

ADMINISTRATIVE PANEL DECISION

ABC Online Resources, LLC v. xiulan wang
Case No. D2023-0473

1. The Parties

The Complainant is ABC Online Resources, LLC, United States of America (“United States or U.S.”), represented by Taft, Stettinius & Hollister, LLP, United States.

The Respondent is xiulan wang, China.

2. The Domain Name and Registrar

The disputed domain name <abcunderwear.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 February 1, 2023. On February 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 8, 2023, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. In response to the Center’s invitation to clarify certain information in the Complaint, the Complainant filed an amendment to the Complaint on February 7, 2023. The Center sent an email communication to the Complainant on February 8, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed a second amendment to the Complaint on the same date.

The Center verified that the Complaint together with the amendments 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 February 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 6, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 8, 2023.

The Center appointed Peter Burgstaller as the sole panelist in this matter on March 21, 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 an apparel company with an online store featuring various types of clothing for men and women; the Complainant uses the domain name <abcunderwear.com> to address its website (Annex 4 to the Complaint).

The Complainant is the owner of the U.S. trademark ABCUNDERWEAR (word), Registration No. 6,104,980, registered on July 21, 2020 in the classes 25 and 28, as well as the U.S. trademark ABCUNDERWEAR.COM (figurative), Registration No. 6,254,112, registered on January 26, 2021 in the classes 25, 28 and 35 (Annex 5 to the Complaint).

The disputed domain name was registered on June 29, 2022 (Annex 1 to the Complaint).

On January 11, 2023, the disputed domain name resolved to a website which offered for sale various types of clothing together with displaying the Complainant's registered figurative U.S. trademark Registration No. 6,254,112 (Annex 6 to the Complaint); currently, the disputed domain name is still in use.

5. Parties' Contentions

A. Complainant

The Complainant is an apparel company with an online store featuring various types of clothing for men and women. Many individuals use the Complainant's website to view its products and make purchases online. The Complainant uses its legitimate website at <abcunderwear.com> to advertise and sell its products. The Complainant is the owner of several registered trademarks containing the term ABCUNDERWEAR.

The disputed domain name is confusingly similar to the ABCUNDERWEAR mark because it uses the mark in its entirety. The use of the generic Top-Level Domain ".shop" does not further distinguish the confusing similarity of the disputed domain name.

The Respondent lacks rights or legitimate interests in the disputed domain name and is not making a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name. The Respondent has never been commonly known by the ABCUNDERWEAR marks nor any variations thereof, and has never used any trademark or service mark similar to the disputed domain name by which it may have come to be known, other than the infringing use noted herein. Moreover, the Complainant has not granted the Respondent any license, permission, or authorization by which it could own or use any domain name registrations, which are confusingly similar to any of the ABCUNDERWEAR marks.

Finally, the Respondent's real intention appears to be a phishing and fraud website, which may harvest the personal information of confused consumers. The links on the disputed domain name's webpage advertise the sale of counterfeit ABCUNDERWEAR products and the Respondent accepts consumer personal and financial information to complete these sales. Given the nature of the Respondent's activities, there is a significant risk that consumers may provide personally identifiable information to the Respondent under the false belief of an affiliation with the Complainant, raising the specter of phishing and fraud risks, which cannot confer rights or legitimate interests.

The disputed domain name was registered and is being used in bad faith: There is no reason for the Respondent to have registered the disputed domain name other than to trade off the reputation and goodwill

of the ABCUNDERWEAR marks and to disrupt the Complainant's business. The makeup of the disputed domain name itself and the nature of use evidences bad faith registration and use as there can be no other conclusion than that the disputed domain name was registered and is being used with actual knowledge of the Complainant and their ABCUNDERWEAR marks. The Respondent is using the disputed domain name to capitalize on Internet users' efforts to find the Complainant's website by using the ABCUNDERWEAR marks in the disputed domain name; such efforts to attract the Complainant's customers and profit from their confusion constitutes bad faith registration and use of the disputed domain name.

Finally, the Respondent's use of the disputed domain name for what appears to be a phishing website is clear-cut bad faith registration and use.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

- (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 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

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for identity/confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Complainant submitted evidence, which incontestably and conclusively establishes rights in the mark ABCUNDERWEAR.

In the present case the disputed domain name <abcunderwear.shop> is identical to the ABCUNDERWEAR mark in which the Complainant has rights. It has long been established under UDRP decisions that when scrutinizing the identity or confusing similarity of a disputed domain towards a trademark under paragraph 4(a)(i) of the Policy the Top-Level-Domains ("TLDs") are generally disregarded.

Therefore, the Panel finds that the disputed domain name is identical with the Complainant's trademark ABCUNDERWEAR and the Complainant has satisfied paragraph 4(a)(i) of the Policy.

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#))).

Furthermore, the nature of the disputed domain name, which is identical with the Complainant’s registered trademark ABCUNDERWEAR and carries a high risk of implied affiliation (see section 2.5.1 of [WIPO Overview 3.0](#)), together with the Complainant’s un rebutted contentions that the Respondent has no rights or legitimate interests in the disputed domain name, that the Respondent has no connection or affiliation with the Complainant, and the Respondent has not received any license or consent, express or implied, to use the Complainant’s mark ABCUNDERWEAR in a domain name or in any other manner, lead the Panel to the conclusion that the Complainant has made out an undisputed *prima facie* case so that the conditions set out in paragraph 4(a)(ii) of the Policy have been met by the Complainant.

C. Registered and Used in Bad Faith

As stated in many decisions rendered under the Policy (e.g. *Robert Ellenbogen v. Mike Pearson*, WIPO Case No. [D2000-0001](#)) both conditions, registration and use in bad faith, must be demonstrated; consequently, the Complainant must show that:

- the disputed domain name was registered by the Respondent in bad faith, and
 - the disputed domain name is being used by the Respondent in bad faith.
- (a) It is well-settled case law that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity (as it is in the present case) can by itself create a presumption of bad faith (see section 3.1.4 [WIPO Overview 3.0](#)).

In the present case the disputed domain name is identical to the registered trademark ABCUNDERWEAR of the Complainant. This strongly suggests that the Respondent was aware of the Complainant and its trademark ABCUNDERWEAR when registering the disputed domain name.

Additionally, it is inconceivable that the Respondent has registered the disputed domain name without knowledge of the Complainant’s rights; this is especially supported by the fact that the Complainant has a strong Internet presence under the domain name <abcunderwear.com> and was already on the market at the time where the Respondent registered the disputed domain name; moreover, the disputed domain name uses the TLD “.shop” which also strongly indicates that the Respondent was aware of the Complainant’s online business/shop at the time of registration the disputed domain name.

The Panel is therefore convinced that the disputed domain name was registered with full knowledge of the Complainant’s rights and as such in bad faith by the Respondent.

- (b) Furthermore, the disputed domain name is actively used in bad faith: It still resolves to a website where the Respondent uses the distinctive figurative registered trademark of the Complainant and offers products similar to the Complainant’s products. Thereby the Respondent has attempted to attract Internet users to a website supposedly providing products of the Complainant. Hence, the Respondent intentionally attempts 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 the Respondent’s website; this behaviour constitutes bad faith use of the disputed domain name.

Given the overall circumstances and the composition of the inherently misleading disputed domain name, there is no conceivable plausible reason for good faith use with regard to the disputed domain name.

Therefore, the disputed domain name has been registered and used in bad faith under 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, <abcunderwear.shop>, be transferred to the Complainant.

/Peter Burgstaller/

Peter Burgstaller

Sole Panelist

Date: April 4, 2023