

## **ADMINISTRATIVE PANEL DECISION**

### **ABG Juicy Couture, LLC v. Manlidy, GNN**

#### **Case No. D2023-0861**

#### **1. The Parties**

The Complainant is ABG Juicy Couture, LLC, United States of America (“United States”), represented by Authentic Brands Group, United States.

The Respondent is Manlidy, GNN, Singapore.

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

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

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 24, 2023. On February 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 27, 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 (John Doe) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 28, 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 both an amendment to the Complaint and the amended Complaint on February 28, 2023.

The Center verified that the Complaint, together with the amendment to the Complaint and 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 March 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 21, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 22, 2023.

The Center appointed Emre Kerim Yardimci as the sole panelist in this matter on March 29, 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 United States based company established in 1995 that designs, manufactures, and distributes clothing, namely shirts, dresses, pants, skirts and jackets under its JUICY COUTURE trademark since 1995.

The Complainant products are currently sold in 70 retail stores, shop-in-shops, and in travel retail locations in over 30 countries and through its website “www.juicycouture.com” which promotes its goods throughout the world. Its turnover is currently over USD 887 million.

The Complainant is the proprietor of over many registrations for its JUICY COUTURE trademark internationally, including United States registration number 2,348,674, registered on May 9, 2000.

The disputed domain name was registered on February 3, 2023, and at the time of the Complaint, resolved to a website offering apparel bearing the JUICY COUTURE trademark.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant asserts that the disputed domain name is confusingly similar to the Complainant's trademark JUICY COUTURE as it is recognized within the disputed domain name and that the addition of the descriptive term “best” does not prevent the association between the disputed domain name and the Complainant's trademark as Internet users will likely assume that the disputed domain name is used for the official JUICY COUTURE online shop.

The Complainant considers that the Respondent has no rights or legitimate interests in respect of the disputed domain name, mainly because the Complainant has neither licensed nor otherwise authorized the Respondent to use its marks or to apply for or use any domain name incorporating the trademark JUICY COUTURE.

Finally, in addressing the question of registration and use of the disputed domain name in bad faith, the Complainant observes that the Respondent is well aware of the Complainant's trademark considering that the Respondent is using the respective product images with a copyright indication and that the Respondent's website clearly suggests that the website belongs to the Complainant or is an official affiliated dealer endorsed by the Complainant.

The fact that the website does not provide any information on the true identity of the website provider clearly shows that the Respondent intentionally creates the impression that the products offered on the Respondent's website are provided by the Complainant or at least an official dealer by misleading users on the source of the website and thereby attracting, for commercial gain, Internet users to the website.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

Paragraph 4(a) of the Policy sets forth the following three elements which the Complainant must prove, during the administrative proceedings, to merit a finding that the disputed domain name be transferred to the Complainant:

- (a) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

- (b) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (c) the disputed domain name has been registered and is being used in bad faith.

Pursuant to paragraph 15(a) of the Rules, the Panel shall decide a Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

### **A. Identical or Confusingly Similar**

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. A trademark registration provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner.

As indicated above, the Complainant holds several trademark registrations for the JUICY COUTURE trademark. The disputed domain name <bestjuicycouture.com> integrates the Complainant's JUICY COUTURE trademark in its entirety. The disputed domain name differs from the registered JUICY COUTURE trademark by the additional descriptive and non-distinctive term "best".

Several UDRP panels have ruled that the mere addition of a term does not prevent a finding of confusing similarity between a disputed domain name and a complainant's registered trademark. Therefore, it is the Panel's view that the use of such word together with a registered trademark does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark (see, e.g., *Société des Produits Nestlé S.A. v. MrToys.com LLC*, WIPO Case No. [D2012-1356](#); *Allianz SE v. Roy Lee / Traffic-Domain.com*, WIPO Case No. [D2012-1459](#); *Swarovski Aktiengesellschaft v. mei xudong*, WIPO Case No. [D2013-0150](#); and *Swarovski Aktiengesellschaft v. www.swarovski-outlet.org*, WIPO Case No. [D2013-0335](#)).

