances confer any rights or legitimate interests on the Respondent.

As a conclusion, the Panel finds that the Complainant has also satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

In the Panel's view, the Respondent has registered and is using the disputed domain names in bad faith.

The Panel has no doubt that the Respondent has registered the disputed domain names in bad faith. At the date of registration, the Complainant's GAP trademark was already registered and widely used for many years.

As to use of the disputed domain names in bad faith, each of the disputed domain names resolved to a website that prominently used the GAP trademark and product pictures promoting likely counterfeit products of the Complainant from its cooperation with Balenciaga and Kanye West (Exhibits N, R, and T to the Complaint). Taking into account that there have been no business relations between the Parties so far, the Panel is convinced that content and design of the website associated to the disputed domain names clearly indicate the Respondent's bad faith in freeriding the Complainant's GAP trademark and underlying reputation to attract Internet users for the Respondent's illegitimate commercial gain.

This assessment is further supported by the fact that the Respondent has not published any visible disclaimer on the websites linked to the disputed domain names to explain that there is no existing relationship between the Respondent and the Complainant.

Furthermore, the Panel notes that none of the Respondents submitted any response to the Complainants' contentions or at least rebutted any of the Complainant's contentions. The Panel assesses this as an additional indication for bad faith. The Panel finds it likely that if the Respondent had legitimate purposes in registering and using the disputed domain names, it would have substantially responded and substantiated any alleged right.

The fact that the disputed domain names do not currently resolve to active websites anymore does not change the Panel's findings in this respect. See section 3.3 of the [WIPO Overview 3.0](#).

Taking all facts of the case into consideration, the Panel has no difficulty in assessing the present case as a typical cybersquatting case, which the UDRP was designed to stop. The Panel therefore concludes that the disputed domain names were registered and are being used in bad faith and that the Complainant consequently has satisfied the third element of the Policy, namely, paragraph 4(a)(iii) of the Policy.

D. Requested Remedy

As to the findings above, the Complainant has satisfied all three requirements of paragraph 4(a) of the Policy.

As regards the requested remedy by the Complainant, the Panel notes that each of the three disputed domain names incorporates not only the Complainant's trademark GAP but also the trademark YEEZY, owned by another entity which is not party to the present administrative proceedings. The Panel further notes that the Complainant has not provided any statement or evidence that this third party agrees to the transfer of the disputed domain names to the Complainant.

In line with section 4.13 of the [WIPO Overview 3.0](#) and numerous UDRP decisions, the Panel believes that the presence of a trademark of another company doing business in the apparel and accessories sector would not prevent the Panel from rendering a decision on the merits.

In the present case, the Panel confirms that the Complainant has satisfied the UDRP's three-step test (as discussed above). As a consequence, the Panel believes that a transfer of the disputed domain names to the Complainant will be efficient and appropriate.

At the same time, the Panel highlights that any such transfer will not prejudice any rights of the third party in the disputed domain names. It is particularly noted that the transfer of the disputed domain names as such does not give the Complainant any right to use the disputed domain names itself.

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 names, <yeezygapofficial.com>, <yeezygapofficial.net>, and <yeezygapus.com>, be transferred to the First Complainant, The Gap Inc.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: October 27, 2022