

ADMINISTRATIVE PANEL DECISION

YZ Productions, Inc. v. Aarnav Paul
Case No. D2023-5327

1. The Parties

The Complainant is YZ Productions, Inc., United States of America (the “United States”), represented by AESTHETIC LEGAL, United States.

The Respondent is Aarnav Paul, India.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 21, 2023. On December 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On December 22, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 2, 2024, 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 amendment to the Complaint on January 2, 2024. On January 3, 2024, the Respondent sent an email communication to the Center.

The Center verified that the Complaint together with the amendment to 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 January 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 4, 2024. The Respondent sent an email communication to the Center on January 27, 2024, indicating that he was willing to settle the dispute. The Center sent an email to the Parties on February 1, 2024, indicating that they could settle the dispute. The Complainant did not comment on the Center’s email. Accordingly, the Center notified the Commencement of Panel Appointment Process to the Parties on February 7, 2024.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on February 14, 2024. 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, based in Encino, California, United States, is a multimedia production company that designs, creates and distributes multimedia content. The Complainant's content is uploaded on the platforms of, amongst others, YouTube and TikTok. Some of the Complainant's most popular channels and most viewed videos feature Rebecca Zamolo modeling and displaying her own Rebecca Zamolo branded clothing. The Complainant also owns and operates an online e-commerce site selling clothing, stickers and cosmetics.

The Complainant is inter alia the owner of the United States trademark, REBECCA ZAMOLO (word mark), with registration no. 6090463 and with a registration date of December 5, 2019, for goods and services in classes 3, 16, 25 and 41 (hereinafter also referred to as "Trademark").

The Domain Name was registered on January 25, 2023. The website to which the Domain Name resolves offers all kinds of merchandise, such as hoodies, t-shirts, posters, and wall clocks, for sale, whilst using and referring to the Trademark.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

Notably, the Complainant contends that:

- the Domain Name is confusingly similar to its trademarks;
- the Respondent has no rights or legitimate interests in respect of the Domain Name;
- the Respondent has registered and is using the Domain Name in bad faith.

B. Respondent

The Respondent did not reply to the Complainant's contentions. However, on January 27, 2024 the Respondent sent to the Center a scanned paper of a standard settlement form.

6. Discussion and Findings

Pursuant to paragraph 4(a) of the Policy, the Complainant must prove each of the following three elements:

- (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

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between

the Complainant's trademark and the Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the Domain Name. Accordingly, the Domain Name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

As set out in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 1.8, the addition of other terms, such as "merch" (short for merchandising), would not prevent a finding that a domain name is confusingly similar to the relevant trademark for purposes of the first element.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although 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 difficult 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 relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the Domain Name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Domain Name such as those enumerated in the Policy or otherwise.

The Respondent has also not put forward any evidence that would support the claim that the Respondent has used or made preparations to use the Domain Name or a name corresponding to the Domain Name in connection with a bona fide offering of goods and services.

To the contrary, the Respondent uses the Website to offer products for sale identifying these products as Rebecca Zamolo products and thus using the Trademark. In addition, the Trademark is used all over the website. There is no mention of any party being responsible as operator of the Website, except for a copyright notice: "Copyright © 2024 Rebecca Zamolo Merch". Moreover, the website has the following tittle: "Rebecca Zamolo Merch Store".

Certainly, lacking a Response, the Panel finds that the Website creates the impression of being an official website affiliated to the Complainant. The Website can even be regarded as an impersonation of the Complainant. In accordance with [WIPO Overview 3.0](#), section 2.5.1 the use of the Domain Name cannot constitute fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Panel finds that the Respondent has registered and used the Domain Name in bad faith and refers to its considerations under section 6.B. above.

In light of the evidence filed by the Complainant, the Panel finds that the Complainant's Trademark and activities are well-known since 2016. The Respondent has not rebutted that the Complainant's YouTube channel, that features Rebecca Zamolo, has 15.2 million subscribers and the videos that are uploaded on the YouTube channel enjoy many (monthly) views.

It is beyond any doubt that the Respondent clearly had the Complainant in mind when registering and using the Domain Name as the Website offers for sale products that clearly relate to the influencer Rebecca Zamolo, as also images of her are being used.

As such, the Respondent has registered and is using the Domain Name to intentionally attract Internet users for commercial gain to its website by creating a likelihood of confusion with the Complainant's Trademark as to the source, sponsorship, affiliation or endorsement of the Website or the products that are being offered for sale on the Website.

The Panel finds that the 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 Domain Name <rebeccazamolomerch.net> be transferred to the Complainant.

/Pablo A. Palazzi/

Pablo A. Palazzi

Sole Panelist

Date: February 23, 2024