

## ADMINISTRATIVE PANEL DECISION

Fremaux Delorme v. yin jia  
Case No. D2023-1133

### 1. The Parties

Complainant is Fremaux Delorme, France, represented by Plasseraud IP, France.

Respondent is yin jia, China.

### 2. The Domain Name and Registrar

The disputed domain name <yoyodelorme.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 March 14, 2023. On March 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 16, 2023, the Registrar transmitted by email to the Center its verification response confirming that 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 Respondent of the Complaint, and the proceedings commenced on March 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 6, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on April 12, 2023.

The Center appointed Phillip V. Marano as the sole panelist in this matter on April 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

Complainant is one of the oldest French linens house, specializing in linen design and distribution. Complainant was founded in 1875 and is headquartered in Paris, France. Complainant offers information about its goods through its official <yvesdelorme.com> domain name and associated websites. Complainant owns valid and subsisting registrations for the YVES DELORME trademark in numerous countries, including the trademark for YVES DELORME in the United States of America (Reg. No. 1,814,967) and an international registration with a designation in China (Reg. No. 690,659), with the earliest priority dating back to January 4, 1994 and December 15, 1997 respectively.

Respondent registered the disputed domain name on September 12, 2022. At the time, this Complaint was filed, the disputed domain name resolved to an online shop offering for sale putative YVES DELORME bed linens and nightwear at deeply discounted prices.

#### 5. Parties' Contentions

##### A. Complainant

Complainant asserts ownership of the YVES DELORME trademark and has adduced evidence of trademark registrations in numerous countries around the world including in the United States of America, France, and China, with earliest priority dating back to January 4, 1994 and December 15, 1997 respectively. The disputed domain name is confusingly similar to Complainant's YVES DELORME trademark, according to Complainant, because it: (i) reproduces the most dominant, distinctive, and attractive element of the YVES DELORME trademark, namely the DELORME family name; (ii) the additional term "yoyo" does not distinguish the disputed domain name from the YVES DELORME trademark in any significant way; and (iii) the content of Respondent's website consists of an online shop that prominently displays the YVES DELORME trademark and exclusively dedicated to the putative sale of Complainant's bed linens.

Complainant further asserts that Respondent lacks any rights or legitimate interests in the disputed domain name based on: (i) the lack of any trademark or trade name corresponding to the disputed domain name in the name of the Respondent; (ii) the lack of any license or authorization from Complainant for Respondent to use the YVES DELORME trademark; (iii) the lack of any evidence of any fair or noncommercial or *bona fide* use of the disputed domain name, as best demonstrated by Respondent's website and offers to sell putative YVES DELORME goods at abnormally low prices outside of Complainant's ordinary distribution network; and (iv) the lack of any brick-and-mortar presence of Respondent at the address listed on Respondent's website. Moreover, Complainant asserts that Respondent cannot satisfy the *Ok! Data* test for legitimate resale because: (i) Respondent's abnormally low prices made it more than doubtful that Respondent offers genuine YVES DELORME products; (ii) Respondent's failure to disclose its lack of any relationship with Complainant; and (iii) Respondent's unnecessarily prominent display of the YVES DELORME trademark on Respondent's website.

Complainant argues that Respondent has registered and used the disputed domain name in bad faith for numerous reasons, including: (i) the global registration and well-known nature of the YVES DELORME trademark in the luxury industry; (ii) Respondent's constructive knowledge of the YVES DELORME trademark; (iii) Respondent's identical reproduction of the dominant element of Complainant's YVES DELORME trademark within the disputed domain name; (iv) Respondent's website which specifically targets Complainant and purports to sell genuine YVES DELORME products at abnormally low prices; (v) extensive and unauthorized use of Complainant's YVES DELORME trademark a total of 149 times on and within Respondent's website, which falls outside of Complainant's official distribution network; and (vi) Respondent's impersonation of Complainant within the "contact us" and "about us" sections of Respondent's website, which merely list "Yves Delorme Sales 2022".

## B. Respondent

Respondent did not reply to Complainant's contentions.

## 6. Discussion and Findings

To succeed in its Complaint, Complainant must establish in accordance with paragraph 4(a) of the Policy:

1. The disputed domain name is identical or confusingly similar to a trademark in which Complainant has rights;
2. Respondent has no rights or legitimate interests in respect of the disputed domain name; and
3. The disputed domain name has been registered and is being used in bad faith.