As regards the generic Top-Level Domain ("gTLD") ".com", it is typically disregarded under the confusing similarity test under the Policy.

Consequently, the Panel finds that the Complainant has shown that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

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

The onus is on the Complainant to make out at least a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and it is then for the Respondent to rebut this case.

Although the Respondent did not file a Response, a respondent's default does not automatically result in a decision in favor of the complainant. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3 and the cases cited therein.

However, paragraph 14(b) of the Rules provides that, in the absence of exceptional circumstances, a panel shall draw such inferences, as it considers appropriate from a failure of a party to comply with a provision or requirement of the Rules.

As there are no exceptional circumstances for the failure of the Respondent to submit a Response, the Panel infers that the Respondent does not deny the facts asserted and contentions made by the Complainant. See *Reuters Limited v. Global Net 2000, Inc.*, WIPO Case No. [D2000-0441](#).

A number of UDRP decisions have addressed the question of when a reseller's use of a mark constitutes a *bona fide* offering of goods or services. The general view on this was articulated in *Okidata Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#). See [WIPO Overview 3.0](#), section 2.8. In that case, the authorized reseller's domain name <okidataparts.com> incorporated the complainant's OKIDATA trademark in full. The panel in *Okidata Americas, Inc. v. ASD, Inc.*, *supra*, concluded that for a respondent to demonstrate that a resale offering was *bona fide*, the following conditions must be met:

- the respondent must actually be offering the goods or services at issue;
- the respondent must use the corresponding website to sell only the trademarked goods, otherwise there is the possibility that the respondent is using the trademark in a domain name to bait consumers and then switch them to other goods;
- the site itself must accurately disclose the respondent's relationship with the trademark owner, *i.e.*, respondent may not falsely suggest that it is the trademark owner, or that the website is the official site, if that is not the case; and
- the respondent must not try to "corner the market" in all relevant domain names, or deprive the trademark owner of reflecting its own mark in a domain name.

In this case, it appears from the website, that the Respondent has been operating its business of selling clothing and accessories exclusively for the Complainant's products under the disputed domain name.

That being said, the Respondent is using the stylized version and the logo of JUICY COUTURE trademark on the website.

Moreover, the website includes the photos of the Complainant's JUICY COUTURE branded products and uses the marketing material of the Complainant.

Another relevant point is that not only the website of the Respondent does not provide any information regarding its ownership, but also the website does not have any indication regarding the relationship or lack thereof with the Complainant.

All of these circumstances give the impression that the Respondent is affiliated with the Complainant, or it is an authorized dealer of the Complainant.

The Panel notes that the nature of the disputed domain name carries a risk of implied affiliation with the Complainant's trademark. See section 2.5.1 of the [WIPO Overview 3.0](#).

For these reasons, the Panel concludes that the Respondent is not making use of the disputed domain name in connection with a *bona fide* offering of goods or services.

In the Panel's view the Complainant has made out its *prima facie* case under this element of the Policy and the Respondent has failed to rebut it. Accordingly, the Complaint succeeds in relation to the second element of the Policy.

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

Finally, the Complainant must show that the disputed domain name has been registered and is being used in bad faith under paragraph 4(a)(iii) of the Policy.

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

- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's 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 the respondent's website or location or of a product or service on the respondent's website or location.

Considering the Panel's finding under the second element, the Panel finds that the registration and use of the disputed domain name falls under the circumstances described under paragraph 4(b)(iv) of the Policy, namely, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by seeking to create a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.

Accordingly, the Panel finds that the requirements of paragraph 4(a)(iii) of the Policy have been met by the Complainant.

## **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, <bestjuicycouture.com>, be transferred to the Complainant.

*/Emre Kerim Yardimci/*

**Emre Kerim Yardimci**

Sole Panelist

Date: April 16, 2023