

## **ADMINISTRATIVE PANEL DECISION**

KUIU, LLC v. Nan Ji  
Case No. D2022-3459

### **1. The Parties**

The Complainant is KUIU, LLC, United States of America (“United States”), represented by Dorsey & Whitney LLP, United States.

The Respondent is Nan Ji, China.

### **2. The Domain Name and Registrar**

The disputed domain name <kuiustore.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 17, 2022. On September 19, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 20, 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 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 11, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 13, 2022.

The Center appointed Theda König Horowicz as the sole panelist in this matter on November 2, 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 company organized and existing under the laws of the State of Delaware, United States with its principal place of business in Dixon, California, United States. It was formed in 2011 to manufacture and market hunting gear, apparel, and related accessories sold under the KUIU trademark and other marks such as the Ram's Head logo, VALO, VIAS, and VERDE.

The Complainant runs its business under the KUIU trade name.

The Complainant owns a portfolio for these marks and variations thereof in several jurisdictions, including China where the Respondent is based. In particular, the Complainant owns the following trademark registrations for KUIU which have been used since 2011:

(i) United States trademark registration, registered on January 28, 2014 under No. 4475223; and

(ii) International trademark registration, which covers China and Russia Federation, registered on July 9, 2013 under No. 1170374.

The Complainant also owns many domain names comprising KUIU, such as <kuiu.com> which resolves to the Complainant's official website where its goods and services are promoted and advertised. The KUIU trademark is prominently displayed on said website.

The disputed domain name was registered on August 2, 2022.

The disputed domain name resolves to a website containing the above-mentioned trademarks owned by the Complainant. The website notably states that consumer can buy "items produced in www.kuiustore.com factory" and advertises KUIU branded apparel. The website also alleges that "KUIU shop online mainly focuses on providing daily updated high-quality new fashionable clothing and accessories at factory price. We sell items produced in www.kuiustore.com factory or other superior manufacturers in the market".

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant claims to have rights in the name KUIU through trademark registrations, copyrights registrations, trade name rights, and domain names. It is of the opinion that the disputed domain name is confusingly similar to its KUIU trademark since the disputed domain name consists solely of the Complainant's KUIU trademark immediately followed by the descriptive term "store". The addition of this term clearly intends to confuse the consumers into believing they are accessing the online shopping website affiliated with the Complainant.

The Complainant is of the opinion that the Respondent cannot demonstrate it has any rights or legitimate interests in the disputed domain name. In this context, the Complainant invokes the fact that its use of KUIU dates back as 2011 and thus greatly predates the Respondent's registration of the disputed domain name in 2022. In addition, the Complainant mentions that:

- the Respondent is not a licensee of the Complainant;
- it has not authorized the Respondent to register the disputed domain name or use the KUIU trademark;
- the Respondent uses the disputed domain name on a website displaying the protected KUIU trademark along with some other brands owned by the Complainant such as the Ram's Head logo, VALO, VIAS, and VERDE. Such use is attempting to confuse consumers into believing the website is an offshoot or affiliated website;

- the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, but actually capitalizes on the goodwill acquired by the Complainant over the KUIU trademark in order to misleadingly divert consumers with intent for its own illegitimate commercial gain;
- the Respondent offers the same type of goods to those of the Complainant, including goods bearing the Complainant's copyrighted designs, thus intending to create confusion as to source or affiliation with the Complainant and its goods;
- to the best of its knowledge, the Respondent accepts payment from consumers for the purchase of apparels that it does not sell, nor does it intend to ever sell; and
- the Respondent has not been commonly known as KUIU.

Finally, the Complainant contends that the Respondent registered the disputed domain name with knowledge of the Complainant's exclusive trademark rights over KUIU and that the Respondent has no rights or legitimate interests with respect to the disputed domain name, it is clear that the disputed domain name was registered and is being used in bad faith. In addition to the contentions mentioned above, the Complainant underlines that the Respondent is operating the website on the disputed domain name with sale of hunting apparel and related accessories, which features the KUIU mark in the disputed domain name itself throughout the website. The Complainant's products are also featured on said website, but the Respondent is not an authorized reseller of the Complainant. The way the KUIU trademark is used in the disputed domain name and the related website creates the false impression that the goods and services offered by the Respondent are authentic KUIU goods or that they are sponsored or endorsed by the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

Under the Policy, in order to prevail, a complainant must prove the following three elements for obtaining the transfer of a domain name:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) that the respondent has no rights or legitimate interests in the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

### **A. Identical or Confusingly Similar**

The Complainant has shown to have obtained trademark rights in KUIU through several registrations including in China where the Respondent is based.

