

## **ADMINISTRATIVE PANEL DECISION**

The Founders Inc. v. Mera Jewelry  
Case No. D2024-4939

### **1. The Parties**

The Complainant is The Founders Inc., Republic of Korea, represented by Marq Vision Inc., United States of America (“United States”).

The Respondent is Mera Jewelry, Portugal.

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

The disputed domain name <anuabeauty.com> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 29, 2024. On November 29, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 2, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 3, 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 December 4, 2024.

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 December 4, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 24, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 25, 2024.

The Center appointed Luca Barbero as the sole panelist in this matter on December 30, 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 owns several consumer brands, including the ANUA skin care cosmetics brand.

The Complainant is the owner of trademark registrations for ANUA, including the following, as per trademark registration details submitted as annexes 5 and 6 to the Complaint:

- International trademark registration No. 1546316 for ANUA (figurative mark), registered on July 1, 2020, in class 3;

- United States trademark registration No. 6458219 for ANUA (figurative mark), registered on August 24, 2021 in international class 3.

The Complainant's mark subject of the above-referenced trademark registration consists of the stylized wording "anua" centered above three stylized Korean characters.

The Complainant is also the owner of the domain name <anua.kr>, which was registered on January 24, 2019, and is used by the Complainant to advertise and sell its products on the corresponding website under the trademark ANUA.

The disputed domain name <anuabeauty.com> was registered on January 18, 2024 and, according to the screenshots submitted by the Complainant – which have not been contested by the Respondent, resolved prior to the present proceeding to an active website where the Complainant's trademark ANUA was displayed in the top-left section of the home page and purported ANUA skin care products were offered for sale, using images of the Complainant's goods and displaying the indication "Beauty Store Anua Beauty" in the copyright line. The Complainant's ANUA mark was reproduced also in the "About" section of the website, along with descriptions of the Complainant's products. The website did not appear to include any disclaimer of non-affiliation with the Complainant.

At present, the disputed domain name resolves to a webpage indicating that the store is unavailable.

#### **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 the trademark ANUA in which the Complainant has rights as it reproduces the trademark in its entirety with the mere addition of the descriptive term "beauty" and the generic Top-Level Domain ("gTLD") ".com", which do not diminish the confusing similarity to the Complainant's well established trademark rights.

The Complainant states that the Respondent has no rights or legitimate interests in respect of the disputed domain name since: i) the Respondent is not commonly known by the disputed domain name; ii) the Respondent has not acquired any trademark or service mark rights; iii) there is no relationship or affiliation between the Complainant and the Respondent that would grant the Respondent any license, permission, or other rights to own or use a domain name incorporating the Complainant's ANUA mark; and iv) the Respondent has not engaged in a bona fide offering of goods or services but has instead used the disputed domain name with a website that misled consumers into believing that the Respondent was the Complainant

and was holding the disputed domain name for commercial gain.

With reference to the circumstances evidencing bad faith, the Complainant indicates that, given the renowned and distinctive nature of the ANUA trademark and the descriptions reproduced on the Complainant's official website, the Respondent must have been aware of the Complainant's trademark and products at the time of registration. The Complainant further states that a simple trademark search or Internet query would have revealed the Complainant's trademark registrations.

The Complainant claims that the following additional circumstances demonstrates the Respondent's bad faith registration and use of the disputed domain name: i) the disputed domain name combines the Complainant's trademark ANUA with the term "beauty", closely associated with the Complainant's industry; ii) the Respondent has used the Complainant's trademark and product images on the website to which the disputed domain name resolved, purporting to offer the same or similar services as the Complainant, to create the false impression that the Respondent was affiliated with or represented the Complainant, thereby exploiting the disputed domain name for commercial gain; iii) the Respondent's unauthorized use of the Complainant's trademark involved deliberate impersonation and fraudulent activities, since the website to which the disputed domain name resolved featured an "About" page designed to mislead users by showcasing key brand messaging from the Complainant, including the phrase, "Anua pursues healthy beauty led by a simple lifestyle," alongside altered versions of official sales images from the Complainant; iv) the Respondent decided to withhold its contact information from the Whois record of the disputed domain name; and v), the Respondent failed to respond to or comply with the Complainant's request to transfer the disputed domain name following the sending of the Complainant's report to the Registrar dated November 14, 2024.

