

ADMINISTRATIVE PANEL DECISION

Thirdlove, Inc. v. 海燕施 (Haiyan Shi)

Case No. D2023-0113

1. The Parties

The Complainant is Thirdlove, Inc., United States of America (“United States”), represented by Lewis Kohn & Walker, LLP, United States.

The Respondent is 海燕施 (Haiyan Shi), China.

2. The Domain Name and Registrar

The disputed domain name <thirdlove-shop.com> is registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 9, 2023. On January 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 12, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 6, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 7, 2023.

The Center appointed David Taylor as the sole panelist in this matter on February 24, 2023. 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

Founded in 2013, the Complainant is a United States lingerie company, offering apparel under its THIRDLOVE trademark.

The Complainant is the registered owner of, *inter alia*, the following trademarks:

- United States Trademark Registration No. 4467930, THIRDLOVE, registered on January 14, 2014; and
- International Trademark Registration No. 1421833, THIRDLOVE, registered on June 20, 2018.

The Complainant is also the registrant of the domain name <thirdlove.com>, from which it operates a consumer-facing website and online store.

The disputed domain name was registered on August 15, 2022. The disputed domain name resolves to a website (the “Respondent’s website”) holding itself out as an online store selling the Complainant’s products at discounted prices.

5. Parties’ Contentions

A. Complainant

The Complainant asserts rights in the THIRDLOVE trademark. The Complainant submits that the disputed domain name is confusingly similar to the Complainant’s THIRDLOVE trademark.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant asserts that the Respondent has used the disputed domain name to resolve to a website that cloned an earlier version of the Complainant’s official website, displaying the Complainant’s trademarks, logos, product names, and copyrighted images of models and flat lay apparel products, to advertise and sell counterfeit products to unsuspecting Internet users. The Complainant submits that the Respondent is not making use of the disputed domain name in connection with a *bona fide* offering of goods or services, nor is the Respondent commonly known by the disputed domain name, nor is the Respondent making any legitimate noncommercial or fair use of the disputed domain name.

The Complainant submits that the disputed domain name was registered and is being used in bad faith. The Complainant notes that the registration of its trademarks predates the registration of the disputed domain name. The Complainant argues that by using the disputed domain name to resolve to a website offering counterfeit goods, the Respondent has made use of the Complainant’s trademarks, logos, and images from the Complainant’s website, to create a likelihood of confusion with the Complainant for commercial gain, in bad faith.

The Complainant requests transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

In order to prevail, the Complainant must demonstrate on the balance of probabilities that it has satisfied the requirements of paragraph 4(a) of the Policy:

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

A. Identical or Confusingly Similar

The Panel finds that the Complainant has established rights in the THIRDLOVE trademark, the registration details of which are provided in the factual background section above.

The disputed domain name comprises the Complainant's THIRDLOVE trademark in its entirety as its leading element, followed by a hyphen, and the term "shop", under the generic Top-Level Domain ("gTLD") ".com". The Panel finds that the addition of a hyphen and the term "shop" does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's THIRDLOVE trademark, which remains clearly recognizable in the disputed domain name; see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8. See also *SRAM, LLC v. hongwang hu and guiren li*, WIPO Case No. [D2022-3682](#):

"The addition of '-shop' after the [SRAM] Mark in and the addition of 'stores' after the Mark in do not prevent a finding of confusing similarity between the Disputed Domain Names [<sram-shop.com> and <sramstores.com>] and the Mark [...]"

The gTLD ".com" may be disregarded for purposes of assessment under the first element; see [WIPO Overview 3.0](#), section 1.11.1.

The Panel finds the disputed domain name to be confusingly similar to the Complainant's THIRDLOVE trademark. The Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Panel notes that there is no relationship between the Complainant and the Respondent. No authorization has been granted to the Respondent to make use of the Complainant's trademark in a domain name or otherwise.

As noted above, the Complainant alleges that the Respondent has been using the disputed domain name in connection with a website that offers counterfeit goods for sale. Prior UDRP panels have categorically held that the use of a domain name for illegal activity (*e.g.*, the sale of counterfeit goods, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent; see [WIPO Overview 3.0](#), section 2.13. The Panel notes in this regard that the disputed domain name resolves to a website that prominently displays the Complainant's THIRDLOVE trademark and logos, appears to have misappropriated images from an earlier version of the Complainant's website, offers the concerned products at substantially discounted prices, displays text containing obvious grammatical errors, displays a physical contact address that corresponds to a residential location in West Virginia, United States (while the Respondent is listed in the Whois record as being located in China), and that the Complainant has received at least one complaint from a consumer who was misled into believing that the Respondent's website was operated by the Complainant. The Respondent has not come forward with any evidence to support a finding that it is acting as an unauthorized reseller of the Complainant's products. Rather, the evidence on records tends to suggest that the Respondent has been illegitimately holding itself out as the Complainant. See in this regard *Mou Limited v. Song Lihong*, WIPO Case No. [D2018-0988](#). In light of the above, the Panel finds that the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services pursuant to paragraph 4(c)(i) of the Policy.

The Respondent is listed in the Whois record as 海燕施 (Haiyan Shi), which bears no resemblance to the disputed domain name. The Respondent's use of the disputed domain name to misleadingly hold itself out as the Complainant does not give rise to any legitimate claim of being commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy.

Nor is the Respondent making any legitimate noncommercial or fair use of the disputed domain name under paragraph 4(c)(iii) of the Policy.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Complainant's rights in the THIRDLOVE trademark substantially predate the registration of the disputed domain name. It is clear from the contents of the Respondent's website that the Respondent was aware of the Complainant and its rights in the THIRDLOVE trademark when registering the disputed domain name. The Panel finds that the Respondent, having no authorization to make use of the Complainant's trademark, proceeded to register the disputed domain name with a view to creating a website to misleadingly hold itself out as the Complainant, in bad faith.

As noted under the second element, the Respondent is using the disputed domain name to hold itself out as the Complainant, to offer for sale what appear to be counterfeit products bearing the Complainant's trademark. Use of a domain name for *per se* illegitimate activity such as the sale of counterfeit goods is manifestly considered evidence of bad faith; see [WIPO Overview 3.0](#), section 3.1.4. Moreover, Internet users viewing the Respondent's website are likely to be misled into believing that the disputed domain name and website are operated or authorized by the Complainant, as evidenced by a consumer complaint received by the Complainant to this effect. The Panel finds that by using the disputed domain name in the manner described above, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of its website and the goods offered for sale therein, in bad faith pursuant to paragraph 4(b)(iv) of the Policy.

The Panel finds that the disputed domain name was registered and is being used in bad faith. The Complainant has satisfied the requirements of 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 <thirdlove-shop.com> be transferred to the Complainant.

/David Taylor/

David Taylor

Sole Panelist

Date: March 10, 2023