

## **ADMINISTRATIVE PANEL DECISION**

**NSN Apparel Co, LLC v. Aamir Ali, Million Merch**  
**Case No. D2023-0274**

### **1. The Parties**

The Complainant is NSN Apparel Co, LLC, United States of America (“United States”), represented by Adelman Matz P.C., United States.

The Respondent is Aamir Ali, Million Merch, Pakistan.

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

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 20, 2023. On January 23, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 23, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name, which differed from the named Respondent (Privacy Service Provided by Withheld for Privacy ehf), and contact information in the Complaint. The Center sent an email communication to the Complainant on January 24, 2023, 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 January 27, 2023.

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 February 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 22, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 3, 2023.

The Center appointed Ian Lowe as the sole panelist in this matter on March 13, 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 owns the website at “www.thehouseofdrew.com” that sells unisex clothing and apparel under the DREW mark. The DREW mark, together with THE HOUSE OF DREW and DREW HOUSE comprises the “Complainant’s Brand”. The DREW mark is based on the middle name (“Drew”) of Justin Bieber, a famous singer/musician who is one of the founders of the Complainant’s Brand. The Complainant’s Brand has been widely popular in the United States and throughout the world since at least 2018.

The Complainant is the proprietor of several registered trademarks comprising DREW, including Malaysia trademark No. TM2021012184 DREW HOUSE, registered on April 27, 2021, and International Trademark No. 1645597 DREW HOUSE registered on October 17, 2021, designating China, the European Union, United Kingdom, and Türkiye. It is also the proprietor of registered trademarks in respect of the DREW HOUSE device mark (the “Drew House Logo”) depicted below:



including Malaysia trademark No. TM2021012193 registered on April 27, 2021.

The Domain Name was registered on August 15, 2021. It currently resolves to a website at “www.houseclothing.co” (the “Website”) that purports to offer for sale a wide range of Drew House products at discounted prices. The home page prominently features the Drew House Logo in the same colorway as that used by the Complainant on its website. The Website has several references to “Drew House Official” but the “Contact Us” page of the website gives no indication as to the operator of the site. At the time of preparation of the Complaint, the Domain Name resolved to a website at “www.drewhouseofficial.com” with the same features as the Website.

#### **5. Parties’ Contentions**

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

The Complainant contends that the Domain Name is confusingly similar to its DREW HOUSE mark (the “Mark”), that the Respondent has no rights or legitimate interests in respect of the Domain Name and that the Respondent registered and is using the Domain Name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

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

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

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

For this Complaint to succeed in relation to the Domain Name the Complainant must prove 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**

The Complainant has uncontested rights in the Mark, both by virtue of its trademark registrations and as a result of the goodwill and reputation acquired through its use of the Mark over a number of years. Ignoring the generic Top-Level Domain (“gTLD”) “.com”, the Domain Name comprises the entirety of the Mark together with the term “official”. The Panel does not consider that this addition prevents a finding of confusing similarity between the Domain Name and the Mark.

Accordingly, the Panel finds that the Domain Name is confusingly similar to a trademark in which the Complainant has rights.

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

The Complainant has made out a *prima facie* case that the Respondent could have no rights or legitimate interests in respect of the Domain Name. The Respondent has used the Domain Name not in connection with a *bona fide* offering of goods or services, but for a website purporting by implication to be the official Drew House website and offering for sale a very wide range of what claim to be the Complainant’s products but which have not been licensed by the Complainant.

Although there has been no Response by the Respondent, the Panel has in mind that previous UDRP panels have recognized that resellers using a domain name containing the complainant’s trademark to undertake sales of the complainant’s goods may be making a *bona fide* offering of goods and thus have a legitimate interest in such domain name. The Oki Data<sup>1</sup> test as set out in section 2.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) outlines the following cumulative requirements for such a finding:

- (i) the respondent must actually be offering the goods at issue;
- (ii) the respondent must use the site only to sell the trademarked goods;
- (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.

So far as the first requirement is concerned, the Website offers what purport to be the Complainant’s goods, but considering the numerous products purportedly for sale and the substantially discounted prices, it is in the Panel’s view a legitimate inference that the Respondent is not in fact in a position to deliver the products on offer. Turning to the third requirement, the Website gives no information whatsoever as to the identity of the operator of the Website or seller of the products on offer and fails to make clear in an accurate and prominent way, or at all, the Respondent’s relationship (or absence of relationship) with the Complainant. The third requirement is not therefore met.

Accordingly, the Panel does not consider that the Respondent has met the Oki Data test and finds that there is a *prima facie* case that the Respondent does not have any rights or legitimate interests in respect of the Domain Name. Furthermore, the construction of the Domain Name itself is such as to carry a risk of implied affiliation and thus cannot constitute fair use.

There is no suggestion that the Respondent has ever been known by the Domain Name (section 2.3 of the, [WIPO Overview 3.0](#)) and the Complainant has not authorized the Respondent to use the Mark. The

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<sup>1</sup> *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#).

Respondent has chosen not to respond to the Complaint or to take any steps to counter the *prima facie* case established by the Complainant.

In the circumstances, the Panel finds that the Respondent does not have any rights or legitimate interests in respect of the Domain Name.

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

In light of the nature of the Domain Name, comprising the entirety of the Mark with the addition of “official”, and the use of the Domain Name by the Respondent for a website selling what purport to be the Complainant’s goods, the Panel is in no doubt that the Respondent had the Complainant and its rights in the Mark in mind when it registered the Domain Name. In the absence of any response by the Respondent, the Panel has no reason to doubt that the Respondent has used its website to mislead Internet users into believing that the website at the Domain Name is operated by or authorized by the Complainant and offering products authorized by the Complainant. In the Panel’s view, the use of a domain name for such activity, clearly with a view to commercial gain, amounts to paradigm bad faith registration and use for the purposes of the Policy.

Accordingly, the Panel finds that the Domain Name has been registered and is being used in bad faith.

### **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 Domain Name <drewhouseofficial.com> be transferred to the Complainant.

*/Ian Lowe*

**Ian Lowe**

Sole Panelist

Date: March 27, 2023