

ADMINISTRATIVE PANEL DECISION

Loft Ipco LLC v. Hao Tu
Case No. D2022-4591

1. The Parties

The Complainant is Loft Ipco LLC, United States of America (“United States”), represented by Fross Zelnick Lehrman & Zissu, P.C., United States.

The Respondent is Hao Tu, China.

2. The Domain Name and Registrar

The disputed domain name <lofttop.online> is registered with Hong Kong Juming Network Technology Co., Ltd (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 1, 2022. On December 2, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 5, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on December 5, 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 December 9, 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 December 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 3, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 9, 2023.

The Center appointed Antony Gold as the sole panelist in this matter on January 18, 2023. 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 based in New Jersey, United States, and is a retailer of women's fashion garments and accessories. The Complainant operates over 500 LOFT and LOFT OUTLET stores. The Complainant owns United States trade and service marks for LOFT including, by way of example, trademark registration number 3,434,715, in class 26, registered on May 27, 2008. The Complainant also operates a website at "www.loft.com" which had more than 140 million visitors in 2021 and ships to over 180 countries. Additionally, the Complainant's LOFT brand is promoted on social media and networking websites.

The disputed domain name was registered on October 20, 2022. It has previously resolved to a website which sells, or purports to sell, the Complainant's garments (generally from earlier fashion seasons) and which makes use of the Complainant's LOFT and other trade marks to describe the goods offered for sale. One page, for example, is headed "LOFT: Women's Clothing, Petite, Dresses, Pants, Shirts". The "About Us" section of the Respondent's website invites Internet users to "Shop online or in one of our 500 stores". The Respondent's website also used images of the Complainant's products which have evidently been copied from the Complainant's website.

The disputed domain name does not presently resolve to an active website.

5. Parties' Contentions

A. Complainant

The Complainant says that the disputed domain name is confusingly similar to its LOFT mark in that it incorporates the mark in its entirety. The Respondent cannot avoid an adverse finding simply by adding the term "top" to the Complainant's mark as this does not alleviate any possibility of confusion.

The Complainant says also that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The website associated with the disputed domain name is passing itself off as the Complainant's website in that it is purportedly offering the Complainant's clothing and stealing the Complainant's images to do so. The Respondent's website unquestionably trades on the fame of the Complainant's LOFT mark and as such cannot constitute a *bona fide* use of the disputed domain name. There is no relationship between the Complainant and the Respondent that would give rise to any license permission or authorization by which the Respondent could own or use the disputed domain name or operate a website that mimics the Complainant's own website. Moreover, even if the goods sold on the Respondent's website were genuine LOFT merchandise, the Respondent's use of the disputed domain name would still not be *bona fide*.

Finally, the Complainant says that the Respondent has registered and is using the disputed domain name in bad faith. There is no reason for the Respondent to have chosen the disputed domain name unless it was seeking to create an association with the Complainant. Since the Respondent has never been authorized by the Complainant to use or register the disputed domain, its registration establishes opportunistic bad faith. Furthermore, the confusing similarity between the Complainant's LOFT mark and the Respondent's website means that consumers are likely to believe mistakenly that the disputed domain name is related to or associated with the Complainant.

By its use of the disputed domain name the Respondent is intentionally attempting to attract for commercial gain Internet users to its website by creating a likelihood of confusion as to the source, sponsorship or affiliation of its website. Finally, the Complainant contends the Respondent is a serial cyber-squatter.

B. Respondent

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

6. Discussion and Findings

Dealing, first, with the Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under, these Rules, the Panel shall be entitled to draw such inferences from this omission as it considers appropriate.

Paragraph 4(a) of the Policy provides that the Complainant proves each of the following three elements in order to succeed in its Complaint:

- (i) the disputed domain name is identical or confusingly similar to a trade mark 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 Complainant has produced evidence of its registered marks for LOFT, including the mark full details of which have been set out above, which thereby establish its rights in this term.

When considering whether the disputed domain name is identical or confusingly similar to the Complainant's mark the generic Top-Level Domain ("gTLD") ".online" is disregarded as a technical requirement of registration. The disputed domain name accordingly comprises the Complainant's LOFT trade mark followed by the word "top". The addition of this term does not prevent the disputed domain name from being found confusingly similar to the Complainant's mark. As explained at section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"); "Where the relevant trade mark 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". See also *LinkedIn Corporation v. Daphne Reynolds*, WIPO Case No. [D2015-1679](#).

The Complainant's LOFT mark is clearly recognizable within the disputed domain name and the Panel therefore finds that it is confusingly similar to a trade mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides, in summary, that a respondent may demonstrate that it may have rights or legitimate interests in a disputed domain name by demonstrating either that, before any notice to it of the dispute, it has been using or has made demonstrable preparations to use, the domain name in connection with a *bona fide* offering of goods or services or that it has been commonly known by the domain name or that it has been making a legitimate noncommercial or fair use of the domain name.

