

## **ADMINISTRATIVE PANEL DECISION**

Kristina Alice Brown v. yuhua pang  
Case No. D2022-4897

### **1. The Parties**

The Complainant is Kristina Alice Brown, Australia, represented by Taits Legal, Australia.

The Respondent is yuhua pang, China.

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

The disputed domain name <whitecoliving.shop> is registered with Dynadot, LLC (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 20, 2022. On December 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 22, 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 22, 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 amendment to the Complaint on January 2, 2023.

The Center verified that the Complaint together with the amendment to 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 January 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 29, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 31, 2023.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on February 6, 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 natural person who has operated a clothing and accessories retail business under the name “White & Co. Living”, commonly abbreviated to “White & Co.”, since 2016. The business has physical premises, namely its head office, a warehouse and a retail boutique, in Melbourne, Victoria, Australia. The Complainant notes that the gross sales of said business amounted to over AUD 12 million in 2021, being the latest year for which full figures were available. According to a table produced by the Complainant, the total volume of its gross sales from 2017 to 2022 is over AUD 32.8 million and the total volume of its advertising expenditure for the same period is over AUD 3.1 million.

The Complainant produces evidence showing that it has over 91,000 followers on Facebook, and over 67,000 subscribers on Instagram. The Complainant also demonstrates with reference to its email marketing systems that it has issued promotional emails to over 390,000 recipients between 2019 and 2022. Nearly 116,000 of such emails were opened, the average clickthrough rate was just under five per cent, and the unsubscribe rate was under one third of one per cent.

The Complainant’s business name was registered with the Australian Securities and Investment Commission on April 19, 2021. The Complainant has filed two Australian trademark applications, namely nos. 2206589 in respect of the mark WHITE & CO (word) in Classes 14, 18, 25, and 35, and 2206591 in respect of the mark WHITE & CO (figurative, incorporating words in a disc topped by a saltire or Saint Andrew’s Cross) in Classes 14, 18, 25, and 35. Neither of these marks has yet proceeded to grant.

The Complainant has used the domain names <whiteandco.com.au> and <whiteandco.co.nz> for its Australian and New Zealand websites. The Australian website has been in operation since 2016, as evidenced by archived screenshots. Said screenshots show that since at least May 12, 2016, the Complainant has used the figurative mark that is the subject of the above application, together with a stylized version of the name “White & Co.” in a distinctive typeface for the promotions of various third party clothing brands including Elm, Betty Basics, Isle of Mine, and Jovie the Label.

The disputed domain name was registered on June 27, 2022. Nothing is known of the Respondent other than that it appears to be a natural person with an address in Hunan Province, China. The website associated with the disputed domain name is a clothing retail site that has been designed in similar style to the Complainant’s website and is entitled “[saltire] White & Co Living Sales – fashion clothing”<sup>1</sup>. The Respondent abbreviates this title to “White & Co” using the same stylized form in grey on white, with an ampersand, in an identical sans-serif typeface to that used by the Complainant. Said website promotes the same third party brands as those promoted by the Complainant’s site, and also depicts a model standing in front of a vehicle bearing a registration plate from the state of New South Wales, Australia.

#### 5. Parties’ Contentions

##### A. Complainant

In summary, the Complainant contends as follows:

##### **Identical or confusingly similar**

The Complainant possesses unregistered trademark rights in the mark WHITE & CO that may be evidenced in the manner described in section 1.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). Such evidence includes its use of said mark over six years, the volume of gross sales and advertising spend achieved since 2017, the Complainant’s social media following, and the reach of its promotional activities both by email and on social media since 2019.

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<sup>1</sup> The Panel visited the Respondent’s website for the purposes of this decision in order to review various aspects of the Complainant’s screenshots that were suffering from compression artefacts. With regard to the Panel conducting limited factual research into matters of public record, such as consulting relevant publicly available websites, see section 4.8 of the [WIPO Overview 3.0](#).

