

ADMINISTRATIVE PANEL DECISION

LoveShackFancy, LLC v. “Domain is suspended due to user not filling out their contact details”

Case No. D2023-1141

1. The Parties

Complainant is LoveShackFancy, LLC, United States of America (“United States”), represented by Sheppard, Mullin, Richter & Hampton, United States.

Respondent’s identity is noted as being redacted for privacy. The Registrar disclosed that the “Domain is suspended due to user not filling out their contact details.”

2. The Domain Name and Registrar

The disputed domain name <loveshackfancy.shop> (the “Domain Name”) is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 14, 2023. On March 15, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On March 15, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name, which differed from the named Respondent (Domain Administrator, Privacy service provided by PrivacyGuardian.org LLC) and contact information in the Complaint. The Whois database, indicates that Respondent’s identity is redacted for privacy. On March 20, 2023, the Registrar disclosed that the “Domain is suspended due to user not filling out their contact details”.

The Center sent an email communication to Complainant on March 20, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on March 20, 2023.

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 Respondent of the Complaint, and the proceedings commenced on March 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 17, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on April 25, 2023.

The Center appointed Kimberley Chen Nobles as the sole panelist in this matter on April 27, 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

Complainant, a New York company, produces womenswear and collaborates with known brands to produce a number of co-branded products. Complainant own numerous United States and international trademark registrations for its LOVESHACKFANCY marks, including:

- United States registered trademark number 5,280,125 for LoveShackFancy word mark, registered on September 5, 2017;
- United States registered service mark number 6,829,996 for LoveShackFancy word mark, registered on August 30, 2022;
- United States registered trademark number 6,895,573 for LoveShackFancy word mark, registered on November 8, 2022;
- International trademark registration number 1336328, for LoveShackFancy word mark registered on February 3, 2017, designating various countries; and
- International trademark registration number 1473262, for LoveShackFancy word mark, registered on May 2, 2019, designating various countries.

Complainant also owns and operates <loveshackfancy.com> as its main business website, having operated at that website since 2013 to offer its branded products for purchase.

The Domain Name was registered on November 6, 2022, and at the time of filing of the Complaint, it reverted to a website which displayed Complainant's registered trademark and offered content that were unauthorized productions of Complainant's original photographs, duplicating Complainant's official website look and feel and promoted unauthorized products identical to those offered by Complainant on Complainant's website. At the time of the decision the Domain Name reverted to an error page.

5. Parties' Contentions

A. Complainant

Complainant contends that (i) the Domain Name is identical or confusingly similar to Complainant's trademarks; (ii) Respondent has no rights or legitimate interests in the Domain Name; and (iii) Respondent registered and is using the Domain Name in bad faith.

In particular, Complainant contends that it has trademark registrations for LOVESHACKFANCY and that Respondent registered and is using the Domain Name with the intention to confuse Internet users looking for *bona fide* and well-known LOVESHACKFANCY products and services.

Complainant notes that it has no affiliation with Respondent. Complainant further contends that Respondent is using the Domain Name as a tool to exploit Complainant's reputation for its own commercial gain, and that Respondent has no rights or legitimate interests in the registration and use of the Domain Name other than trademark infringement. Further, Complainant contends that Respondent has acted in bad faith in acquiring and setting up the Domain Name, when Respondent clearly knew of Complainant's rights.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

- (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 was registered and is being used in bad faith.

Section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") states that failure to respond to the complainant's contentions would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true.

Thus, although in this case, Respondent has failed to respond to the Complaint, the burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence.

A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See [WIPO Overview 3.0](#), section 1.2.1. Complainant has provided evidence of its rights in the LOVESHACKFANCY trademarks, as noted above under section 4. Complainant has also submitted evidence, which supports that the LOVESHACKFANCY trademarks are widely known and a distinctive identifier of Complainant's products and services. Complainant has therefore proven that it has the requisite rights in the LOVESHACKFANCY trademarks.

With Complainant's rights in the LOVESHACKFANCY trademarks established, the remaining question under the first element of the Policy is whether the Domain Name, typically disregarding the Top-Level Domain ("TLD") in which it is registered (in this case is, ".shop"), is identical or confusingly similar to Complainant's trademark. See, e.g., *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#).

Here, the Domain Name is identical to Complainant's LOVESHACKFANCY trademarks.

Thus, the Panel finds that Complainant has satisfied the first element of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make a *prima facie* showing that a respondent possesses no rights or legitimate interests in a disputed domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes such a

prima facie showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with relevant evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

From the record in this case, it is evident that Respondent was, and is, aware of Complainant and its LOVESHACKFANCY trademarks, and does not have any rights or legitimate interests in the Domain Name. In addition, Complainant asserts that Respondent is not an authorized reseller and is not related to Complainant. Respondent is also not known to be associated with the LOVESHACKFANCY trademarks and there is no evidence showing that Respondent has been commonly known by the Domain Name.

