

## **ADMINISTRATIVE PANEL DECISION**

Atelier de Production et de Création v. Liuxian Qian  
Case No. D2022-3877

### **1. The Parties**

The Complainant is Atelier de Production et de Création, France, represented by Casalonga, France.

The Respondent is Liuxian Qian, Hong Kong, China.

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

The disputed domain name <storeapc.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 October 17, 2022. On October 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 17, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Whois Agent, Domain Protection Services, Inc., United States of America) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 18, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on October 20, 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 October 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 10, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 11, 2022.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on November 17, 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 Atelier de Production et de Création, a company incorporated in France. The Complainant offers fashion products using the trademark A.P.C. The term “A.P.C.” stands for “Atelier de Production et de Création”, an abbreviation of the Complainant’s company name. The trademark A.P.C. is a famous French fashion brand created in 1987 by Jean Touitou.

The Complainant has more than 80 of its own stores in Paris, New York, Los Angeles, London, Sydney, Hong Kong, China, Berlin, Copenhagen and Tokyo and 300 points of sale in multi-brand stores.

The Complainant has registered the trademark A.P.C. in several jurisdiction around the world including:

- French trademark registration A.P.C. No. 3370130 filed and registered on July 12, 2005, for goods in classes 14, 18, and 25;
- European Union trademark registration A.P.C. No. 006843205 filed on April 9, 2008 and registered on September 22, 2009, for goods in classes 14, 18, and 25;
- Japanese trademark registration A.P.C. No. 5375437 filed on December 28, 2009 and registered on December 10, 2010, for goods in classes 14, 18, and 25;
- International trademark registration A.P.C. No. 1099666, designating China, United States of America, and Republic of Korea, filed and registered on September 21, 2011, for goods in classes 3, 9, and 24.

The Complainant has been operating a web portal located at “www.apc.fr” for over 26 years which presents its products, clothes, objects, collaborations and services.

The disputed domain name was registered on November 16, 2021 and resolves to a website that reproduces the look and feel of the Complainant’s website, and trademark, and purports to sell the products under the brand A.P.C. at heavily discounted prices.

#### **5. Parties’ Contentions**

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

According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the disputed domain name is identical or confusingly similar to the A.P.C. trademark registration of the Complainant.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the disputed domain name.

Third, the Complainant submits that the disputed domain name was registered and is being used in bad faith.

With respect to bad faith the Complainant specifically states that:

- the Complainant's trademark A.P.C. is a well-known trademark that have been extensively used for many years in the field of fashion, sale of clothing, bags, accessories and objects.
- the Complainant's trademarks were notably registered long before the disputed domain name was registered by the Respondent.
- the Complainant has never authorized, licensed or otherwise consented to the Respondent's use of its trademarks or any confusingly similar variation thereof, for any purpose including as part of a domain name.
- as a result, there is no doubt that the Respondent knew or should have known about the existence of the Complainant's trademarks. Indeed, the Complainant's trademarks are notably registered in a large number of countries. For all the foregoing reasons, the Complainant asserts that the Respondent registered and used the disputed domain name in bad faith.

The Complainant requests that the disputed domain name be transferred to the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy lists three elements, which a complainant must satisfy in order to succeed. The Complainant must satisfy that:

- (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.

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

The first element that the Complainant must establish is that the disputed domain name is identical or confusingly similar to the Complainant's trademark.

The Complainant holds several valid A.P.C. trademark registrations. The disputed domain name is confusingly similar to the Complainant's trademarks since it merely reproduces the A.P.C. trademark in its entirety without the dots and with the addition of the term "store". As numerous UDRP panels have held, where at least a dominant feature of the relevant trademark is recognizable in the domain name, it is sufficient to establish that a domain name is identical or confusingly similar to a registered trademark. The addition of the term "store" does not prevent a finding of confusing similarity.

The Panel finds the first element of the Policy has therefore been met.

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

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that the Respondent has rights or legitimate interests in the disputed domain name:

- "(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

There is no evidence of the existence of any of those rights or legitimate interests in this case. The Complainant has not authorized, licensed, or permitted the Respondent to register or use the disputed domain name or its trademarks. The Complainant has prior rights in the trademarks, which precede the Respondent’s registration of the disputed domain name. According to the Complainant, the Respondent is using the disputed domain name to sell counterfeit products because the prices of the products are 90% of the Complainant’s genuine products. Although panels are generally not prepared to accept merely conclusory or wholly unsupported allegations of illegal activity, including counterfeiting, the Panel notes that in this case, the goods are purportedly offered at substantially discounted prices, which supports the Complainant’s claim of illegal activity by the Respondent and which cannot constitute a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use. The Complainant has therefore established a *prima facie* case that the Respondent has no rights and legitimate interests in the disputed domain name and thereby shifted the burden to the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to rebut the Complainant’s *prima facie* case.

Moreover, the nature of the disputed domain name carries a risk of an implied affiliation as it effectively impersonates or suggests sponsorship or endorsement by the Complainant.

Therefore, the Panel finds that the Complainant has satisfied the second requirement of paragraph 4(a) of the Policy.

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

The Complainant must prove both that the disputed domain name was registered and used in bad faith.

The Complainant’s allegations with regard to the Respondent’s registration and use of the disputed domain name in bad faith have been considered by the Panel. The Respondent has not contested these allegations.

The Complainant has used A.P.C. as its trademark for more than 30 years, and has an Internet presence for more than 20 years. There is no doubt that the Respondent was aware of the Complainant’s trademark when he registered the disputed domain name given that the website reproduced the Complainant’s A.P.C. trademark. The Complainant stated and the Respondent has not denied that the disputed domain name resolves to a website that reproduces the look and feel of the Complainant’s website, and trademark, and purports to sell the products under the brand A.P.C. at heavily discounted prices. According to the Complainant, the disputed domain name reproduces the A.P.C. trademarks without any license or authorization and proposes the alleged A.P.C. products sold on the website with very substantial discounts (around 90%).

The Panel visited the website at the disputed domain name and was able to verify that it resolves to an online store that is very similar to the online store of the Complainant. The Panel finds that such behavior is evidence of bad faith.

In light of the evidence, the Panel holds that the Respondent has intentionally attempted to attract for commercial gain Internet users to his website by creating a likelihood of confusion with the Complainant’s trademark as to the source, sponsorship, affiliation or endorsement of the website and services and products offered on it under paragraph 4(b)(iv) of the Policy, and likely to disrupt the business of the Complainant.

Therefore, the Panel concludes that the Complainant has made out its case that the disputed domain name was registered and is being used in bad faith and has satisfied the third limb of the Policy, under paragraphs 4(a)(iii) and 4(b)(iv).

## 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, <storeapc.com>, be transferred to the Complainant.

*/Pablo A. Palazzi/*

**Pablo A. Palazzi**

Sole Panelist

Date: December 1, 2022