

## **ADMINISTRATIVE PANEL DECISION**

A & D Spitz (Pty) Limited v. Marina Wagner  
Case No. D2024-2804

### **1. The Parties**

The Complainant is A & D Spitz (Pty) Limited, South Africa, represented by Adams & Adams, South Africa.

The Respondent is Marina Wagner, Germany.

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

The disputed domain name <kgeigersouthafrica.com> is registered with Dynadot Inc (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 10, 2024. On July 10, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 11, 2024, 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 (Super Privacy Service LTD c/o Dynadot) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 11, 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 amended Complaint on July 15, 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 the Respondent of the Complaint, and the proceedings commenced on July 17, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 6, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 13, 2024.

The Center appointed Olga Zalomiy as the sole panelist in this matter on August 21, 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 is a company in the fashion business and is the owner in South Africa of the registered trademark KURT GEIGER, which is registered across various classes of goods and services. Specifically, it holds the following relevant trademark registrations in South Africa:

- the South African trademark registration for the KURT GEIGER mark, no. 1990/11118, registered on February 7, 2004;
- the South African trademark registration for the word KURT GEIGER, no. 2001/16485, registered on February 17, 2006; and
- the South African trademark registration for the word KURT GEIGER, no. 2006/19234, registered on March 18, 2010.

The Complainant also owns the domain name <kurtgeiger.co.za>, which directs to its official website.

The Respondent registered the disputed domain name on May 24, 2024. The disputed domain name directs to an online store that offers for sale purported Kurt Geiger goods. The website under the disputed domain name prominently displays the Complainant's trademark in the same color scheme as style as the mark displayed on the Complainant's official website.

#### **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 disputed domain name.

Notably, the Complainant contends that the disputed domain name is confusingly similar to its KURT GEIGER trademarks because the disputed domain name reproduces the Complainant's mark in its entirety. The Complainant argues that the omission of the letters "URT" from its mark in the disputed domain name does nothing to distinguish the disputed domain name from its mark. The Complainant contends that the inclusion of the descriptive terms such as "South Africa" fail to alleviate the confusion between the disputed domain name and the Complainant's trademark. The Complainant argues that the addition of the generic Top-Level Domain ("gTLD") ".com" is insufficient to avoid confusing similarity.

The Complainant submits that the Respondent has no rights or legitimate interests in the disputed domain name because (i) ) the Respondent's is neither affiliated or has been authorized by the Complainant to use its KURT GEIGER trademark in the disputed domain name; (ii) there is no evidence that the Respondent is commonly known by the disputed domain name; (iii) the Respondent is not making legitimate noncommercial or fair use of the disputed domain name; (iv) the disputed domain name directs to a website that offers for sale goods and services similar to those of the Complainant. The Complainant argues that most of the content on the website associated with the disputed domain name is either identical to or adapted from the content of the Complainant's website.

The Complainant asserts that the Respondent registered the disputed domain name in bad faith, because the Respondent registered it with the Complainant's trademark in mind. The Complainant asserts that the claim is supported by the fact that the Respondent's website uses the Complainant KURT GEIGER trademark's font, color scheme, and placement. The Complainant submits that its trademark is well known, so it is unlikely that the Respondent did not know about the Complainant's mark at the time of the disputed domain name's registration. The Complainant contends that the Respondent's use of the disputed domain name constitutes bad faith, since the Respondent is using the disputed domain name to redirect to a website that offers for sale purported Kurt Geiger goods.

## **B. Respondent**

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

## **6. Discussion and Findings**

Pursuant to paragraph 4(a) of the Policy, to succeed in this proceeding, the Complainant must prove each of the following elements with respect to the disputed domain name:

- (i) the disputed 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 disputed domain name; and
- (iii) the disputed 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 disputed 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 Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. The inclusion of the gTLD ".com" is typically disregarded in the context of the confusing similarity assessment, being a technical requirement of registration. [WIPO Overview 3.0](#), section 1.11.1.

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

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 disputed 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 disputed domain name such as those enumerated in the Policy or otherwise.

The evidence on record shows that the Respondent is not commonly known by the disputed domain name. The Respondent is not making legitimate noncommercial or fair use. The Respondent has not been authorized by the Complainant to use the Complainant's distinctive trademark in a domain name.

Nor is the Respondent using the disputed domain name for bona fide offering of goods or services. Previous UDRP panels have recognized that resellers or distributors using domain names 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 rights or legitimate interests in such domain names in some situations.

Outlined in the *Oki Data* case<sup>1</sup>, the following cumulative requirements must be satisfied for the respondent to make a bona fide offering of goods and services:

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

Here, the disputed domain name directs users to an online store that offers for sale purported Kurt Geiger goods. The website provided no information about the Respondent or its lack of affiliation with the Complainant. Furthermore, the look and feel of the Respondent's website is virtually identical to the look and feel of the Complainant's website, which creates a false impression of affiliation with the Complainant. Moreover, the disputed domain name is comprised of a term confusingly similar to the Complainant's well-known trademark and the geographic term “South Africa”, the market where the Complainant is located. This may lead Internet users to believe that the disputed domain name is affiliated with or authorized by the Complainant. [WIPO Overview 3.0](#), section 2.5.1. Therefore, the Respondent's actions do not amount to bona fide offering of goods.

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.

In the present case, the Panel notes that the Respondent registered the disputed domain name incorporating a term confusingly similar to the Complainant's KURT GEIGER trademark and the geographical term “South Africa” many years after the Complainant's first trademark registration. The Respondent's lack of rights or legitimate interests in the disputed domain name, the absence of an explanation for choosing the inherently misleading disputed domain name, the well-known status of the Complainant's trademark, and the Respondent's use of the disputed domain name to direct to a website with the similar look and feel as the Complainant's official website, for purportedly selling the Complainant's goods indicate that the disputed domain name was registered in bad faith.

The UDRP establishes that, for purposes of paragraph 4(a)(iii), “bad faith” registration and use of a domain name can be established by a showing of circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to the respondent's website or other online location, by creating a likelihood of confusion with the complainant's mark as to source,

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<sup>1</sup> See [WIPO Overview 3.0](#), section 2.8.1; and *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#).

sponsorship, affiliation or endorsement of the respondent's website or location, or of a product or service on the respondent's website or location. See Policy, paragraph 4(b)(iv).

Prior UDRP panels have found "the following types of evidence to support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark: (i) actual confusion, (ii) seeking to cause confusion (including by technical means beyond the domain name itself) for the respondent's commercial benefit, even if unsuccessful, (iii) the lack of a respondent's own rights to or legitimate interests in a domain name, (vi) absence of any conceivable good faith use." [WIPO Overview 3.0](#), section 3.1.4.

Here, the Respondent, who had no rights or legitimate interests, registered the inherently misleading disputed domain name to direct to a website looking similar to the Complainant's official website and purportedly offering for sale the Complainant's goods. Therefore, the Panel concludes that the Respondent, sought to cause confusion for the Respondent's commercial benefit and is using the disputed domain name to intentionally attempt to attract, for commercial gain, the Internet users to the Respondent'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 Respondent's website or location, or of a product or service on the Respondent's website or location.

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 disputed domain name <kgeigersouthafrica.com> be transferred to the Complainant.

*/Olga Zalomiy/*

**Olga Zalomiy**

Sole Panelist

Date: September 4, 2024