

ADMINISTRATIVE PANEL DECISION

Jonathan Adler Enterprises, LLC v. Wensde Fudef
Case No. D2023-2462

1. The Parties

The Complainant is Jonathan Adler Enterprises, LLC, United States of America (“US”), represented by Kaplan Levenson, US.

The Respondent is Wensde Fudef, China.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 6, 2023. On June 7, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 9, 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 (Whois Agent, Domain Protection Services, Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 13, 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 an amended Complaint on June 13, 2023.

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 June 22, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 12, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 18, 2023.

The Center appointed Knud Wallberg as the sole panelist in this matter on July 28, 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 home furnishing design company with a national and international retail, wholesale, e-commerce, and licensing business. The Complainant owns a number of JONATHAN ADLER trademark registrations worldwide including US registration No. 2,860,439, registered on July 6, 2004, for goods in international classes 11, 20, 21, 24, 27 and 28.

The Complainant maintains a website at “www.jonathanadler.com” promoting its products.

The disputed domain name was registered on August 4, 2022, and resolves to a website which features the Complainant’s mark JONATHAN ADLER being used in association with the sale of items identical to those sold by the Complainant in its stores and online. The website also features the exact same images of items that are featured on the Complainant’s website.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is confusingly similar to its trademark since it contains this mark in its entirety. The inclusion of “home” at the beginning of the domain name is designed to cause even more confusion since the Complainant specializes in the sale of home furnishings and accessories.

The Complainant further contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has thus never authorized or allowed the Respondent to use, register, or imply any kind of affiliation with the Complainant nor has it otherwise condoned the Respondent’s actions in registering this domain and use of the Complainant’s marks.

The Complainant finally contends that the disputed domain name was registered and is being used in bad faith. The Respondent’s entire website features what appear to be genuine Jonathan Adler products, including actual photographs from the Complainant’s website of the products, for prices that are a fraction of the actual cost of the real items, which clearly shows that the Respondent is intentionally attempting to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website and its products and services

B. Respondent

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

6. Discussion and Findings

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 confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant’s trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([“WIPO Overview 3.0”](#)), section 1.7.

The Panel finds that the Complainant's registered trademark JONATHAN ADLER is recognizable within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms here, "home", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, 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. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any evidence demonstrating rights or legitimate interests in the disputed domain name. Rather on the contrary, since the Respondent uses the disputed domain name to direct Internet users to its website that features what appear to be genuine Jonathan Adler products, including actual photographs from the Complainant's website of the products.

Panels have held that the use of a domain name for activities such as impersonation, or other types of fraud can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Given the circumstances of the case, in particular the Complainant's well established and well-known trademark JONATHAN ADLER and its exact replication in the disputed domain name, the Panel finds that the Respondent registered the disputed domain name with prior knowledge of the Complainant and the Complainant's trademark.

The Panel therefore finds that the disputed domain name was registered in bad faith.

The disputed domain name is used for a website that purports to offer genuine Jonathan Adler products, and on which photographs from the Complainant's website of these products are reproduced. The Panel therefore finds that the Respondent intentionally attempts to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's trademarks as to the

source, sponsorship, affiliation, or endorsement of the Respondent's website (see [WIPO Overview 3.0](#), section 3.1.4)

The Panel therefore finds that the disputed domain name is being used in bad faith.

Based on the available record, the Panel thus finds that also the third element of the Policy has been established.

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, <homejonathanadler.com> be transferred to the Complainant.

/Knud Wallberg/

Knud Wallberg

Sole Panelist

Date: August 15, 2023