In addition, Respondent has not used the Domain Name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. Rather, and at the time of filing of the Complaint, it reverted to a website which displayed Complainant's registered trademark and offered content that were unauthorized productions of Complainant's original photographs, duplicating Complainant's official website look and feel and promoted unauthorized products identical to those offered by Complainant on Complainant's website, which could mislead Internet users into thinking that the website has been authorized or operated by or affiliated with Complainant, and offered LOVESHACKFANCY-branded products for sale. At the time of the Decision, the Domain Name reverted to an error or inactive page. Such use does not constitute a *bona fide* offering of goods or services or a legitimate noncommercial or fair use and cannot under the circumstances confer on Respondent any rights or legitimate interests in the Domain Name. See, e.g., *Intesa Sanpaolo S.p.A. v. Charles Duke / Oneandone Private Registration*, WIPO Case No. [D2013-0875](#).

Moreover, the nature of the Domain Name is inherently misleading and carries a risk of implied affiliation (see [WIPO Overview 3.0](#), section 2.5.1).

Accordingly, Complainant has provided evidence supporting its *prima facie* claim that Respondent lacks any rights or legitimate interests in the Domain Name. Respondent has failed to produce countervailing evidence of any rights or legitimate interests in the Domain Name, reinforcing the notion that Respondent was not using the Domain Name in connection with a *bona fide* offering.

Thus, the Panel concludes that Respondent does not have any rights or legitimate interests in the Domain Name and Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that Respondent's actions indicate that Respondent registered and is using the Domain Name in bad faith.

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances indicating bad faith registration and use on the part of a domain name registrant, namely:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location."

The Panel finds that Complainant has provided ample evidence to show that registration and use of the LOVESHACKFANCY trademarks long predate the registration of the Domain Name. Complainant is also well-established and known. Indeed, the record shows that Complainant's LOVESHACKFANCY trademarks and related products and services are widely known and recognized. Therefore, Respondent was likely aware of the LOVESHACKFANCY trademarks when it registered the Domain Name, knew, or should have known that the Domain Name was confusingly similar to Complainant's trademarks. See [WIPO Overview 3.0](#), section 3.2.2; see also *TTT Moneycorp Limited v. Privacy Gods / Privacy Gods Limited*, WIPO Case No. [D2016-1973](#).

The Panel therefore finds that Respondent's awareness of Complainant's trademark rights at the time of registration suggests bad faith. See *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite*, WIPO Case No. [D2001-1070](#); and *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#).

Further, the registration of the Domain Name incorporating Complainant's LOVESHACKFANCY trademark in its entirety suggests Respondent's actual knowledge of Complainant's rights in the LOVESHACKFANCY trademarks at the time of registration of the Domain Name and its effort to opportunistically capitalize on the registration and use of the Domain Name.

In addition, the evidence provided by Complainant indicated that at the time of filing of the Complaint, the Domain Name reverted to a website which displayed Complainant's registered trademark and offered content that were unauthorized productions of Complainant's original photographs, duplicating Complainant's official website look and feel and promoted unauthorized products identical to those offered by Complainant on Complainant's website. Such use could mislead Internet users into thinking that the website has been authorized, operated by, or affiliated with Complainant, and offered LOVESHACKFANCY-branded products for sale. At the time of the Decision, the Domain Name reverted to an error or inactive page. Such use included Respondent's unauthorized reproduction of Complainant's LOVESHACKFANCY marks, which could mislead Internet users into thinking that the respective website has been authorized or operated by or affiliated with Complainant, and offered LOVESHACKFANCY-branded products for sale, all of which have not been rebutted by Respondent. Such use cannot be considered in good faith.

Moreover, Respondent registered and is using the Domain Name to confuse and mislead consumers looking for *bona fide* and well-known LOVESHACKFANCY products and services of Complainant or authorized partners of Complainant. The use of the LOVESHACKFANCY mark as the dominant part of the Domain Name is intended to capture Internet traffic from Internet users who are looking for Complainant's products and services. Therefore, by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's webpage by creating a likelihood of confusion with Complainant's LOVESHACKFANCY marks as to the source, sponsorship, affiliation, or endorsement of Respondent's website.

Further, the Panel also notes the failure of Respondent to submit a formal Response or to provide any evidence of actual or contemplated good-faith use, the failure to provide its contact information to the Registrar, and the implausibility of any good-faith use to which the Domain Name may be put.

Accordingly, the Panel finds that Respondent registered and is using the Domain Name in bad faith and Complainant succeeds under the third element of paragraph 4(a) 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 Name, <loveshackfancy.shop> be transferred to Complainant.

/Kimberley Chen Nobles/

Kimberley Chen Nobles

Sole Panelist

Date: May 11, 2023