

ADMINISTRATIVE PANEL DECISION

LODO IP, LLC v. James Cantu
Case No. D2024-0271

1. The Parties

The Complainant is LODO IP, LLC, United States of America (“United States”), represented by Milgrom & Daskam, United States.

The Respondent is James Cantu, United States.

2. The Domain Name and Registrar

The disputed domain name <shopvitalitys.shop> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 23, 2024. On January 25, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 26, 2024, 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 (Unknown Holder of the Disputed Domain Names (“Doe”)) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 26, 2024, 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 January 30, 2024.

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 January 31, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 20, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 23, 2024.

The Center appointed Evan D. Brown as the sole panelist in this matter on March 8, 2024. 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 in the clothing and accessories business and owns the mark VITALITY. It enjoys the benefits of registration of that mark in the United States (e.g., Reg. No. 5352936, registered on December 12, 2017. According to the Whois records, the disputed domain name was registered on July 26, 2023. The Complainant asserts that the Respondent is using the disputed domain name to sell counterfeits of the Complainant's clothing at discount prices without the Complainant's permission.

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.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

This element requires the Panel to consider two issues: first, whether the Complainant has rights in a relevant mark; and second, whether the disputed domain name is identical or confusingly similar to that mark. This element under the Policy functions primarily as a standing requirement. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#). The Complainant has demonstrated its rights because it has shown that it is the owner of multiple valid and subsisting trademark registrations for the mark VITALITY.

The incorporation of a trademark in its entirety may be sufficient to establish that a domain name is identical or confusingly similar to the Complainant's registered mark. See *Britannia Building Society v. Britannia Fraud Prevention*, WIPO Case No. [D2001-0505](#). In this case, the disputed domain name contains the Complainant's trademark VITALITY in its entirety, with additional words "shop" and the letter "s" that do not prevent a finding of confusing similarity. The VITALITY mark remains recognizable for a showing of confusing similarity under the Policy. Accordingly, the Panel finds that the Complainant has satisfied this first element under the Policy.

B. Rights or Legitimate Interests

The Complainant's allegations under this second element are relatively sparse, but having reviewed the overall allegations of the Complaint, as well as the website appearing at the disputed domain name, it is clear to the Panel that the Respondent's use of the disputed domain name is not a bona fide offering of goods or services. The Respondent has not rebutted the Complainant's case that the disputed domain name purportedly sells counterfeit goods bearing the mark of the Complainant. Even if such goods were not

counterfeits, noting the composition of the disputed domain name and its website, the Panel considers that there is a risk of implied affiliation with the Complainant. The Respondent has not provided any evidence of rights or legitimate interests in the disputed domain name. Accordingly, the Panel finds that the Complainant has satisfied this second element under the Policy.

C. Registered and Used in Bad Faith

The Policy requires a complainant to establish that the disputed domain name was registered and is being used in bad faith. The Policy describes several non-exhaustive circumstances demonstrating a respondent's bad faith use and registration. Under paragraph 4(b)(iv) of the Policy, a panel may find bad faith when a respondent "[uses] the domain name to intentionally attempt to attract, for commercial gain, Internet users to [respondent's] website or other online location, by creating a likelihood of confusion with complainant's mark as to the source, sponsorship, affiliation, or endorsement of [respondent's] website or location or a product or service on [the respondent's] website or location".

The Respondent registered and is using the disputed domain name in bad faith. Establishing a website that bears the Complainant's mark to sell purportedly counterfeit products, using the disputed domain name that incorporates the Complainant's mark, is a clear example of bad faith registration and use under the Policy. *Columbia Sportswear Company v. PrivacyGuardian.org / Dorota Borowska*, WIPO Case No. [D2019-0314](#); *Millet Mountain Group SAS v. AndreasSankt, JuliaKruger, TomZimmer*, WIPO Case No. [D2023-3363](#). Even if such goods were not counterfeits, noting the composition of the disputed domain name and its use, the Panel considers that the Respondent registered and used the disputed domain name to attract, for commercial gain, Internet users to Respondent's website, by creating a likelihood of confusion with Complainant's trademark VITALITY. Accordingly, the Panel finds that this third element under the Policy has been met.

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 <shopvitality.shop> be transferred to the Complainant.

/Evan D. Brown/

Evan D. Brown

Sole Panelist

Date: March 22, 2024