

ADMINISTRATIVE PANEL DECISION

Jacques Bermon Webster II (also known as Travis Scott) and LaFlame Enterprises, Inc. v. Babar Anwar
Case No. D2022-4118

1. The Parties

The Complainants are Jacques Bermon Webster II (also known as Travis Scott), United States of America (“United States”) and LaFlame Enterprises, Inc., United States, both represented by Kia Kamran P.C.

The Respondent is Babar Anwar, Pakistan.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 1, 2022. On November 2, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 2, 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 November 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 24, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 25, 2022.

The Center appointed Assen Alexiev as the sole panelist in this matter on December 5, 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 Jacques Bermon Webster II (the "First Complainant") is professionally known as the recording artist Travis Scott. He started his activities in the entertainment industries in 2009. Throughout his career, the First Complainant has been nominated for eight Grammy Awards and has won a Billboard Music Award, Latin Grammy Award, MTV Video Music Award, and multiple BET Awards. The First Complainant has toured extensively in the United States and internationally. The other Complainant, LaFlame Enterprises, Inc. (the "Second Complainant") is a company owned by the First Complainant.

The Second Complainant is the owner of the United States trademark TRAVIS SCOTT with registration No. 5918744, registered on November 26, 2019 for goods and services in International Classes 9, 16, 25 and 41, with first use in commerce on January 1, 2009 for the services in International Class 41 (the "TRAVIS SCOTT trademark").

The Complainants operate the domain name <travisscott.com> registered on January 1, 2011. It resolves to the First Complainant's official website where his music and authorized merchandise are released.

The disputed domain name was registered on April 13, 2021. It resolves to a website that sells products branded with the Complainant's name and likeness and the TRAVIS SCOTT trademark.

5. Parties' Contentions

A. Complainant

The Complainants submit that they have used the brand TRAVIS SCOTT in commerce since 2009 in connection with entertainment services, live performance, music and merchandise such as clothing, jewelry, bags, cups and paper goods.

The Complainants state that the disputed domain name is confusingly similar to their TRAVIS SCOTT trademark, because it includes the entirety of the trademark with the addition of the dictionary words "merch" and "shop" which do not eliminate the likelihood of confusion.

According to the Complainants, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it is not commonly known by the name Travis Scott and is not authorized by the Complainants to use this name as part of any trademark or domain name. According to the Complainants, the Respondent cannot claim any legitimate noncommercial or fair use of the disputed domain name, for criticism or as a fan site, because its primary purpose is to engage in commercial use in competition with the Complainants and to sell bootleg merchandise on the associated website bearing the First Complainant's name and likeness and the TRAVIS SCOTT trademark. According to the Complainants, this use of the disputed domain name is intended to divert consumers to the Respondent's website for the Respondent's commercial gain by creating a likelihood of confusion with the Complainants for the purpose of selling counterfeit merchandise.

The Complainants maintain that the Respondent's use of the Complainants' TRAVIS SCOTT trademark is not legitimate because the Respondent is not an authorized reseller, distributor, or licensee of the Complainants, and the Complainants have not acquiesced to the use of the disputed domain name by the Respondent. The Complainants point out that the Respondent's website does not provide any indication to the consumers that it is not the official website of the Complainants.

The Complainants contend that the disputed domain name was registered and is being used in bad faith. According to them, the Respondent has deliberately registered the Complainants' TRAVIS SCOTT trademark as its domain name. The Complainants note that the Respondent registered the disputed domain name on April 13, 2021 primarily for the purpose of disrupting the Complainants' business by selling counterfeit products branded as TRAVIS SCOTT, CACTUS JACK, ASTROWORLD and LOOK MOM I CAN

FLY. In the Complainants' view, in choosing the disputed domain name, the Respondent intended to target the value in the Complainants' name and trademark and benefit financially. According to them, the use of the disputed domain name is intended to misdirect consumers to the Respondent's website and inducing them into believing that the Respondent's counterfeit products are associated with or authorized by the Complainants. The Complainants add that these counterfeit products are offered at much lower prices than those which are sold by the Complainants and their distributors.

B. Respondent

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

6. Discussion and Findings

6.1. Procedural issue – Consolidation of the Complainants

The Complaint has been filed by two Complainants. As discussed in section 4.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), in assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels look at whether the complainants have a specific common grievance against the respondent or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and whether it would be equitable and procedurally efficient to permit the consolidation.

In support of their consolidation in this proceeding, the Complainants point out that the disputed domain name incorporates the professional name of the First Complainant and the TRAVIS SCOTT trademark which is owned by the Second Complainant which in turn is owned by the First Complainant. The website at the disputed domain name features the image of the First Complainant and offers goods bearing the TRAVIS SCOTT trademark. These allegations, supported by evidence, allow a *prima facie* conclusion that the Respondent's alleged conduct may affect the Complainants in a similar fashion and that the two of them may have a common grievance against the Respondent. This in turn justifies a conclusion that the Complaint filed by the two Complainants is admissible.

The Center has discharged its duties to notify the Respondent, but the Respondent did not submit a Response in this proceeding or raise any arguments why the consolidation of the Complainants may not be equitable or procedurally efficient.

The Panel is of the view that the consolidation would lead to greater procedural efficiency, and is not aware of any reasons why it would not be fair and equitable to all parties. Therefore, the Panel decides to allow the consolidation of the Complainants in the present proceeding.

