

## **ADMINISTRATIVE PANEL DECISION**

Accent Lifestyle Pty Ltd, Accent Lifestyle (NZ) Limited v. Vbcs Oncsa  
Case No. D2022-4726

### **1. The Parties**

The Complainants are Accent Lifestyle Pty Ltd, Australia, and Accent Lifestyle (NZ) Limited, New Zealand, represented by Clayton Utz, Australia.

The Respondent is Vbcs Oncsa, China.

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

The disputed domain name <beyonthersale.store> 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 December 9, 2022. On December 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 12, 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 (Whois Agent, Domain Protection Services, Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainants on December 15, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint on December 19, 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 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 8, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 11, 2023.

The Center appointed Theda König Horowicz as the sole panelist in this matter on January 25, 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 Complainants belong to the Accent Group, which is listed in the Australian Stock Exchange. The Accent Group is a digitally integrated retail and distribution business for apparel, clothing, footwear, headgear, bags, and accessory goods, which operates in many jurisdictions worldwide including the United States, Australia, and New Zealand.

The Accent Group uses several trademarks for its business, including BEYOND HER, which is one of its key brands known for its easy, casual, and accessible clothes for young people. The brand BEYOND HER is notably promoted in Accent Group's retail stores and online in the so called "Glue Store".

The Complainants own trademark registrations for BEYOND HER including Australian Trademark No. 1848411, in class 25, registered on January 9, 2018.

The disputed domain name was registered on July 27, 2022. It is linked to a website offering BEYOND HER-branded apparel.

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

##### **A. Complainants**

The Complainants allege to have trademark rights in BEYOND HER, which is widely used in relation to clothes and related goods, in retail stores and on the website of the Accent Group, which operates in retail and fashion. The Complainants notably hold trademark registrations in several jurisdictions, which are prior to the registration of the disputed domain name. The extensive use and promotion of BEYOND HER has given the said trademark a well-known trademark status. The disputed domain name is confusingly similar to the Complainant's trademark, BEYOND HER being its only distinctive part: the word "sale" is purely descriptive and generic and it actually increases the likelihood of confusion with the Complainant's BEYOND HER trademark.

The Complainants further allege that the Respondent has no rights or legitimate interests in respect of the disputed domain name:

- (i) no license was granted to the Respondent by the Complainants
- (ii) the disputed domain name is not used in *bona fide* offering of goods or services, notably as it is used to operate a fraud website which uses BEYOND HER and unlawfully copies images of Complainant's website
- (iii) the Respondent is not commonly known by the disputed domain name (the Contact Us address on the website does not exist), but seeks to exploit the IP rights of the Complainants to derive revenue with a high risk of implied affiliation.
- (iv) there is no legitimate noncommercial or fair use of the disputed domain name which resolves to an active website in the form of a retail store for apparel goods and which reproduces a large number of pictures taken from Complainants official websites.

The Complainants are also of the opinion that the disputed domain name has been registered and is used in bad faith. The Respondent obviously knew of Complainants prior trademark rights in BEYOND HER,

particularly since the Respondent uses not only the protected BEYOND HER trademark on the website linked to the disputed domain name but also images taken from Complainants website without authorization of any kind. The bad faith use is also clear since the Respondent operates a commercial website thus attempting to attract for commercial gain internet users to the disputed domain name. The layout of the disputed domain name website and the copying of images taken from Complainants website confuses Internet users into believing that the disputed domain name is operated or authorized by the Complainants. Further, the Respondent has taken steps to conceal its identity and the contact information available on the website is fake.

## **B. Respondent**

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

## **6. Discussion and Findings**

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Paragraph 4(a) of the Policy directs that a complainant must prove each of the following:

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

Paragraph 4(a) of the Policy states that the burden of proving that all these elements are present lies with the Complainant. At the same time, in accordance with paragraph 14(b) of the Rules, if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules, or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

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

The Complainants have shown to have obtained registered trademark rights in BEYOND HER in several jurisdictions.

According to section 1.7, of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed 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 disputed domain name. In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's registered trademark BEYOND HER since it contains this mark in entirety. The addition of the term "sale" in the disputed domain name does not prevent a finding of confusing similarity. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Panel therefore finds that the conditions in paragraph 4(a)(i) of the Policy are fulfilled in relation to the disputed domain name.

