

## **ADMINISTRATIVE PANEL DECISION**

Lift-All Company, Inc. v. Adfsi Adfsi  
Case No. D2023-3803

### **1. The Parties**

The Complainant is Lift-All Company, Inc., United States of America, represented by Saxton & Stump, United States of America (“United States”).

The Respondent is Adfsi Adfsi, Hong Kong, China.

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

The disputed domain name <liftallsale.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 September 12, 2023. On September 12, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 12, 2023, 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 (Registrant of liftallsale.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 13, 2023, 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 September 13, 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 the Respondent of the Complaint, and the proceedings commenced on September 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 9, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 10, 2023.

The Center appointed Adam Taylor as the sole panelist in this matter on October 13, 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**

The Complainant has supplied lifting slings and other products under various marks since around 1970.

The Complainant owns a figurative United States trade mark No. 6818402 for LIFTALL PRODUCTS FOR BETTER LIFTING, filed on July 13, 2021, registered on August 16, 2022, in class 22, and first used in commerce on January 1, 1970.

The Complainant operates a website at “www.lift-all.com”.

The disputed domain name was registered on August 13, 2022.

The disputed domain name was used to resolve to a website that was branded with the Complainant’s “LIFTALL PRODUCTS FOR BETTER LIFTING” mark and logo, and which purported to offer various lifting products for sale, including some which were branded with other of the Complainant’s marks and whose descriptions included photographs of the Complainant’s products.

#### **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, amongst other things, that the Respondent’s website at the disputed domain name includes counterfeit products for sale.

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

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

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

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- 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 trade mark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([“WIPO Overview 3.0”](#)), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognisable 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.

Based on the available record, 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.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognised that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible 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. 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 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.

Paragraph 4(c) of the Policy gives examples of circumstances which, if proved, suffice to demonstrate that a respondent possesses rights or legitimate interests.

As to paragraph 4(c)(i) of the Policy, insofar as the Respondent is reselling the Complainant’s own goods, the consensus view of UDRP panels is that to establish a *bona fide* offering of goods or services in such circumstances, a respondent must comply with certain conditions (the “Oki Data requirements”). [WIPO Overview 3.0](#), section 2.8.

In this case, the Panel considers that the Respondent has failed to comply with the Oki Data requirement to accurately and prominently disclose the Respondent’s relationship with the trade mark holder. On the contrary, the Respondent is impersonating the trade mark holder.

If, as the Complainant contends, the Respondent is selling counterfeit products, then its behaviour is even more egregious, and plainly illegitimate.

Accordingly, the Panel considers that the Respondent’s use of the disputed domain name cannot be said to be *bona fide*.

Nor is there any evidence that paragraphs 4(c)(ii) or (iii) of the Policy are relevant in the circumstances of this case.

Furthermore, panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or impersonation/passing off) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Based on the available record, 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 considers that the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trade mark in accordance with paragraph 4(b)(iv) of the Policy.

Not only does the disputed domain name reflect the Complainant's mark, but the Respondent has used the disputed domain name for a website that impersonates the Complainant including by prominent use of the Complainant's mark/logo as well as the Complainant's product images. Furthermore, the Respondent has not appeared in this proceeding to deny the Complainant's assertion that the Respondent is selling counterfeit products on the website.

In these circumstances, it is reasonable to infer that the Respondent is intent on commercial gain.

Based on the available record, the Panel finds the third element of the Policy has been established.

### **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, <liftallsale.com> be transferred to the Complainant.

*/Adam Taylor/*

**Adam Taylor**

Sole Panelist

Date: October 27, 2023