

ADMINISTRATIVE PANEL DECISION

Marine Layer, PBC v. Min Zheng
Case No. D2022-3438

1. The Parties

The Complainant is Marine Layer, PBC, United States of America (“United States”), represented by Breakwater Law Group, United States.

The Respondent is Min Zheng, China.

2. The Domain Name and Registrar

The disputed domain name <marinelayerus.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 15, 2022. On September 16, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 16, 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 October 18, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 7, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 8, 2022.

The Center appointed Adam Samuel as the sole panelist in this matter on November 14, 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 United States corporation that sells clothing. It owns a number of trademarks for the name MARINE LAYER including United States trademark registration number 4200867, registered on September 4, 2012. The Complainant promotes its business using the domain name <marinelayer.com>, registered by the Complainant on March 19, 2004.

The disputed domain name was registered on August 17, 2022. Access is currently blocked to the website to which it resolves by a scam warning. The disputed domain name previously resolved to a website offering the Complainant's clothes for sale.

5. Parties' Contentions

A. Complainant

The Complainant owns trademark registrations for MARINE LAYER in the United States in connection with clothing dating back to September 4, 2012, well before the registration of the disputed domain name.

The disputed domain name consists of the Complainant's trademark and the geographically descriptive word "US" which suggests that the site is based in or offers goods and services in or from the United States.

Twenty days after its registration, the disputed domain name advertised the Complainant's clothes for sale under the name MARINE LAYER, using images and text taken from the Complainant's website without the Complainant's permission.

The Respondent is not a licensee or in any way authorized to use the Complainant's trademark. The disputed domain name resolves to a commercial website offering for sale the Complainant's products without any disclaimer indicating the site's lack of affiliation with the Complainant. There is no evidence that the Complainant has previously been known by the disputed domain name. This shows that the Respondent clearly knew of the Complainant's trademarks when the disputed domain name was registered.

The mailing address given on the contact page of the website to which the disputed domain name resolves does not exist. Email addresses listed on the website to which the disputed domain name resolves have been connected with suspected fraud in the past. For all these reasons, the Respondent registered the disputed domain name in bad faith in order to defraud customers.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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 only difference between the disputed domain name and the Complainant's trademark is the insertion of the letters "us" after the Complainant's trademark and the addition of the generic Top-Level Domain ("gTLD") ".com".

The gTLD is irrelevant here as it is a standard registration requirement. See section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The geographical term "us" does not prevent the recognition of the Complainant's trademark in the disputed domain name. As, Section 1.8 of the [WIPO Overview 3.0](#) says:

"Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element."

For these reasons, the Panel concludes the disputed domain name is confusingly similar to the Complainant's trademark.

B. Rights or Legitimate Interests

The Respondent is not called "Marine Layer US" or anything similar. There is no evidence that the Complainant has ever authorized the Respondent to use its trademark. The Respondent does not appear to have used the disputed domain name for any legitimate purpose. The Respondent has used the website to mimic the Complainant's official website and offering what could be counterfeit clothing for sale.

Based on the available record, where the Complainant has made out a preliminary case that the Respondent lacks rights or legitimate interests, and in the absence of any response on this point, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name. See section 2.1 of the [WIPO Overview 3.0](#).

C. Registered and Used in Bad Faith

The disputed domain name consists of the Complainant's trademark and two letters "us" describing the location of the Complainant's head office.

The disputed domain name resolved to a website that offered the Complainant's clothes, seemingly mimicking the Complainant's official website. One page of the disputed domain name's website reproduced the Complainant's promotion on its website of a "Banks Tee in Heather Grey" t-shirt, using the same unusual product name with just the addition of the words "Marine Layer". The same website has a number of other promotions of "Marine Layer" clothes.

The Respondent clearly knew of the Complainant when it registered the disputed domain name and sought to use the disputed domain name to market the Complainant's goods or counterfeit versions of them. The use of a fake address on the contact page of the disputed domain's website reinforces this view.

The Respondent appears to have registered the disputed domain name primarily 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 the disputed domain name. All this is evidence of registration and use in bad faith in accordance with paragraph 4(b)(iv) of the Policy.

For all these reasons, the Panel concludes that the Respondent registered and is using the disputed domain name 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, <marinelayerus.com> be transferred to the Complainant.

/Adam Samuel/

Adam Samuel

Sole Panelist

Date: November 15, 2022