

## **ADMINISTRATIVE PANEL DECISION**

Loft Ipco LLC v. Manlidy, GNN  
Case No. D2022-4627

### **1. The Parties**

The Complainant is Loft Ipco LLC, United States of America (“United States”), represented by Fross Zelnick Lehrman & Zissu, PC, United States.

The Respondent is Manlidy, GNN, Singapore.

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

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 2, 2022. On December 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 6, 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 (WhoisSecure) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 6, 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 December 12, 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 December 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 3, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 4, 2023.

The Center appointed Angelica Lodigiani as the sole panelist in this matter on January 11, 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 Loft Ipco LLC, a United States company. Among the Complainant's affiliated entities is Ascena Retail Group L.P. ("Ascena"), which in 2012 became the owner of the Lane Bryant and Catherines brands, and in 2015 acquired Ann Inc., the parent company of the retail brands Ann Taylor, Loft and Lou & Grey. The predecessor-in-interest to Ascena started operating a chain of retail stores under the name Dressbarn in 1962. Relevant Ascena group trademarks were acquired by the Complainant on December 23, 2020.

The Complainant owns the following trademark registration:

ASCENA, United States registration No. 4165141, registered on June 26, 2012, for services in class 36.

The disputed domain name was registered on October 21, 2022, and first redirected to the Complainant's website at "www.ascena.com", and then became inactive. The disputed domain name has also been used to send fraudulent emails, as better explained below.

#### 5. Parties' Contentions

##### A. Complainant

According to the Complainant, the disputed domain name was first registered by the Respondent on August 2, 2017, and then the Respondent transferred the disputed domain name to the Registrar on October 21, 2022.

The Complainant asserts that the disputed domain name is confusingly similar to its ASCENA mark as it incorporates it entirely, and the addition of the term "group" cannot prevent a finding of confusing similarity.

The Complainant maintains that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has no connection or affiliation with the Complainant, and has not received any license or consent to use the Complainant's trademarks in the disputed domain name or in any other manner. To the best of the Complainant's knowledge, the Respondent has used the disputed domain name to send fraudulent emails. As far as the Complainant can understand the fraudulent scheme, an individual employed as a recruiter claims to have placed employees with Ascena and sends emails to allegedly confirm his placement of these employees. The individual then claims commissions for the (non-existent) placements to the recruitment agency. When the recruitment agency tries to collect the placement fee from Ascena, the fraudulent scheme is uncovered. Such use is not in connection with a *bona fide* offering of goods or services, nor a legitimate interest.

Apart from the use illustrated above, to the best of the Complainant's knowledge, the Respondent has made no actual use of the disputed domain name in connection with an active website, other than to redirect visitors to the Complainant's own website, in furtherance of the fraud. Therefore, there is no evidence to suggest that the Respondent has before notice of the dispute, made demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. There is also no evidence to suggest that the Respondent has been commonly known by the disputed domain name, or that the Respondent is or has been making a legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's mark.

In relation to bad faith, the Complainant maintains that the ASCENA marks are well known and that it is inconceivable that the Respondent was unaware of the ASCENA marks when registering the disputed domain name. Given such reputation, already the registration of a domain name confusingly similar to the Complainant's marks without authorization is, in and of itself, evidence of bad faith registration. Furthermore, as the Respondent appears to have used the disputed domain name to impersonate the Complainant's employees, it is clear that the Respondent was aware of the ASCENA marks of the Complainant. The

Respondent's exploitation of the Complainant's goodwill for financial gain by perpetrating a fraud, demonstrates the Respondent's bad faith. Furthermore, the fact that the disputed domain name is not currently associated with an active website cannot prevent a finding of bad faith in certain given situations.

Finally, the Respondent appears to be a serial cybersquatter, having lost three prior UDRP proceedings.

## **B. Respondent**

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

## **6. Discussion and Findings**

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

The Panel is satisfied that the Complainant is the owner of the ASCENA mark, registered earlier than the date of registration of the disputed domain name. The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark as it reproduces it entirely with the sole addition of the term "group". Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms would not prevent a finding of confusing similarity under the first element (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)")).

In light of the above, the Panel is satisfied that the first condition under the Policy is met.

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

While the overall burden of proof rests with the complainant, UDRP panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. As such, where a complainant makes a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

In the instant case, the Respondent has no connection or affiliation with the Complainant, and has not received any license or consent to incorporate the Complainant's mark in the disputed domain name. The disputed domain name has been used to redirect to the Complainant's website and there is evidence in the file showing the use of the disputed domain name in connection with the sending of fraudulent emails on behalf of the alleged Complainant's employees. The Respondent has therefore illegally impersonated the Complainant.

However, the Panel notes that fraudulent emails were sent prior to the registration date of the disputed domain name, *i.e.*, October 21, 2022. The Complainant asserts that the Respondent registered the disputed domain name in 2017, and then transferred to the Registrar on October 21, 2022. The Panel further notes that the Complainant sent a cease and desist letter to the previous registrar on May 4, 2022 regarding the fraudulent use of the disputed domain name. However, based on the case file, the Panel cannot conclude that the Respondent first registered the disputed domain name in 2017.

Even if the Respondent did not use the disputed domain name for redirecting the Complainant's website and sending fraudulent emails, the Panel finds that based on the record the Respondent has no rights or legitimate interests in the disputed domain name because the disputed domain name is inactive and there is no evidence that the Respondent is commonly known by the disputed domain name or has any trademark rights related to the disputed domain name.

Further, the composition of the disputed domain name, which incorporates the Complainant's trademark in its entirety with a descriptive term, carries a risk of an implied affiliation. Such composition cannot constitute

fair use if it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

In light of the above, the Panel concludes that the Complainant has successfully established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

As the Respondent failed to file a Response, the Panel is satisfied that also the second condition under the Policy is met.

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

Although the Panel cannot establish from the case file, whether or not the Respondent first registered the disputed domain name in 2017 and has used the disputed domain name for sending fraudulent emails for profit, and redirecting to the Complainant's website. The Panel notes that the ASCENA mark was registered prior to the registration of the disputed domain name. Also, considering the composition of the disputed domain name, which is closely related to one of the Complainant's affiliated entities "Ascena Retail Group L.P", the Panel finds that it is more likely than not that the Respondent has targeted the Complainant and its ASCENA mark at the time of registering the disputed domain name.

The disputed domain name does not resolve to an active website. However, such non-use of the disputed domain name does not prevent a finding of bad faith under the doctrine of passive holding (see section 3.3 of the [WIPO Overview 3.0](#)), particularly noting:

- the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good faith use;
- the Respondent has used false contact details in registering the disputed domain name as the Center's Written Notice could not be delivered to the Respondent by courier; and
- the implausibility of any good faith use to which the domain name may be put.

It also appears that the Respondent has engaged in a pattern of registering domain names corresponding to marks held by third parties, as confirmed by other UDRP disputes involving the same respondent, all decided in the complainants' favors.

Therefore, the Panel concludes that the disputed domain name has been registered and is being used in bad faith, and that the third and last condition under the Policy is 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 <ascenagroup.com> be transferred to the Complainant.

*/Angelica Lodigiani/*

**Angelica Lodigiani**

Sole Panelist

Date: January 24, 2023