

ADMINISTRATIVE PANEL DECISION

Boot Barn, Inc. v. Qhyfde Rydeu, Jgey Tudei, and Wfcdf Sfrfree
Case No. D2022-4633

1. The Parties

The Complainant is Boot Barn, Inc., United States of America (“United States”), represented by Sisun Law, United States.

The Respondents are Qhyfde Rydeu, China, Jgey Tudei, China, and Wfcdf Sfrfree, China.

2. The Domain Names and Registrar

The disputed domain names <idyllwindsale.com> (“the first disputed domain name”), <womenidyllwind.com> (“the second disputed domain name”), and <idyllwindshop.com> (“the third disputed domain name”) are registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 2, 2022. On December 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names and, additionally, <idyllwindsale.shop>, to which the Complaint, at that stage, also related. On December 6, 2022, the Registrar transmitted by email to the Center its verification response, disclosing registrant and contact information for the disputed domain names and <idyllwindsale.shop>, which differed from the named Respondent and contact information in the Complaint (Domain Protection Services, Inc.). The Center sent an email communication to the Complainant on December 15, 2022, providing the registrant and contact information for the multiple underlying registrants disclosed by the Registrar and inviting the Complainant to either amend the Complaint by adding the Registrar-disclosed registrants as the formal Respondents and by providing relevant arguments or evidence demonstrating that all the named Respondents are, in fact, the same entity and/or that all the disputed domain names are under common control, or to indicate which domain names were no longer to be included in the current Complaint. The Complainant filed an amended Complaint on December 20, 2022, including a request for consolidation of its complaint in relation to the disputed domain names and requesting the withdrawal of the domain name <idyllwindsale.shop> from these proceedings. On December 28, the Center sent the Parties the Notification of Requested Partial Withdrawal regarding the domain name <idyllwindsale.shop>.

The Center verified that the Complaint together with 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 Respondents of the Complaint, and the proceedings commenced on January 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 24, 2023. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on January 26, 2023.

The Center appointed Antony Gold as the sole panelist in this matter on February 1, 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 the exclusive licensee of the trade mark IDYLLWIND, which is owned by the United States country music singer and musician, Miranda Lambert, and which has been used by the Complainant for the sale of western wear, clothing, and apparel since 2017. For ease of reference, these marks are referred to below as the “Complainant’s marks”. The Complainant’s marks include, by way of example, United States trade mark, registration number 5481320, registered on May 29, 2018, in class 25. The Complainant also operates websites at the domain names <idyllwind.com> and <bootbarn.com>, both of which sell its apparel, jewelry, bags, and related items. The Complainant’s website at <idyllwind.com> receives in excess of 100,000 visitors per month.

The first and second disputed domain names were registered on May 10, 2022, and the third disputed domain name was registered on July 8, 2022. The first disputed domain name resolves to a website branded as “Idyllwindsale”, which purports to sell discounted IDYLLWIND-branded clothing, the appearance of which is very similar to that of the Complainant’s apparel. Save that the websites to which the second and third domain names resolve are branded as “WomenIdyllwind” and “Idyllwind - fueled by Miranda Lambert” respectively, their form and content is very similar to the website at the site of the first disputed domain name. The look and feel of all three of the Respondents’ websites is essentially the same as that of the Complainant’s website at <idyllwind.com>.

5. Procedural issue - Complaint filed against multiple Respondents

The Complainant seeks consolidation of its complaints against the Respondents in the light of the following circumstances. First, the disputed domain names were registered within a short time period of each other, that is between May 10, 2022 and July 8, 2022. Second, the composition of the disputed domain names is similar, in that each of them includes the Complainant’s IDYLLWIND mark in full, followed by, or preceded by, a generic term. Third, the contact information for each disputed domain name includes the same telephone number and the contact physical addresses for all three disputed domain names are within the same postal code in Hong Kong, China. Fourth, the websites to which each of the disputed domain names resolves are similar in content and layout to each other.

The principles applied by UDRP panels considering requests for consolidation are set out at section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). This explains that: “Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario.” See also *Speedo Holdings B.V. v. Programmer, Miss Kathy Beckerson, John Smitt, Matthew Simmons*, WIPO Case No. [D2010-0281](#).

The circumstances to which the Complainant has drawn attention indicate that the Respondents are either the same person or are acting in concert in order to fulfil a common design. In either eventuality, the

disputed domain names are plainly under common control. Moreover, the Panel notes that none of the Respondents has challenged the Complainant's assertions as to why consolidation is appropriate.

In these circumstances, it is procedurally efficient, as well as fair and equitable to all Parties, for the Complainant's case in respect of all three of the disputed domain names to be dealt with in a single Complaint. The Panel therefore grants the Complainant's request for consolidation and the named Respondents are accordingly referred to below collectively as "the Respondent".

