

ADMINISTRATIVE PANEL DECISION

Otsumo Co. Ltd. v. Amir Ali, Athar Naveed, m, KAI YIP CHEUNG
Case No. D2024-0618

1. The Parties

Complainant is Otsumo Co. Ltd., Japan, represented by Fross Zelnick Lehrman & Zissu, PC, United States of America ("United States").

Respondents are Amir Ali, Pakistan, Athar Naveed, m, United States, and KAI YIP CHEUNG, United States.

2. The Domain Names and Registrars

The disputed domain names ("Domain Names"), <humanmadeclothing.co> and <humanmadeclothing.net>, are registered with NameCheap, Inc. The disputed domain name, <humanmade.ltd>, is registered with GoDaddy.com, LLC, and the disputed domain name, <humanmadeofficial.co> is registered with Dynadot Inc (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on February 9, 2024. On February 12, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On February 12, 2024, the Registrar, NameCheap, Inc., transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Names, <humanmadeclothing.co> and <humanmadeclothing.net>, which differed from the named Respondents and contact information in the Complaint. On February 12, 2024, the Registrar, GoDaddy.com, LLC, transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name, <humanmade.ltd>. On February 13, 2024, the Registrar, Dynadot Inc, transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name, <humanmadeofficial.co>.

The Center sent an email communication to Complainant on February 19, 2024 with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrars, requesting Complainant to either file separate complaint(s) for the Domain Names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity and/or that all Domain Names are under common control. The Complainant filed an amended Complaint on February 22, 2024.

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 Respondents of the Complaint, and the proceedings commenced on March 1, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 21, 2024. Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on March 22, 2024.

The Center appointed Marina Perraki as the sole panelist in this matter on March 28, 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

Launched in 2010, HUMAN MADE is a Tokyo-based lifestyle brand for a wide range of items, including clothing, footwear, bags, accessories, and home goods, which, per Complaint, are sold worldwide through Complainant’s dedicated retail stores and through authorized retailers, including stores located in the United States, Japan, China, Canada, United Kingdom, Australia, Republic of Korea, Nigeria, and the European Union. Per Complaint, during the most recent fiscal year, sales of products under the HUMAN MADE brand amounted to tens of millions of dollars worldwide. The Instagram followers of the brand are over 1.1 million, while Complainant’s products sold under the HUMAN MADE Marks routinely receive editorial coverage from online and print publications around the world, including TimeOut, Vogue, GQ, and W.

Complainant owns trademark registrations for HUMAN MADE including the United States trademark registrations No. 4216002 HUMAN MADE (figurative), filed on May 23, 2011 and registered on October 2, 2012 for goods and services in international classes 14, 18, 25, and 35 and No. 5169018, HUMAN MADE (figurative), filed on April 14, 2016 and registered on March 28, 2017 for goods and services in international classes 14, 18, 25, and 35.

The Domain Names were registered between May 7, 2023 and July 28, 2023 and at the time of filing of the Complaint lead to largely identical websites (“the Websites”), mimicking that of Complainant and purportedly offering clothing bearing Complainant’s HUMAN MADE trademarks. The Websites displayed Complainant’s trademark, also in the favicon appearing at each Website, in the banner and heading, while reproducing images of HUMAN MADE products. The Website at “www.humanmadeclothing.co” also included a link to Complainant’s official Instagram account. The Websites contained false contact information. For example, the address shown at the Website for “www.humanmade.ltd” used a building number that does not exist and the wrong zip code. The same was true at the Website for “www.humanmadeclothing.net”, where the listed address, did not, per Complaint, exist. Per Complainant, while the Websites included images of HUMAN MADE products and purported to offer them for sale, orders could not actually be placed for the goods offered at the Websites.

They Domain Names all currently lead to inactive websites.

5. Parties’ Contentions

A. Complainant

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

B. Respondents

Respondents did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to each of the Domain Names:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered or is being used in bad faith.

Consolidation: Multiple Respondents

The amended Complaint was filed in relation to nominally different Domain Name registrants. Complainant alleges that the Domain Name registrants are the same entity or mere alter egos of each other, or under common control. Complainant requests the consolidation of the Complaint against the multiple Domain Name registrants pursuant to paragraph 10(e) of the Rules.

The Domain Name registrants did not comment on Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing Complainant's request, the Panel will consider whether (i) the Domain Name or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.11.2.

The Panel notes that the Domain Names <humanmadeclothing.net> and <humanmadeclothing.co> are registered by the same individual.