Although Respondent did not reply to Complainant's contentions, the burden remains with Complainant to establish by a balance of probabilities, or a preponderance of the evidence, all three elements of paragraph 4(a) of the Policy. A respondent's default 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. UDRP panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case, *e.g.* where a particular conclusion is *prima facie* obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), sections 4.2 and 4.3; see also *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#) ("The Respondent's default does not automatically result in a decision in favor of the complainant. The Complainant must still prove each of the three elements required by Policy paragraph 4(a)").

### A. Identical or Confusingly Similar

Ownership of a nationally or regionally registered trademark serves as *prima facie* evidence that Complainant has trademark rights for the purposes of standing to file this Complaint. [WIPO Overview 3.0](#), section 1.2.1. Complainant submitted evidence that the YVES DELORME trademark has been registered in numerous jurisdictions around the globe with priority dating back to at least January 4, 1994. Thus, the Panel finds that Complainant's rights in the YVES DELORME trademark have been established pursuant to the first element of the Policy.

The only remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant's YVES DELORME trademark. In this Complaint, the disputed domain name is confusingly similar to Complainant's YVES DELORME trademark because, disregarding the ".com" generic Top-Level Domain ("gTLD"), the dominant DELORME portion of the trademark is contained within the disputed domain name. [WIPO Overview 3.0](#), section 1.7. ("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 ... [I]n 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..."). In regards to gTLDs, such as ".com" in the disputed domain name, they are generally viewed as a standard registration requirement and are disregarded under the first element. [WIPO Overview 3.0](#), section 1.11.

Furthermore, broader case context such as website content trading off Complainant's reputation, or a pattern of multiple respondent domain names targeting Complainant's marks, can also support a finding of confusing similarity. [WIPO Overview 3.0](#), section 1.7; see also *VF Corporation v. Vogt Debra*, WIPO Case No. [D2016-2650](#) (Finding confusing similarity where "[w]hile the Complainant's EASTPAK mark is not as easily recognized in the disputed domain name <bagpakonline.com> the PAK element of the Complainant's mark is recognizable and is combined with the descriptive terms 'bag' and 'online' [and] resolved to an identical website displaying the Complainant's EASTPAK logo and products bearing the EASTPAK mark".) In this Complaint, as discussed further below, a plethora of evidence supports the conclusion that Respondent and

Respondent's website have specifically targeted Complainant and Complainant's YVES DELORME trademark, including *inter alia* prominent and replete use of Complainant's YVES DELORME trademark a total of 149 times on Respondent's website.

In addition, the combination with the term "yoyo" does not prevent a finding of confusing similarity between Complainant's YVES DELORME trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.8 (Additional terms "whether descriptive, geographic, pejorative, meaningless, or otherwise" do not prevent a finding of confusing similarity under the first element); see also *AT&T Corp. v. WorldclassMedia.com*, WIPO Case No. [D2000-0553](#) ("Each of the domain names in dispute comprises a portion identical to [the ATT trademark] in which the Complainant has rights, together with a portion comprising a geographic qualifier, which is insufficient to prevent the composite domain name from being confusingly similar to Complainant's [ATT trademark]"); *OSRAM GmbH v. Cong Ty Co Phan Dau Tu Xay Dung Va Cong Nghe Viet Nam*, WIPO Case No. [D2017-1583](#) ("[T]he addition of the letters 'hbg' to the trademark OSRAM does not prevent a finding of confusing similarity between the Disputed Domain Name and the said trademark.").

In view of the foregoing, the Panel concludes that Complainant has established the first element of the Policy.

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

Complainant must make out a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name, shifting the burden of production on this element to Respondent to come forward with evidence demonstrating such rights or legitimate interests. Where, as in this Complaint, Respondent fails to come forward with any relevant evidence, Complainant is deemed to have satisfied the second element of the Policy. [WIPO Overview 3.0](#), section 2.1.

It is evident that Respondent, identified by Whois data for the disputed domain name as "yin jia", is not commonly known by the disputed domain name or Complainant's YVES DELORME trademark.

Typically, panels apply the fact specific "Okidata Test" to determine whether rights or legitimate interests in the disputed domain name are present with respect to resellers, distributors, and service providers using a domain name containing Complainant's trademark (usually in conjunction with descriptive terms like "parts", "repairs", or a geographic location) to undertake sales or repairs related to Complainant's products. [WIPO Overview 3.0](#), section 2.8.1. However, as discussed further below, in this Complaint there is sufficient and uncontroverted evidence to conclude that Respondent has specifically targeted Complainant and Complainant's YVES DELORME trademark to engage in illegal behavior, specifically fraud, impersonation, and/or the sale of counterfeit goods.

