

## **ADMINISTRATIVE PANEL DECISION**

Stance, Inc. v. Haiyan Zhu

Case No. D2022-3451

### **1. The Parties**

The Complainant is Stance, Inc., United States of America (“United States”), represented by Demys Limited, United Kingdom.

The Respondent is Haiyan Zhu, China.

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

The disputed domain name <stanceoutlet.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 September 16, 2022. On September 16, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 20, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 September 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 17, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 18, 2022.

The Center appointed Zoltán Takács as the sole panelist in this matter on October 25, 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 a socks, underwear, and apparel company founded in 2009 and headquartered in California, United States.

Within the first four years of trading, the Complainant sold more than 15 million pair of socks and in 2015 became the official on court National Basketball Association's (NBA) sock provider.

Among others, the Complainant is owner of the:

- United States Registration No. 3905421 for the word mark STANCE, registered since January 11, 2011 for goods of class 25 of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks ("Nice Classification"); and

- International Trademark Registration No. 1142289 for the mark STANCE and figurative element, registered since November 16, 2012 for goods of class 25 of the Nice Classification.

The Complainant owns the domain name <stance.com>, at which it operates its official web store.

The disputed domain name was registered on December 20, 2021, and resolves to a website that substantially copies the Complainant's official website (including its trademarks, official logo, and copyrighted images and texts) and purports to sell the Complainant's products.

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

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

The Complainant contends that the disputed domain name, which incorporates the entirety of its STANCE trademark is confusingly similar to it, because addition of the term "outlet" to the trademark does not sufficiently distinguish the disputed domain name.

The Complainant alleges that the Respondent has no rights or legitimate interests in respect of the disputed domain name and is unable to rely on any of the circumstances set out in paragraphs 4(c)(i), (ii), or (iii) of the Policy.

The Complainant contends that the Respondent's use of its trademarks, logo, and copyrighted images on the website under the disputed domain name shows the Respondent's intent to mislead consumers into believing that it is an authorized site, which demonstrates that the disputed domain name was registered and used in bad faith in terms of the Policy.

The Complainant requests that the disputed domain name be transferred from the Respondent to the Complainant.

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

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

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

Paragraph 15(a) of the Rules requires that the Panel's decision be made "on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

It has been a consensus view in UDRP decisions that a respondent's default (*i.e.*, failure to submit a response) would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

A complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the complaint, namely that:

- (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) the respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) the domain name has been registered and is being used in bad faith.

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

Under paragraph 4(a)(i) of the Policy, there are two requirements which the Complainant must establish, first that it has rights in a trademark or service mark, and second that the disputed domain name is identical or confusingly similar to the trademark or service mark.

It has been a consensus view among UDRP panels that if the complainant owns a registered trademark, then it generally satisfies the threshold requirement of having trademark rights.

The Complainant produced evidence of having registered rights in the STANCE trademark and for the purpose of this proceeding the Panel establishes that the United States Registration No. 3905421 satisfies the requirement of having trademark rights for the purpose of the Policy.

Having determined the presence of the Complainant's trademark rights, the Panel next assesses whether the disputed domain name is identical or confusingly similar to the Complainant's trademark.

According to section 1.7 of the [WIPO Overview 3.0](#), the standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the domain name.

According to section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.

According to section 1.11.1 of the [WIPO Overview 3.0](#), the applicable Top-Level Domain ("TLD") in a domain name (in this case ".com") is viewed as a standard registration requirement and as such is generally disregarded under the first element confusingly similar test.

The disputed domain name incorporates the Complainant's mark in its entirety. In view of the Panel, the addition of the term "outlet" to the Complainant's trademark does not prevent a finding of confusing similarity between the Complainant's trademark and the disputed domain name.

The Panel finds that the disputed domain name is therefore confusingly similar to the Complainant's trademark and that the first ground of the Policy is established.

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

Under paragraph 4(c) of the Policy, a respondent may demonstrate its rights or legitimate interests in a domain name by showing any of the following circumstances, in particular but without limitation:

- (i) before any notice to it of the dispute, its use of, or demonstrable preparation to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods and services; or
- (ii) it has been commonly known by the domain name; or
- (iii) it is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert customers or to tarnish the trademark or service mark at issue.

According to section 2.1 of the [WIPO Overview 3.0](#), 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 the relevant evidence demonstrating its 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.

The Respondent failed to respond, and by doing so failed to offer the Panel any type of evidence set forth in paragraph 4(c) of the Policy, or otherwise counter to the Complainant’s *prima facie* case.

In the present case, the Complainant has submitted sufficient and uncontested evidence that it holds well-established rights in the STANCE trademark.

The Complainant has never authorized the Respondent to use its STANCE trademark in any way, and its prior rights in the trademark precede the date of registration of the disputed domain name.

The website at the disputed domain name effectively impersonates the Complainant as the Respondent is prominently using on its website the trademarks, logo, and product images found in the Complainant’s official website.

UDRP panels have categorically held that the use of a domain name for illegal activity, such as impersonation/passing of, or other types of fraud can never confer rights or legitimate interests on a respondent (see section 2.13.1 of the [WIPO Overview 3.0](#)).

The Panel notes that even if the products sold on the Respondent’s website under the disputed domain name are genuine products from the Complainant, the website still does not qualify as fair use (see sections 2.13.2 and 2.8.1 of the [WIPO Overview 3.0](#); see also *Okidata Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#)). Moreover, the inherently misleading nature of the disputed domain name, incorporating the Complainant’s trademark and a descriptive term, carries risk of implied affiliation (see section 2.5.1 of the [WIPO Overview 3.0](#)).

The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name in accordance with paragraph 4(a)(ii) of the Policy.

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

Paragraph 4(b) of the Policy lists a number of factors which, if found by the panel to be present, shall be evidence of registration and use of a domain name in bad faith. This non-exclusive list includes:

- (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location.

The Complainant's STANCE trademark is inherently distinctive for the corresponding goods, namely socks, underwear, and apparel, and predates the registration of the disputed domain name by at least ten years.

The Respondent reproduced the Complainant's trademark in the disputed domain name and is using the Complainant's signature logo and copyrighted materials at the website under the disputed domain name.

Thus, it is clear that the Respondent had full knowledge of the Complainant's business and trademark at the time of registration of the disputed domain name and had registered it in order to take unfair advantage of it.

The use to which the Respondent has put the disputed domain name in view of the Panel amounts to bad faith registration and use within the meaning of paragraph 4(b)(iv) of the Policy. The Respondent is using the disputed domain name to direct Internet traffic to its website to gain illegitimate profit through impersonation or false association.

The Respondent chose not to respond to the Complaint and rebut the Complainant's credible evidence and assertions, which the Panel accepts, and accordingly the Panel finds that the disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) of 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 <stanceoutlet.com> be transferred to the Complainant.

*/Zoltán Takács/*

**Zoltán Takács**

Sole Panelist

Date: November 8, 2022