As regards common control, the Panel notes the following: the contact details of the two Domain Names <humanmadeclothing.net> and <humanmadeclothing.co> have the same Pakistani postal code 56130, while the Domain Name <humanmade.ltd> has the same postal code, 56130 and a Pakistani telephone number. In the Domain Name <humanmadeofficial.co> the registered address is in Renton, Washington, United States while the telephone number is in San Antonio, Texas, United States. All four Domain Names resolve to largely identical websites, each using Complainant's HUMAN MADE trademarks, including in the favicon appearing at each website, in the banner and heading and offering purportedly clothing under Complainant's HUMAN MADE trademarks. Last, all of the Domain Names were registered within the same roughly two and a half month period (i.e., between May 7, 2023 and July 28, 2023). They all currently lead to inactive websites.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different Domain Name registrants (referred to below as "Respondent") in a single proceeding.

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 Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

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 Names. Accordingly, the Domain Name <humanmade.ltd> is identical and the Domain Names <humanmadedclothing.net>, <humanmadedclothing.co> and <humanmadeofficial.co> are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here "official" or "clothing" may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The generic Top-Level Domains ("gTLDs") ".ltd" and ".net" are disregarded, as gTLDs typically do not form part of the comparison on the grounds that they are required for technical reasons (*Rexel Developpements SAS v. Zhan Yequn*, WIPO Case No. [D2017-0275](#); *Hay & Robertson International Licensing AG v. C. J. Lovik*, WIPO Case No. [D2002-0122](#)). The same is true for the ".co" country code Top-Level Domain ("ccTLD").

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 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 Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the Domain Names. Respondent has not rebutted Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Domain Names such as those enumerated in the Policy or otherwise.

On the contrary, as Complainant demonstrated, the Domain Names resolved at the time of filing of the Complaint to the Websites, which suggested falsely that they are of Complainant or an affiliated entity or of an authorized partner of Complainant.

Per Complaint, Respondent is not an affiliated entity or an authorised distributor or reseller of Complainant and no agreement, express or otherwise, exists allowing the use of Complainant's trademarks on the Websites and the use of the Domain Names by Respondent.

A distributor or reseller can be making a bona fide offering of goods and thus have a legitimate interest in a domain name only if the following cumulative requirements are met (*Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#); [WIPO Overview 3.0](#), section 2.8.1: (i) respondent must actually be offering the goods at issue; (ii) respondent must use the site to sell only the trademarked goods; (iii) the site must accurately and prominently disclose the registrant's relationship with the trademark holder; and (iv) respondent must not try to "corner the market" in domain names that reflect the trademark.)

These requirements are not cumulatively fulfilled in the present case. The Domain Names falsely suggested that the Websites are official sites of Complainant or of an entity affiliated to or endorsed by Complainant. The Websites extensively reproduced, without authorization by Complainant, Complainant's trademark and product images, without any disclaimer of association (or lack thereof) with Complainant.

Panels have held that the use of a domain name for illegal activity here, claimed impersonation/passing off, or other types of fraud can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel concludes that Respondent has registered and used the Domain Names in bad faith. Because the HUMAN MADE mark had been widely used and registered at the time of the Domain Names' registrations by Respondent, the Panel finds it more likely than not that Respondent had Complainant's mark in mind when registering the Domain Names (*Tudor Games, Inc. v. Domain Hostmaster, Customer ID No. 09382953107339 dba Whois Privacy Services Pty Ltd / Domain Administrator, Vertical Axis Inc.*, WIPO Case No. [D2014-1754](#); *Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net*, WIPO Case No. [D2000-0226](#)).

As regards bad faith use of the Domain Names, Complainant has demonstrated that the Domain Names were used to resolve to the Websites, which prominently displayed Complainant's registered trademarks, thereby giving the false impression that they were operated by Complainant, or a company affiliated to Complainant or an authorised dealer of Complainant. The Domain Names were therefore used to intentionally create a likelihood of confusion with Complainant's trademark and business as to the source, sponsorship, affiliation, or endorsement of the websites they resolved to. This can be used in support of bad faith registration and use (*Booking.com BV v. Chen Guo Long*, WIPO Case No. [D2017-0311](#); *Ebel International Limited v. Alan Brashear*, WIPO Case No. [D2017-0001](#); *Walgreen Co. v. Muhammad Azeem / Wang Zheng, Nicenic International Group Co., Limited*, WIPO Case No. [D2016-1607](#); *Oculus VR, LLC v. Sean Lin*, WIPO Case No. [DCO2016-0034](#); and [WIPO Overview 3.0](#), section 3.1.4).

Panels have held that the use of a domain name for illegal activity, here, claimed impersonation/passing off, or other types of fraud, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds Respondent's registration and use of the Domain Names constitutes bad faith under the Policy.

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 Names <humanmadeclothing.co>, <humanmadeclothing.net>, <humanmade.ltd>, and <humanmadeofficial.co> be transferred to Complainant.

/Marina Perraki/

Marina Perraki

Sole Panelist

Date: April 11, 2024