UDRP panels have categorically held that use of a domain name for illegal activity—including the impersonation of the complainant, the sale of counterfeit goods, and other types of fraud—can never confer rights or legitimate interests on a respondent. Circumstantial evidence can support a credible claim made by Complainant asserting Respondent is engaged in such illegal activity. [WIPO Overview 3.0](#), sections 2.13 and 2.13.2. See *e.g. GEA Group Aktiengesellschaft v. J. D.*, WIPO Case No. [D2014-0357](#) (concluding that Respondent's use of the disputed domain name to disrupt the Complainant's business by using it to impersonate the Complainant for commercial gain was evidence of respondent's bad faith registration and use of the disputed domain). In its Complaint, Complainant has submitted ample and persuasive evidence that: (i) Respondent's website offers putative YVES DELORME luxury goods at prices disproportionately below (by up to eighty percent) market value; (ii) Complainant's YVES DELORME goods are ordinarily only sold through Complainant's authorized distribution channels, of which Respondent's website are not a part; and (iii) Respondent's fraudulent representation of itself on Respondent's website as "Yves Delorme Sales 2022", thereby impersonating either Complainant or an authorized distributor of Complainant. In addition, a limited factual Internet search quickly enabled the Panel to confirm that a significant portion of the literary elements of Respondent's website, including its "about us" page, have been plagiarized from otherwise legitimate online retailers.

In view of the foregoing, the Panel concludes that Complainant has established the second element of the Policy.

### C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy proscribes the following non-exhaustive circumstances as evidence of bad faith registration and use of the disputed domain name:

- i. Circumstances indicating that Respondent has registered or Respondent has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to Complainant who is the owner of the trademark to a competitor of that Complainant, for valuable consideration in excess of Respondent's documented out of pocket costs directly related to the disputed domain name;
- ii. Respondent has registered the disputed domain name in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct;
- iii. Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- iv. By using the disputed domain name, Respondent has intentionally attempted 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 of a product or service on Respondent's website or location.

UDRP panels have categorically held that registration and use of a domain name for illegal activity—including impersonation, passing off, sale of counterfeit goods, and other types of fraud—is manifestly considered evidence of bad faith within paragraph 4(b)(iv) of the Policy. [WIPO Overview 3.0](#), section 3.1.3. Use of the disputed domain name by Respondent to pretend that it is Complainant or that it is associated with Complainant “brings the case within the provisions of paragraph 4(b)(iii) of the Policy, for it shows Respondent registered the domain name primarily for the purpose of disrupting the business of a competitor, namely Complainant”. *Graybar Services Inc. v. Graybar Elec, Grayberinc Lawrence*, WIPO Case No. [D2009-1017](#); see also *GEA Group Aktiengesellschaft v. J. D.*, WIPO Case No. [D2014-0357](#) (concluding that Respondent's use of the disputed domain name to disrupt the Complainant's business by using it to impersonate the Complainant for commercial gain was evidence of respondent's bad faith registration and use of the disputed domain). Circumstantial evidence can support a complainant's otherwise credible claim of illegal respondent activity, including evidence that: (i) goods are offered disproportionately below market value; (ii) goods are ordinarily only sold with Complainant's authorization; (iii) images of the goods used by a respondent suggest they are not genuine; (iv) the respondent has misappropriated copyrighted images from the complainant; (v) the goods at issue are extremely rare; (vi) the goods at issue have prompted consumer complaints; (vii) the respondent has masked its identity to avoid being contactable; and (ix) so-called “trap purchases” demonstrate illegal respondent activity. [WIPO Overview 3.0](#), section 2.13.2. As discussed above, Complainant has proffered sufficient evidence to support the conclusion that Respondent is engaged in illegal activity, specifically impersonation, fraud and/or the sale of counterfeit goods.

Finally, the failure of Respondent to answer this Complaint or take any part in the present proceedings, in the view of the Panel, is another indication of bad faith on the part of Respondent. See *Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. [D2002-0787](#).

In view of the foregoing, the Panel concludes that Complainant has established the third element 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 <yoyodelorme.com> be transferred to Complainant.

*/Phillip V. Marano/*

**Phillip V. Marano**

Sole Panelist

Date: May 9, 2023