

ADMINISTRATIVE PANEL DECISION

Kylie Jenner, Inc. v. Privacy service provided by Withheld for Privacy ehf /
Kylie Cosmetique, Kylie Cosmetics Promo
Case No. D2022-2548

1. The Parties

The Complainant is Kylie Jenner, Inc., United States of America (“United States”), represented by Studio Barbero, Italy.

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Kylie Cosmetique, Kylie Cosmetics Promo, United States.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 13, 2022. On July 13, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 13, 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 July 14, 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 amendment to the Complaint on July 14, 2022.

The Center verified that the Complaint together with the amendment 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 July 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 10, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 12, 2022.

The Center appointed Evan D. Brown as the sole panelist in this matter on August 26, 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 was founded by the media celebrity and style icon Kylie Jenner, and is in the cosmetics business. It owns the trademarks KYLIE and KYLIE COSMETICS which it has registered in number of jurisdictions, including the United States (*inter alia* KYLIE, Reg. No. 5,443,643, registered on April 10, 2018, and KYLIE COSMETICS, Reg. No. 5,536,206, registered on August 7, 2018).

According to the Whois records, the disputed domain name was registered on September 20, 2021. The Respondent has used the disputed domain name to set up a website featuring the image of Kyle Jenner and purporting to offer cosmetics for sale, which the Complainant asserts may have been counterfeit. The Respondent did not reply to cease and desist communications the Complainant sent concerning the disputed domain name.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant's trademarks; 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. 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.

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 KYLIE and KYLIE COSMETICS marks by providing evidence of its trademark registrations.

It is standard practice when comparing a disputed domain name to a complainant's trademarks, to not take the generic Top-Level Domain ("gTLD") 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 disputed domain name incorporates the KYLIE mark in its entirety with the words "cosmetics" and "promo" (presumably a shortened version of the word "promotion") which do not prevent a finding of confusing similarity between the disputed domain name and the Complainant's KYLIE mark. Similarly, the addition of the shortened term "promo" to the KYLIE COSMETICS mark does not prevent a finding of confusing similarity. See [WIPO Overview 3.0](#), section 1.8. The KYLIE and KYLIE COSMETICS mark remains sufficiently recognizable for a showing of confusing similarity under the Policy.

Accordingly, the Panel finds that the Complainant has satisfied this first element of 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) it has not authorized the Respondent to use the Complainant's trademarks in the disputed domain name, (2) use of the Complainant's trademarks in the disputed domain name is not a noncommercial or fair use, (3) the Respondent has not been known by 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 to establish a website that imitates the Complainant by using Kylie Jenner's image and likeness without authorization, and by perhaps selling counterfeit products.

The Panel finds that the Complainant has made the required *prima facie* showing. 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.

Furthermore, the nature of the disputed domain name, incorporating the Complainant's widely known trademarks, carries a risk of implied affiliation and cannot constitute fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. *Columbia Insurance Company v. Name Redacted*, WIPO Case No. [D2022-0528](#); [WIPO Overview 3.0](#), section 2.5.1. Moreover, use of such a confusingly similar domain name to sell allegedly counterfeit goods would never confer rights or legitimate interests upon a respondent. [WIPO Overview 3.0](#), section 2.13. Even if the goods were genuine, while UDRP panels have recognized the limited rights of resellers, distributors, or service providers to utilize domain names consisting of a trademark, such use would only be considered fair if it falls within the applicable safeguards of section 2.8 of the [WIPO Overview 3.0](#). Noting the disputed domain name's website fails to disclaim its relation, and lack thereof, to the Complainant, the disputed domain name fails the so-called "Oki Data test".

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".

Because the Complainant's marks and the products sold under that mark are well known, it is implausible to believe that the Respondent was not aware of the marks when it registered the disputed domain name. Moreover, it is clear the Respondent was targeting the Complainant when it registered the disputed domain name, because the website set up at the disputed domain name imitates the Complainant and purports to sell the Complainant's products. In the circumstances of this case, such a showing is sufficient to establish bad faith registration of the disputed domain name. Bad faith use is clear from the Respondent's activities of using the disputed domain name to maintain a website imitating the Complainant and perhaps selling counterfeit products. For these reasons, the Panel finds that the Complainant has successfully met this third UDRP element.

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 <kyliecosmeticspromo.com> be transferred to the Complainant.

/Evan D. Brown/

Evan D. Brown

Sole Panelist

Date: September 9, 2022