6.2. Substantive issues

Pursuant to the Policy, paragraph 4(a), the Complainants must prove each of the following to justify the transfer of the disputed domain name:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainants have rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the Respondent has registered and is using the disputed domain name in bad faith.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: "[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name [...]."

The Respondent has however not submitted a Response and has not disputed the Complainants' contentions and evidence in this proceeding.

A. Identical or Confusingly Similar

The Complainants have provided evidence that the Second Complainant is the owner of the TRAVIS SCOTT trademark. They have also submitted that the First Complainant is the owner of the Second Complainant and that the TRAVIS SCOTT trademark belongs to them. This close relationship between the two Complainants is sufficient for a finding that both of them have rights in the TRAVIS SCOTT trademark for the purposes of the Policy.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the generic Top-Level Domain ("gTLD") section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). See section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). The Panel sees no reason not to follow the same approach here, so it will disregard the ".com" gTLD section of the disputed domain name.

The relevant part of the disputed domain name is therefore the sequence "travisscottmerchshop". It consists of the elements "travis", "scott", "merch" and "shop". The TRAVIS SCOTT trademark is included in its entirety in the disputed domain name. The inclusion of the two additional elements "merch" (likely to be understood as a short form of "merchant" or "merchandise") and "shop", which as combination describe the nature of the associated website, does not prevent the TRAVIS SCOTT trademark from being recognizable in the disputed domain name. Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms would not prevent a finding of confusing similarity under the first element. See section 1.8 of [WIPO Overview 3.0](#).

In view of the above, the Panel finds that the disputed domain name is confusingly similar to the TRAVIS SCOTT trademark in which the Complainants have rights.

B. Rights or Legitimate Interests

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See section 2.1 of the [WIPO Overview 3.0](#).

The Complainants contend that the Respondent has no rights or legitimate interests in the disputed domain name, stating that it has no relationship with them and was not given permission to use the TRAVIS SCOTT trademark. They point out that the Respondent is using the disputed domain name for a commercial website selling counterfeit goods bearing the TRAVIS SCOTT trademark without informing visitors that the website and the goods offered on it have not been authorized by the Complainants. Thus, the Complainants have established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has not submitted a Response and has not disputed the statements of the Complainants.

The disputed domain name represents a combination of the TRAVIS SCOTT trademark with additional words that make it to appear as an online shop selling TRAVIS SCOTT branded merchandise. It is confusingly similar to the TRAVIS SCOTT trademark and to the professional name of the First Complainant, both of which started being used more than twelve years before the registration of the disputed domain name. According to the evidence in the case file, the disputed domain name indeed resolves to a website

that offers TRAVIS SCOTT branded goods and contains no disclaimer for the lack of relationship between the Parties and the lack of authorization by the Complainants of the merchandize offered, but claims to be an authorized shop. The website contains the statement “This merch is the online shop that offers Travis Scott hoodies, shirts, sweatshirts, shoes, sweatpants, jackets, phone covers and hats. All these premium quality merchandise is available to shop online at affordable costs. If you are after some iconic Travis Scott merch products, then it is the right store to buy some. [...] Travis Scott Merch Shop is the perfect online shop to buy Travis Scott merch online. Our shop is an authorized merch and we sell 100% real merchandise here. The material used is of 100% pure quality and the price for each product is also reasonable”.

In view of the above, and in the absence of any evidence to the contrary and of any plausible alternative explanation by the Respondent, it appears to the Panel that it is more likely than not that the Respondent, being aware of the goodwill of the Complainants and of their TRAVIS SCOTT trademark, has registered and used the disputed domain name to illegitimately exploit their goodwill for commercial gain. In the Panel’s view, such conduct does not give rise to rights or legitimate interests of the Respondent in the disputed domain name.

In addition, and without prejudice to the above, the nature of the disputed domain name, comprising the TRAVIS SCOTT trademark in its entirety in combination with two additional terms, carries a risk of implied affiliation. See section 2.5.1 of the [WIPO Overview 3.0](#).

Therefore, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

The Respondent has registered the disputed domain name more than twelve years after the adoption by the First Complainant of his professional name and the first use in commerce of the TRAVIS SCOTT trademark. The disputed domain name represents a combination that refers to a shop selling TRAVIS SCOTT merchandize, claims to be an authorized shop and does not disclose the lack of affiliation and authorization by the Complainant. It is unclear whether the goods offered on the Respondent’s website are authentic, but this is questionable, given that the Complainants dispute the authenticity of these goods and note that their selling prices on the Respondent’s website are significantly lower than the prices of similar goods authorized by the Complainants, and the Respondent does not claim otherwise or submit evidence of the authenticity of the offered goods.

Taking the above into account, and in the absence of any evidence to the contrary, the Panel is satisfied that it is more likely than not that the Respondent was well aware of the Complainants' TRAVIS SCOTT trademark and of its goodwill when it registered the disputed domain name, and that the Respondent has registered and used it targeting the TRAVIS SCOTT trademark and the professional name of the First Complainant in an attempt to exploit the goodwill of the Complainants, and of the TRAVIS SCOTT trademark to mislead for commercial gain Internet users that the goods offered to them on the Respondent's website are authorized by the Complainants.

Therefore, the Panel finds that the disputed domain name has been registered and being used 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 <travisscottmerchshop.com> be transferred to the Complainants.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: December 13, 2022