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

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances that may demonstrate when a respondent has rights or legitimate interests in the use of a domain name. The list includes:

- (i) the use of the domain name in connection with a *bona fide* offering of goods or services;
- (ii) being commonly known by the domain name; or
- (iii) the making of a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers.

Once the Complainant establishes a *prima facie* case against the Respondent under this ground, the burden of production shifts to the Respondent to rebut it. See section 2.1, [WIPO Overview 3.0](#).

The Complainants made sufficient statements in order to demonstrate that the Respondent would have no rights or legitimate interests into the disputed domain name.

In particular, the Complainants have not licensed or otherwise permitted the Respondent to use its trademark. There is no evidence showing that the Respondent would be commonly known by the disputed domain name or that a legitimate business would be run by the Respondent under the disputed domain name. To the contrary, the Complainants have shown that the disputed domain name is linked to a website unduly using the BEYOND HER trademark for apparel (that is for the same type of goods than the ones commercialized by the Complainants and respectively the Accent Group to which they belong) and copies of images owned by the Complainants which were taken from their website. Such impersonating use, without any explanation of the lack of relationship between the Parties, constitutes neither a *bona fide* offering of goods or services, nor legitimate noncommercial or fair use, regardless if the website is actually reselling the Complainants goods, is offering counterfeit goods, is a fake website seeking sensitive payment details, or otherwise.

The Panel therefore finds that the Complainants have established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name and the burden of production shifts to the Respondent who has chosen not to reply.

The Respondent has not rebutted the Complainants *prima facie* case, and there is no evidence of the types of circumstances set out in paragraph 4(c) of the Policy that might give rise to rights or legitimate interests in the disputed domain name on the part of the Respondent in these proceedings.

As already stated before, nothing is contained in the case file which would show that the disputed domain name has been legitimately noncommercial or fair used, by the Respondent or that that the Respondent would have any rights or legitimate interests in the disputed domain name.

Furthermore, the disputed domain name containing the trademark BEYOND HER in its entirety with the term "sale" carries a risk of implied affiliation.

The Panel therefore finds that the conditions in paragraph 4(a)(ii) of the Policy are fulfilled in relation the disputed domain name.

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

Paragraph 4(a)(iii) of the Policy requires the complainant to prove both registration and use of the domain name in bad faith. Paragraph 4(b) of the Policy provides examples of circumstances which shall be evidence of registration and use in bad faith:

(i) circumstances indicating that the holder has registered or has 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 the holder's documented out-of-pocket costs directly related to the domain name; or

(ii) the holder has 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 the holder has engaged in a pattern of such conduct; or

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

(iv) by using the domain name, the holder has intentionally attempted to attract, for commercial gain, Internet users to the holder's 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 the holder's website or location or of a product or service on the holder's website or location.

Accordingly, for the Complainant to succeed, the Panel must be satisfied that the disputed domain name was registered and is being used in bad faith.

Given the circumstances of the case, including the way the BEYOND HER trademark is used on the litigious website which copies images owned by the Complainants, it is inconceivable to the Panel that the Respondent registered the disputed domain name without prior knowledge of the Complainants and the Complainants' mark. Further, the Panel finds that the Respondent could not have been unaware of the fact that the disputed domain name he chose could attract Internet users in a manner that is likely to create confusion for such users.

The Panel therefore finds that the disputed domain name was registered in bad faith.

The disputed domain name resolves to a website using, without authorization, images owned by the Complainants in order to promote apparel goods. Furthermore, the website extensively uses the BEYOND HER trademarks of the Complainants.

All these facts demonstrate that the disputed domain name is being used in bad faith.

The silence of the Respondent in these proceedings along with his use of a privacy service to conceal its identity when registering the disputed domain name are additional evidence of bad faith in these circumstances.

The Panel therefore finds that the conditions in paragraph 4(a)(iii) of the Policy is fulfilled in relation to the disputed domain name.

## **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 <beyonthersale.store> be transferred to the Complainants.

*/Theda König Horowicz/*

**Theda König Horowicz**

Sole Panelist

Date: February 8, 2023