

ADMINISTRATIVE PANEL DECISION

The Net-A-Porter Group Limited v. 雷王
Case No. D2022-3269

1. The Parties

The Complainant is The Net-A-Porter Group Limited, United Kingdom, represented by Corsearch, Inc., United States of America (“United States” or “U.S.”).

The Respondent is 雷王, China.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 1, 2022. On September 2, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 7, 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 September 9, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 29, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 30, 2022.

The Center appointed Ganna Prokhorova as the sole panelist in this matter on October 4, 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 famous online fashion retailer with headquarter in London, United Kingdom, and offices in New York, United States, Hong Kong, China, and Dubai, United Arab Emirates. It is part of the well-known Richemont Group.

The Complainant owns a portfolio of trademark registrations for MR PORTER and MR P, such as:

- U.S. Trademark Registration No. 4661381 for MR PORTER registered on December 30, 2014 for services in class 35 of the International Classification of Goods and Services (“ICGS”);
- U.S. Trademark Registration No. 5019822 for MR P. (figurative trademark) registered on August 16, 2016 for goods in classes 16, 18, and 25 and services in 35 class of the ICGS;
- European Union Trade Mark Registration No. 009447772 for MR PORTER registered on March 25, 2011 for services in class 35 of the ICGS; and
- International Registration No. 1064145 for MR PORTER registered on November 24, 2010 for services in class 35 of the ICGS, designating several jurisdictions including China.

The disputed domain name was registered on May 6, 2022, and resolves to a website displaying the Complainant’s MR PORTER trademark and purportedly offering for sale products under the MR P. trademark at discounted prices.

5. Parties’ Contentions

A. Complainant

The Complainant has used its MR PORTER marks in connection with luxury apparel and accessories since as early as 2010. The Complainant owns its <mrporter.com> domain name registered on April 18, 2004.

The Complainant has spent substantial time, effort, and money advertising and promoting the MR PORTER marks and has thus developed substantial goodwill and enjoys widespread consumer recognition.

The Complainant contends as follows:

(1) The disputed domain name is confusingly similar to its trademark because it incorporates the trademark in its entirety, removes the space in the mark and merely adds “sale” and the generic Top-Level Domain (“gTLD”) “.com”.

(2) The Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has not granted permission to use its trademark to the Respondent. The Respondent has not been commonly known by the disputed domain name. The Respondent has no trademark or intellectual property rights in the disputed domain name.

(3) The Respondent registered and is using the disputed domain name in bad faith. The Complainant asserts that the Respondent uses the disputed domain name in connection with offering for sale unauthorized or counterfeit versions of the Complainant’s products. Consequently, consumers may wrongly believe that the goods are being offered as a result of a business cooperation between the Respondent and the Complainant, which is not the case. Therefore, the Respondent’s intentions to mislead consumers and divert them from the Complainant’s real and official website in order to create a commercial gain, constitute bad faith.

The Complainant requests transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer the disputed domain name. As the UDRP proceedings are administrative, the standard of proof is the balance of probabilities.

To succeed in a UDRP complaint, the Complainant has to demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied, namely:

- (i) the disputed 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 disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Respondent had 20 days to submit a response in accordance with paragraph 5(a) of the Rules and failed to do so. Paragraph 5(f) of the Rules establishes that if a respondent does not respond to the Complaint, the Panel's decision shall be based upon the Complaint.

However, even if the Respondent has not replied to the Complainant's contentions, the Complainant still bears the burden of proving that all these requirements are fulfilled. 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, section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

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

For the purpose of these proceedings, the Panel also draws attention of the Complainant that according to [WIPO Overview 3.0](#), section 3.1, since the UDRP normally provides for a single round of pleadings without opportunity for discovery, panels expect that a complainant should anticipate and address likely plausible respondent defenses with supporting arguments and evidence in its complaint. The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence". Under this standard, a party should demonstrate to a panel's satisfaction that it is more likely than not that a claimed fact is true. See [WIPO Overview 3.0](#), section 4.2.

The Panel also notes that it has undertaken limited independent research regarding the website associated with the disputed domain name. The Panel has made its investigation in accordance with paragraph 10 of the Rules. Such an approach is consistent with the majority of the panel views about the capacity of a panel to undertake independent research (see [WIPO Overview 3.0](#), section 4.8). The Panel has undertaken this research only to the extent necessary to clarify matters of public record as the Panel considers such

information useful to assessing the case merits and reaching a decision.

A. Identical or Confusingly Similar

According to paragraph 4(a)(i) of the Policy it should be established that the disputed domain name is identical or confusingly similar to a mark in which the complainant has rights.

The Complainant has demonstrated ownership of its MR PORTER trademarks. Therefore, the Panel is satisfied that the Complainant has registered trademark rights in the MR PORTER marks. See [WIPO Overview 3.0](#), section 1.2.1.

The Panel is also of the view that the disputed domain name is confusingly similar to the Complainant's trademark because it incorporates the trademark in its entirety, removes the space in the mark and merely adds "sale" and the gTLD ".com".