The word “living” in the disputed domain name is descriptive of the Complainant’s lifestyle fashion goods. The absence of the ampersand in the Complainant’s WHITE & CO mark within the disputed domain name is of no consequence and will be overlooked by consumers. The disputed domain name is therefore confusingly similar to the Complainant’s mark.

### **Rights or legitimate interests**

The disputed domain name has been used in a fraudulent attempt to mimic the Complainant’s website in order to obtain financial information from unsuspecting Internet users who will believe that they are dealing with the Complainant. Such conduct could not be further from legitimate, and the Respondent has no rights or legitimate interests in the disputed domain name.

### **Registered and used in bad faith**

The disputed domain name was registered in June 2022 and has been directed to a website mimicking that of the Complainant. Said site not only uses the Complainant’s stylization of its mark and the saltire/Saint Andrew’s Cross in identical form but also lists and promotes duplicate clothing brands. There are countless fashion brands in existence in the industry but the Respondent has duplicated those offered by the Complainant in a blatant attempt to mimic the Complainant’s website. The appearance of the Respondent’s said site goes beyond looking similar to the Complainant’s business and is a deliberate attempt to deceive Internet users into believing that said website is published by the Complainant’s business. Said site displays the image of a model in front of an Australian vehicle license plate, giving the impression that it is connected to Australia and to the Complainant’s Australian business. Said site purports to have online payment facilities, such that the Respondent is profiting from the same at the expense of consumers.

## **B. Respondent**

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

## **6. Discussion and Findings**

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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 assessment under the Policy is typically made in two parts. First, the Complainant must demonstrate that it possesses UDRP-relevant rights in a trademark, whether registered or unregistered. Secondly, the disputed domain name is compared to such trademark, usually on a straightforward side-by-side basis, typically disregarding the Top-Level Domain, to assess identity or confusing similarity. If, on the basis of such comparison, the disputed domain name is seen to be identical to the Complainant’s trademark, identity will generally be found, while if the Complainant’s mark is otherwise recognizable in the disputed domain name, confusing similarity will usually be found.

In the present case, the Complainant claims that it possesses an unregistered trademark in the mark WHITE & CO, which it notes that it has been using since 2016. Section 1.3 of the [WIPO Overview 3.0](#) sets out the types of evidence generally required to establish an unregistered mark for the purposes of the Policy, namely (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and

extent of advertising using the mark, (iv) the degree of actual public (e.g., consumer, industry, media) recognition, and (v) consumer surveys.

In the present case, the Complainant supplies evidence consisting of an archived version of its website from May 2016 showing said mark and the corresponding domain name in use, and the results of its email advertising campaigns featuring communications under the said mark that were issued to some hundreds of thousands of consumers and acted on by a substantial proportion of the recipients, together with a social media presence in which 158,000 followers participate. The Complainant's turnover figures and advertising spend were not independently vouched, although these are consistent with the items that were suitably evidenced, particularly the email campaigns and extent of advertising on social media. Such evidence is sufficient for the Panel to find that the Complainant has unregistered trademark rights in the mark WHITE & CO on the basis of factors (i), (ii), (iii) and (iv) of section 1.3 of the [WIPO Overview 3.0](#).

Furthermore, as also noted in section 1.3 of the [WIPO Overview 3.0](#), while panels under the Policy do not usually factor website content into the first element assessment, this may be relevant where a respondent is shown to have been targeting the complainant's mark (e.g., based on the manner in which the related website is used). This may also support a complainant's assertion that its mark has achieved significance as a source identifier. Here, the Panel notes that Respondent has created a facsimile of the Complainant's website, indicating that the Respondent is making a deliberate reference to the Complainant's business, and is targeting the claimed mark as a source identifier.

In addition to making a claim to unregistered trademark rights, the Complainant also provided details of its applications for two registered trademarks but did not specifically rely on these in connection with the first element assessment. The Panel notes in passing that applications for registered trademarks, by themselves, do not amount to UDRP-relevant rights in a trademark for this purpose (see, for example, section 1.1.4 of the [WIPO Overview 3.0](#)).

