

## **ADMINISTRATIVE PANEL DECISION**

The Gap, Inc., Gap (Apparel), LLC, and Gap (ITM) Inc. v. Privacy service provided by Withheld for Privacy ehf / Trinh Hoang  
Case No. DME2022-0018

### **1. The Parties**

The Complainant is The Gap, Inc., United States of America (“United States”), Gap (Apparel), LLC, United States, and Gap (ITM) Inc., United States, represented by Fross Zelnick Lehrman & Zissu, PC, United States.

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Trinh Hoang, Viet Nam.

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

The disputed domain name <gapshop.me> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 26, 2022. On August 26, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 26, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on August 29, 2022, 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 August 30, 2022.

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 September 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 21, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 22, 2022.

The Center appointed Tobias Zuberbühler as the sole panelist in this matter on September 26, 2022. 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 The Gap, Inc. is a company based in the United States which forms, together with two of its subsidiaries, one of the world's leading retailers of clothing, accessories, personal care products, and other merchandise.

The Complainant owns trademark registrations in various jurisdictions, including the United States trademark GAP (Reg. No. 1129294, registered on January 15, 1980), the United States trademark GAP (Reg. No. 1745875, registered on January 12, 1993), and the United States trademark GAP (device) (Reg. No. 2719435, registered on May 27, 2003).

The Complainant further holds the domain name <gap.com> under which the official website of the Complainant is available. The Complainant holds several other domain names incorporating the GAP trademark. The Complainant advertises and sells its services through its <gap.com> domain name.

The disputed domain name was created on June 25, 2022. According to the evidence in the Complaint, the disputed domain name resolved to a website offering the same sort of products for which the Complainant registered the GAP trademark.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant alleges that it has satisfied all elements of the Policy, paragraph 4.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

On the basis of the facts and evidence introduced by the Complainant, and with regard to paragraphs 4(a), (b) and (c) of the Policy, the Panel concludes as follows:

##### **A. Identical or Confusingly Similar**

The Complainant has submitted sufficient evidence to demonstrate its registered rights in the GAP trademark.

The GAP trademark is wholly reproduced in the disputed domain name.

It has become a consensus view among UDRP panels that the applicable Top-Level Domain ("TLD") in a domain name is a standard registration requirement and as such may be disregarded when assessing confusing similarity under the first element of the Policy (see the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), sections 1.11.1 and 1.11.2).

A domain name is “identical or confusingly similar” to a trademark for the purposes of the Policy when the domain name includes the trademark, or a confusingly similar approximation, regardless of other terms in the domain name (*Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale*, WIPO Case No. [D2000-0662](#)). As stated in the [WIPO Overview 3.0](#), section 1.8, “[w]here the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements”. Hence, the Panel holds that the addition of the term “shop” (which appears related to the Complainant’s business) to the Complainant’s GAP trademark does not prevent a finding of confusing similarity between the disputed domain name and the Complainant’s trademark.

The Complainant has thus fulfilled the requirements of paragraph 4(a)(i) of the Policy.

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

There are no indications before the Panel of any rights or legitimate interests of the Respondent in respect of the disputed domain name. The Complainant contends that the Respondent is neither affiliated with the Complainant nor making any *bona fide* use of the disputed domain name.

The Respondent has used the disputed domain name to offer alleged products in connection to the Complainant’s business and trademark. The Complainant has credibly alleged that the Respondent has used the disputed domain name for generating revenue by offering the same sort of products for which the Complainant registered the GAP trademark while taking advantage of the Complainant’s trademark notoriety. This cannot be considered as a *bona fide* offering of goods or services or a noncommercial use.

Furthermore, the composition of the disputed domain name, wholly incorporating the Complainant’s trademark and the term “shop”, cannot constitute fair use in these circumstances as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See [WIPO Overview 3.0](#), section 2.5.1.

The Panel finds that the Complainant, having made out a *prima facie* case which remains unrebutted by the Respondent, has fulfilled the requirements of paragraph 4(a)(ii) of the Policy.

## **C. Registered and Used in Bad Faith**

Under the circumstances of this case, including the composition of the disputed domain name and reputation of the Complainant’s trademark, it can be inferred that the Respondent was aware of the Complainant’s trademark when registering the disputed domain name.

The Panel finds that the reproduction of the Complainant’s trademark along with the term “shop” creates a likelihood of confusion between the Complainant’s trademark and the disputed domain name.

The evidence and allegations submitted by the Complainant support a finding that the Respondent was engaged in an attempt to pass himself off as the Complainant by creating a likelihood of confusion with the Complainant’s trademark as to the source, sponsorship, affiliation, or endorsement of his website for his own commercial benefit. The Respondent has therefore registered and used the disputed domain name in bad faith (see *Claudie Pierlot v. Yinglong Ma*, WIPO Case No. [D2018-2466](#)).

Accordingly, the Complainant has also fulfilled paragraph 4(a)(iii) 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 <gapshop.me> be transferred to the Complainant.

*/Tobias Zuberbühler/*

**Tobias Zuberbühler**

Sole Panelist

Date: October 3, 2022