Adding a term "sale" and removing the space between the two words of the mark while adding a gTLD to the Complainant's mark does not prevent a finding of confusing similarity between the disputed domain name and the mark under the Policy, paragraph 4(a)(i). See [WIPO Overview 3.0](#), sections 1.7, 1.8 and 1.11.1. Bearing that in mind, the Panel accordingly holds the disputed domain name is confusingly similar to the Complainant's trademark MR PORTER.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark and that the requirement of paragraph 4(a)(i) of the Policy is met.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Panel found that the Respondent has no trademark or intellectual property rights related to the disputed domain name. The Panel also has not found evidence that the Respondent has been commonly known by the disputed domain name.

The Complainant has not licensed, authorized, or permitted the Respondent to register the disputed domain name incorporating the Complainant's mark. The Panel also takes into account that the Respondent is not sponsored by or legitimately affiliated with the Complainant in any way.

According to the consensus view in UDRP panel decisions ([WIPO Overview 3.0](#), section 2.8), a reseller or distributor can make a *bona fide* offering of goods and services and thus have a legitimate interest in the domain name if its use meets certain requirements. These requirements normally include the actual offering of goods and services at issue, the use of the site to sell only the trademarked goods or services, and the site's accurate and prominent disclosure of the registrant's relationship with the trademark holder. The respondent must also not try to "corner the market" in domain names that reflect the trademark. Many panels subscribing to this view have also found that not only authorized but also unauthorized resellers may fall within such so-called Oki Data principles (e.g., *Dr. Ing. h.c. F. Porsche AG v. Del Fabbro Laurent*, WIPO Case No. [D2004-0481](#)).

Having carefully inspected the website under the disputed domain name, the Panel, however, has not found signs that prevent confusion with the Complainant. There is no clear disclaimer on the corresponding website that it is not the trademark owner, even if it offers legitimate goods, by accurately disclosing the Respondent's relationship with the trademark owner. Since the Respondent's website does not include any statement clearly setting out the relationship between the Complainant and the Respondent, the Oki Data test does not apply here.

As regards to the Complainant's notion that the "Respondent is disrupting Complainant's business because the resolving website MRPORTERSALE.COM offers for sale unauthorized or counterfeit versions of Complainant's products", the Panel notes, however, that this mere allegation is not supported by any of the Complainant's evidence in the case file.

The Respondent is offering clothing and accessories under the MR P. trademark at the website under the disputed domain name. The website has also used the Complainant's MR PORTER trademark. Such use, both within the disputed domain name together with the term "sale" related to the Complainant's business and on the Respondent's website, is evidence that the Respondent is attempting to defraud customers into believing that the goods being sold on the Respondent's website are authentic by creating an impression of affiliation with the Complainant. Use of the disputed domain name attempting to pass off as the Complainant is not a *bona fide* offering of goods or services, or a legitimate noncommercial or fair use per Policy, paragraphs 4(c)(i) and (iii).

The Panel also finds that the Respondent has failed to produce any evidence to establish his rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name and that the element under paragraph 4(a)(ii) of the Policy has been established.

C. Registered and Used in Bad Faith

The third element of paragraph 4(a) refers to the question of whether the disputed domain name has been registered and is being used in bad faith by the Respondent.

As noted above, the applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", being the Panel prepared to draw certain inferences in light of the particular facts and circumstances of the case. See [WIPO Overview 3.0](#), section 4.2.

The Complainant has been benefitting from trademark protection for MR PORTER and MR P. Moreover, the Complainant's MR PORTER trademarks are distinctive and enjoy a substantial reputation in the fashion industry. Given the world-wide fame of the Complainant and its MR PORTER mark, and the fact that the disputed domain name incorporates that mark verbatim, it is obvious that the Respondent had actual knowledge of the Complainant and its MR PORTER mark.

The Panel repeats its findings in respect of rights or legitimate interests above. In light of the fact that the disputed domain name wholly incorporates the Complainant's MR PORTER trademark, the contents of the Respondent's website using the Complainant's marks heavily in the banner and throughout the page that seems geared to giving the false impression that the Respondent is authorized by or affiliated with the Complainant, and its failure to include an accurate and prominent disclaimer on the website, the Panel concludes on balance that the Respondent both registered and is using the disputed domain name with the intention of taking unfair advantage of the Complainant's goodwill in its MR PORTER trademark. Specifically, the Panel finds that, by using the disputed domain name, the 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 or of goods on that website (paragraph 4(b)(iv) of the Policy).

Therefore, on the balance of probabilities, taking into consideration of all cumulative circumstances of this case, the Panel considers that the disputed domain name was registered and is being used in bad faith. In light of the above, the third element under paragraph 4(a)(iii) of the Policy has been established.

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 <mrportersale.com> be transferred to the Complainant.

/Ganna Prokhorova/

Ganna Prokhorova

Sole Panelist

Date: October 18, 2022