6. Parties' Contentions

A. Complainant

The Complainant says that each of the disputed domain names is confusingly similar to its IDYLLWIND marks. Each of them contains the Complainant's IDYLLWIND mark in its entirety and adds generic material which lacks significance as a source identifier. The addition of non-distinctive terms does not lessen the likelihood of confusion between the disputed domain names and the Complainant's mark.

The Complainant says also that the Respondent has no rights or legitimate interests in respect of the disputed domain names. The Respondent's business does not comprise a *bona fide* offering of goods or services under the disputed domain names, nor does it own any registered trade mark rights in respect of the IDYLLWIND mark. There is no evidence to suggest that the Respondent has been commonly known by any of the disputed domain names. The Respondent is not authorized or licensed by the Complainant to use its IDYLLWIND mark.

The Complainant says, finally, that the disputed domain names were registered and are being used in bad faith. The Respondent created and registered the disputed domain names in order to create a likelihood of confusion between them and the Complainant's mark. The disputed domain names are designed to lure the Complainant's consumers to the Respondent's websites, which advertise for sale goods and services identical to those of the Complainant, but which are not associated with or endorsed by it. The look and feel of the websites to which the disputed domain names resolve creates a false affiliation between them and the Complainant's trade marks. The Respondent should reasonably have been aware that consumers are likely to believe that the disputed domain names are owned, endorsed or affiliated with the Complainant and this is indicative of bad faith.

B. Respondent

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

7. 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 names are 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 names; and

(iii) the disputed domain name have been registered and are being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has produced evidence of Miranda Lambert's registered marks for IDYLLWIND as well as its exclusive license of those marks, including the mark full details of which have been set out above. It has thereby established its rights in this term.

When considering whether the disputed domain names are identical or confusingly similar to the Complainant's mark the generic Top-Level Domain ".com" is disregarded as a technical requirement of registration. Each of the disputed domain names accordingly comprises the Complainant's IDYLLWIND trade mark, in full and without alteration, together with the words "sale", "women", and "shop", respectively. Irrespective of whether these terms precede or follow the Complainant's mark within the disputed domain names, their addition does not prevent them from being found confusingly similar to its mark. As explained at section 1.8 of the [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 IDYLLWIND mark is clearly recognizable within each of the disputed domain names and the Panel therefore finds that they are 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.

The use of substantially similar brand names on the Respondent's websites in order to sell apparel which is very similar in appearance to that of the Complainant is plainly intended to mislead Internet users into believing that the Respondent's websites are operated by, or on behalf of, the Complainant. Use of the disputed domain names for these purposes 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".

Whilst it is not known whether the Respondent is actually selling the Complainant's products, the Panel has undertaken a brief search on Google which suggests that at least some garments offered for sale on the Respondent's websites formerly featured on the Complainant's website.¹ To the extent that the Respondent is both offering for sale and actually supplying the Complainant's garments to users of its website, the circumstances give rise to issues considered at section 2.8 of the [WIPO Overview 3.0](#) and in 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 no content in any of the Respondent's websites which

¹ See section 4.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), which explains that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision.

might distinguish its business from that of the Complainant, still less any form of disclaimer, with the consequence that the form and content of its websites suggest to Internet users that they are operated by, or with the consent of, the Complainant. The Respondent's use of the disputed domain names does not therefore meet the *Oki Data* requirement referred to above. See, for example, *AB Electrolux v. Privacy protection service - whoisproxy.ru / Zoom Ltd.*, WIPO Case No. [D2018-1823](#). For these reasons, the Panel therefore finds that the Respondent's websites are not 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 any of the disputed domain names 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 names.

Once a complainant has made out a *prima facie* case that a respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the respondent to show that it does have such rights or legitimate interests. In the absence of any response from the Respondent to the Complaint, it has failed to satisfy that burden. The Panel accordingly finds that the Respondent has no rights or legitimate interests with respect to the disputed domain names.

C. Registered and Used in Bad Faith

The fact that, following registration of the disputed domain names, the Respondent has used them in order to resolve to websites that purport either to be those of the Complainant or, at least, authorized by it, establishes, that the Respondent was aware of the Complainant's IDYLLWIND mark as at the date of their registration and that the disputed domain names were registered in order to target the Complainant and take advantage of its repute in its marks. This is particularly the case when the added terms within the disputed domain names, namely "sale", "women", and "shop" will also be associated with the Complainant. As explained at section 3.1.4 of the [WIPO Overview 3.0](#): "[p]anels 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 *Verizon Trademark Services LLC v. Jeff Tencza*, WIPO Case No. [D2019-0214](#). The Panel therefore finds the registration of the disputed domain names 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, in summary, 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 the Complainant is making of the disputed domain names, as described above, is plainly intended to confuse Internet users into believing that its websites are those of the Complainant, or are authorized by it, and therefore 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 Panel accordingly finds that the disputed domain names have been registered and are being used in bad faith.

8. 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 names <idyllwindsale.com>, <idyllwindshop.com>, and <womenidyllwind.com> be transferred to the Complainant.

/Antony Gold/

Antony Gold

Sole Panelist

Date: February 15, 2023