## **B. Respondent**

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

## **6. Discussion and Findings**

According to paragraph 15(a) of the Rules: "A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable." Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- (i) that the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that 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. Indeed, the Complainant has provided evidence of ownership of valid trademark registrations for ANUA.

The entirety of the mark is reproduced 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.

Although the addition of the term “beauty” 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 applicable TLD in a domain name, such as the gTLD “.com” in this case, is viewed as a standard registration requirement and is thus disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11.1.

Therefore, 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 Panel notes that there is no relation, disclosed to the Panel or otherwise apparent from the record, between the Respondent and the Complainant. The Respondent is not a licensee of the Complainant, nor has the Respondent otherwise obtained an authorization to use the Complainant’s trademark. Moreover, there is no element from which the Panel could infer a Respondent’s right over the disputed domain name, or that the Respondent might be commonly known by the disputed domain name.

The Panel finds that the Respondent’s prior use of the disputed domain name as shown by the screenshots submitted by the Complainant – not contested by the Respondent – does not meet the requirements for a reseller or distributor to be making a bona fide offering of goods or services under a domain name incorporating a third-party trademark.

According to section 2.8.1 of the [WIPO Overview 3.0](#), “resellers, distributors, or service providers using a domain name containing the complainant’s trademark to undertake sales or repairs related to the complainant’s goods or services may be making a bona fide offering of goods and services and thus have a legitimate interest in such domain name. Outlined in the ‘Oki Data test’, the following cumulative requirements will be applied in the specific conditions of a UDRP case:

- (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".

In the case at hand, at least the third condition has not been met since the Respondent does not appear to have published an accurate and prominent disclaimer on its website aimed at informing users about its lack of relationship with the Complainant. Moreover, the publication of the Complainant's trademark and product images along with the Complainant's product descriptions (or slight variations thereof) appears to have been designed by the Respondent to reinforce the impression that the website corresponding to the disputed domain name was operated by the Complainant or one of its affiliated entities.

In addition to the above, since the disputed domain name resolved to a website which was clearly commercial in nature, the Respondent has not made a legitimate noncommercial or fair use of the disputed domain name.

Thus, in view of the above-described use of the disputed domain name, the Panel finds that the Respondent has not used the disputed domain name in connection with a bona fide offering of goods or services or a legitimate non-commercial or fair use without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's trademark.

The Panel notes that the disputed domain name currently resolve to a webpage stating that the store is unavailable. The Panel shares the view held in *Teachers Insurance and Annuity Association of America v. Wreaks Communications Group*, WIPO Case No. [D2006-0483](#), where it was found that, absent some contrary evidence from the respondent, passive holding of a domain name does not constitute a legitimate non-commercial or fair use.

Furthermore, the disputed domain name, combining the Complainant's trademark ANUA with the term "beauty", suggests an affiliation with the Complainant that does not exist. Even where a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1.

Therefore, the Panel finds the second element of the Policy has also 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, in light of i) the prior registration and use of the trademark ANUA in connection with the Complainant's skin care products, promoted and sold online through the Complainant's website "www.anua.kr"; ii) the distinctiveness of the ANUA mark in relation with skin care products; iii) the composition of the disputed domain name, combining the Complainant's ANUA mark with the term "beauty" descriptive of the Complainant's sector and products; and iv) the reproduction of the Complainant's trademark and product images on the website to which the disputed domain name resolved, the Respondent was clearly aware of the Complainant, its trademarks, and its products at the time of registering the disputed domain name.

Moreover, in view of the prior use of the disputed domain name in connection with the website described above, offering purported ANUA products for sale whilst failing to disclose the lack of affiliation with the Complainant, the Panel finds that the Respondent intentionally attempted to attract Internet users to its website for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of its website according to paragraph 4(b)(iv) of the Policy.

As to the fact that, at the time of the drafting of the Decision, the disputed domain name resolves to an error page stating that the store is unavailable, Panels have found that the non-use of a domain would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness of the Complainant's trademark, the composition of the disputed domain name and the Respondent's failure to submit a Response and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Therefore, the Panel finds that the Complainant has established the third element of the Policy as well.

## **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 <anuabeauty.com> be transferred to the Complainant.

*/Luca Barbero/*

**Luca Barbero**

Sole Panelist

Date: January 13, 2025