Use of the disputed domain name in order to resolve to a website which masquerades as that of the Complainant does not amount to use in connection with a *bona fide* offering of goods and services; see *Zions Bancorporation, N.A. v. George Gillespie*, WIPO Case No. [D2022-3197](#) and also section 2.13.1 of the [WIPO Overview 3.0](#) which explains that "Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent".

It is not known whether the Respondent is actually selling the Complainant's products. In the event that it is, the circumstances give rise to issues considered at section 2.8 of the [WIPO Overview 3.0](#), and in a number of decisions of earlier UDRP panels, including *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#). This decision set out four cumulative requirements to be fulfilled if a UDRP panel is to accept that a respondent has been using a domain name in connection with the resale or distribution of a complainant's goods or services. One of these requirements is that the respondent's website must accurately and prominently disclose its relationship with the trade mark holder or lack thereof. There is nothing in the screen prints of the Respondent's website provided by the Complainant which indicates that the Respondent has made any attempt to distinguish its business from that of the Complainant. The "About us" section of its website states that its business is known as "Theoftusa.com", that it was founded in 2001 and that it now supplies its products to over 220 countries. However, there is not any evidence available to the Panel that suggests that there is any truth in this claim and the extensive use of images of the Complainant's products is apt to suggest to Internet users that the Respondent's website is either that of the Complainant or that it is at least authorized by it to sell its products. The Respondent's use of the disputed domain name does not therefore meet the last *Oki Data* requirement referred to above, in that its website does not clearly and prominently disclose that its activities are not authorized by the Complainant. See, for example, *AB Electrolux v. Privacy protection service - whoisproxy.ru / Zoom Ltd.*, WIPO Case No. [D2018-1823](#).

The Panel does not therefore find that the Respondent's website is being used in connection with a *bona fide* offering of goods and services. There is no evidence to indicate that the Respondent has been commonly known by the disputed domain name and the second circumstance set out at paragraph 4(c) of the Policy is therefore inapplicable. Nor is the Respondent making a legitimate noncommercial or fair use of the disputed domain name.

Lastly, the current inactive status of the disputed domain name comprises neither a *bona fide* offering of goods and services nor a legitimate noncommercial or fair use of it.

For the above reasons, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The fact that, following registration of the disputed domain name, the Respondent has used it in order to resolve to a website that purport to be that of the Complainant establishes, that the Respondent was aware of the Complainant's LOFT mark as at the date of its registration and that it was registered in order to target the Complainant and take advantage of its repute in its mark. As explained at section 3.1.4 of the [WIPO Overview 3.0](#): "[p]anel[s] have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trade mark by an unaffiliated entity (particularly domain names comprising typos or incorporating the mark plus a descriptive term) can by itself create a presumption of bad faith". See also *Costco Wholesale Membership Inc. and Costco Wholesale Corporation v. Almantas Kakareka and Hostmaster Oneandone, 1&1 Internet, Inc.*, WIPO Case No. [D2007-1833](#). The Panel therefore finds the registration of the disputed domain name to have been in bad faith.

Turning to bad faith use, paragraph 4(b) of the Policy sets out, without limitation, circumstances which, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The circumstance set out in paragraph 4(b)(iv) of the Policy is if a 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. The use to which the Respondent has previously put the disputed domain name, as described above, is plainly intended to confuse Internet users into believing that its website is that of the Complainant or, at least, is closely associated with it, comprises bad faith use within the meaning of paragraph 4(b)(iv) of the Policy; see, for example *Clarins v. Privacy Service Provided by Withheld for Privacy ehf / Do Thanh Luan, Lilla Group*, WIPO Case No. [D2022-1178](#).

The current inactive status of the disputed domain name does not prevent a finding of bad faith under the doctrine of passive holding; see section 3.3 of the [WIPO Overview 3.0](#). The factors that are typically considered when applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the Complainant's mark, (ii) the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the Respondent's concealment of its identity by its use of a privacy service, and (iv) the implausibility of any good faith use to which the disputed domain name may be put.

These factors are fulfilled in the current circumstances in that: (i) the Complainant has established the repute of its LOFT trade mark; (ii) the only use made of the disputed domain name to date has been in bad faith; and (iii) there is no plausible good faith use to which the disputed domain name is likely to be put by the Respondent.

For the above reasons, the Panel therefore finds that the disputed domain name has been registered and 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 <lofttop.online> be transferred to the Complainant.

/Antony Gold/

Antony Gold

Sole Panelist

Date: January 31, 2023