Turning to the comparison exercise, the disputed domain name contains the Complainant's mark in its entirety, absent the ampersand which cannot be reproduced in a domain name for technical reasons. The disputed domain name adds the word "living" to said mark but this has no distinguishing qualities and the Complainant's mark remains recognizable in the disputed domain name (see section 1.8 of the [WIPO Overview 3.0](#)).

In all of these circumstances, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark and accordingly that the Complainant has carried its burden with regard to paragraph 4(a)(i) of the Policy.

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

Paragraph 4(c) of the Policy lists several ways in which the Respondent may demonstrate rights or legitimate interests in the disputed domain name:

"Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

- (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."

The consensus of previous decisions under the Policy is that a complainant may establish this element by making out a *prima facie* case, not rebutted by the respondent, that the respondent has no rights or legitimate interests in a domain name. In the present case, the Panel finds that the Complainant has established the requisite *prima facie* case based on its submissions and corresponding evidence indicating that the disputed domain name has been used to mimic the Complainant's website in order to obtain financial information from Internet users who believe that they are dealing with the Complainant.

In these circumstances, the burden of production shifts to the Respondent to set forth evidence of any rights or legitimate interests which it might have in the disputed domain name. In the face of the Complainant's allegations and evidence, the Respondent has chosen to remain silent and has not engaged with the present proceeding. There are no submissions or evidence before the Panel which might have supported any claim that the Respondent might have made in respect of rights or legitimate interests in the disputed domain name. The Panel has not identified any potential rights or legitimate interests that the Respondent may have put forward if it had participated in the administrative proceeding. Furthermore, the use of the disputed domain name in connection with a website mimicking that of the Complainant, notably featuring the Complainant's stylized logo along with imagery suggesting the Australian heritage of the brand, could not be regarded as conferring any rights or legitimate interests upon the Respondent in the circumstances of this case, whether in terms of paragraph 4(c)(i) of the Policy or otherwise.

In all of these circumstances, the Panel finds that the Respondent has failed to rebut the Complainant's *prima facie* case that the Respondent has no rights and legitimate interests in the disputed domain name, and accordingly that the Complainant has carried its burden in terms of paragraph 4(a)(ii) of the Policy.

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

Paragraph 4(b) of the Policy provides four, non-exclusive, circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- “(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.”

In the present case, the record provides sufficient evidence of the registration and use of the disputed domain name in bad faith according to the circumstances set out in paragraph 4(b)(iv) of the Policy. The disputed domain name has been used in connection with a version of the Complainant's retail website, featuring the Complainant's stylized logo, duplicating the fashion brands that it offers, and using imagery suggesting an Australian heritage of the kind promoted and possessed by the Complainant's business. The Respondent's choice of the word “living” to accompany the Complainant's mark in the disputed domain name also suggests deliberate targeting as this word, suffixed to the Complainant's mark, constitutes the Complainant's officially registered business name. The Respondent therefore uses both the Complainant's registered business name in the disputed domain name and the Complainant's typical abbreviated usage thereof on the corresponding website. In these circumstances, it is inconceivable that the Respondent would

not have had prior knowledge of the Complainant and its mark when it registered the disputed domain name. It is equally inconceivable that the Respondent did not have an intent to target the Complainant or its rights thereby.

The Complainant has made allegations of a serious nature regarding the use of the disputed domain name for the purposes of fraudulent mimicking of its website, and furthermore has supported these with relevant evidence. Such allegations and evidence raise a case for the Respondent to answer, yet the Respondent has chosen to remain silent and has made neither any attempt to refute the Complainant's allegations nor to challenge or counter the evidence that the Complainant has put forward. In the absence of a suitable answer from the Respondent, the Panel has been unable to identify any potential good faith motivation that the Respondent might have had concerning the registration and use of the disputed domain name.

In all of the above circumstances, the Panel finds that the disputed domain name has been registered and is being used in bad faith and therefore that the Complainant has carried its burden in terms of 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 <whitecoliving.shop> be transferred to the Complainant.

*/Andrew D. S. Lothian/*

**Andrew D. S. Lothian**

Sole Panelist

Date: February 20, 2023