

## **ADMINISTRATIVE PANEL DECISION**

Urban Outfitters Inc. v. Tatiana Vera  
Case No. D2022-2176

### **1. The Parties**

The Complainant is Urban Outfitters Inc., United States of America (“United States”), represented by SafeNames Ltd., United Kingdom.

The Respondent is Tatiana Vera, United States.

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

The disputed domain name <thefreepeoplesonline.com> is registered with NameSilo, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 15, 2022. On June 15, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 15, 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 June 16, 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 amended Complaint on June 17, 2022.

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 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 11, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 13, 2022.

The Center appointed Evan D. Brown as the sole panelist in this matter on July 20, 2022. 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 lifestyle business. It owns the trademark FREE PEOPLE which it has registered in several jurisdictions, including the United States (Reg. No. 1,827,547, registered on March 22, 1994).

According to the Whois records, the disputed domain name was registered on November 22, 2021. The Respondent used the disputed domain name to publish a website – using the Complainant’s copyright-protected images – purporting to sell discounted versions of the Complainant’s offerings.

#### **5. Parties’ Contentions**

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

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant’s trademark; that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

##### **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. The Panel finds that all three of these elements have been met in this case.

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

This first 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. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#). The Complainant has demonstrated its rights in the FREE PEOPLE mark by providing evidence of its trademark registrations.

The disputed domain name incorporates the FREE PEOPLE mark in its entirety. This is sufficient for showing confusing similarity under the Policy. The inclusion of other words and letters within the disputed domain name, namely, “the,” “ses,” and “online” does not prevent a finding of confusing similarity.

It is standard practice when comparing a disputed domain name to a complainant’s trademarks, to not take the extension into account. See [WIPO Overview 3.0](#) at 1.11.1 (“The applicable Top-Level Domain (“TLD”) in a domain name (e.g., “.com”, “.club”, “.nyc”) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.”).

The Panel finds that the Complainant has established this first element under the Policy.

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

The Panel evaluates this element of the Policy by first looking to see whether the Complainant has made a *prima facie* showing that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. If the Complainant makes that showing, the burden of production of demonstrating rights or legitimate interests shifts to the Respondent (with the burden of proof always remaining with the Complainant). See [WIPO Overview 3.0](#), section 2.1; *AXA SA v. Huade Wang*, WIPO Case No. [D2022-1289](#).

On this point, the Complainant asserts, among other things, that: (1) the Respondent does not have any trademark rights in the term FREE PEOPLE, nor has the Respondent received any license from the Complainant to use domain names featuring the FREE PEOPLE mark, (2) the Respondent's publication of a website offering the Complainant's products for sale was in furtherance of a phishing effort to gain personal data from users thinking they were dealing through a legitimate website, (3) the Respondent is not engaged in any noncommercial or fair use of the disputed domain name, and (4) the Respondent has not used the disputed domain name in connection with any *bona fide* offering of goods or services. Instead, the Respondent has used the disputed domain name purport to resell the Complainant's goods without authorization and in furtherance of a phishing scheme.

UDRP panels have recognized that website operators using a domain name containing a complainant's trademark to undertake sales related to the complainant's goods or services may be making a *bona fide* offering of goods and services and thus have a legitimate interest in such domain name. Outlined in the "Oki Data test", (*Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#)) the following cumulative requirements will be applied in the specific conditions of a UDRP case:

- (i) the respondent must actually be offering the goods or services at issue;
- (ii) the respondent must use the site to sell only the trademarked goods or services;
- (iii) the site must accurately and prominently disclose the registrant's relationship with the trademark holder; and
- (iv) the respondent must not try to "corner the market" in domain names that reflect the trademark.

The Panel has applied the *Oki Data* test to the facts of this case and finds that the circumstances do not warrant the finding of a *bona fide* offering of goods and services. The screenshot of the Respondent's website does not show that the website accurately and prominently discloses the Respondent's relationship with the Complainant.

The Panel finds that the Complainant has made the required *prima facie* showing under this element. The Respondent has not presented evidence to overcome this *prima facie* showing. And nothing in the record otherwise tilts the balance in the Respondent's favor. Accordingly, the Panel finds that the Complainant has established 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 registration and use. 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 record clearly indicates that the Respondent targeted the Complainant when it registered the disputed domain name. It went so far as to publish the Complainant's copyright-protected images on its website in an effort to imitate the Complainant. This rises to the level of bad faith registration. See *Golden Goose S.P.A. v. Whoisguard Inc. / Wei Zhang*, WIPO Case No. [D2017-2444](#).

The facts indicate that the Respondent used the disputed domain name in bad faith, by intentionally attempting to divert, for commercial gain, Internet users to one or more competing websites in an effort to confuse and mislead consumers. *Deutsche Lufthansa AG v. Domain Admin, Whois Privacy Corp / Ryan G Foo, PPA Media Services*, WIPO Case No. [D2015-2346](#); *Net2phone Inc. v. Dynasty System Sdn Bhd*, WIPO Case No. [D2000-0679](#). One cannot reasonably conclude that the Respondent set up the website at the disputed domain name for any sort of purpose other than to unfairly trade on the goodwill of the Complainant's mark and/or to confuse Internet users.

For these reasons, the Panel finds that the Complainant has established this third element under 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, <thefreepeoplesonline.com>, be transferred to the Complainant.

/Evan D. Brown/

**Evan D. Brown**

Sole Panelist

Date: August 3, 2022