According to section 1.7, of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name. In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar

to that mark for purposes of UDRP standing.

The disputed domain name contains the KUIU trademark in its entirety. The mere addition of the term “store” in the disputed domain name does not prevent a finding of confusing similarity. Indeed, the Complainant’s KUIU trademark remains clearly recognizable.

Under these circumstances, the Panel concludes that the disputed domain name is confusingly similar to the Complainant’s mark.

## **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances that may demonstrate when a respondent has rights or legitimate interests in the use of a domain name. The list includes:

- (i) the use of the domain name in connection with a *bona fide* offering of goods or services;
- (ii) being commonly known by the domain name; or
- (iii) the making of a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers.

Once the Complainant establishes a *prima facie* case against the Respondent under this ground, the burden of production shifts to the Respondent to rebut it. See section 2.1, [WIPO Overview 3.0](#).

The Complainant made sufficient statements in order to demonstrate that the Respondent would have no rights or legitimate interests into the disputed domain name.

In particular, the Panel notes that there is no evidence to show that the Respondent would be commonly known by the disputed domain name.

Based on the above, the Panel considers that the Complainant has made out a *prima facie* case and the burden of production shifts to the Respondent who has chosen not to reply.

As already stated before, nothing is contained in the evidence which would show that the disputed domain name has been legitimately used, either noncommercially or fair, by the Respondent or that the Respondent would have any rights or legitimate interests in the disputed domain name.

To the contrary, the Complainant has shown that the website which is linked to the disputed domain name prominently features its KUIU trademark along with some other brands owned by the Complainant. The website also promotes and commercializes identical goods than the ones manufactured and sold by the Complainant. These goods promoted and sold by the Respondent bear the KUIU trademark without the Complainant’s authorization.

The Panel is convinced that the Respondent cannot be assessed as a legitimate reseller or distributor for the Complainant’s products in light of *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) (“Oki Data”) and thus is not entitled to use the disputed domain name accordingly. In addition, the layout of the Respondent’s website and its content actually carries a risk of implied affiliation for the Internet users (see section 2.5.1, [WIPO Overview 3.0](#)), who will think that the website linked to the disputed domain name is an official website or at least a website authorized by the Complainant, which is not the case.

Consequently, the Panel finds that the Complainant has established its case under paragraph 4(a)(ii) of the Policy.

### **C. Registered and Used in Bad Faith**

The Complainant has shown that its KUIU trademark has been registered and used since several years in many jurisdictions, before the registration of the disputed domain name.

The KUIU trademark has been used and promoted by the Complainant since 2011 and is clearly distinctive in particular for the hunting apparel and accessories sold by the Complainant.

The fact that the disputed domain name resolves to a website selling precisely the same type of goods than the Complainant is a clear indication that the Respondent knew about the Complainant's KUIU trademark and deliberately registered the confusingly similar disputed domain name (see section 3.2.2, [WIPO Overview 3.0](#)).

As already stated above, the disputed domain name resolves to a website prominently using the Complainant's KUIU trademark along with other brands owned by the Complainant and selling apparel bearing the KUIU trademark without the Complainant's authorization. The Respondent thus holds the disputed domain name aiming at a potential commercial gain.

As a matter of fact, the display of hunting apparel and related accessories for sale, which features the KUIU mark, and the nature of the disputed domain name is, in view of the Panel, sufficient evidence that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant as to the source, sponsorship, affiliation or endorsement of its website.

Furthermore, the Respondent has chosen to remain silent within the proceeding. This is an additional indication of bad faith in the present circumstances.

In light of the above, the Panel finds that the Respondent has registered and is using the disputed domain names in bad faith and that the Complainant has established its case under 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 disputed domain name, <kuiustore.com>, be transferred to the Complainant.

*/Theda König Horowicz/*

**Theda König Horowicz**

Sole Panelist

Date: November 21, 2022