

ADMINISTRATIVE PANEL DECISION

Chewy, Inc. v. Gbdsh Tvded
Case No. D2022-4490

1. The Parties

The Complainant is Chewy, Inc., United States of America (“United States”), represented by Demys Limited, United Kingdom (“UK”).

The Respondent is Gbdsh Tvded, China.

2. The Domain Name and Registrar

The disputed domain name <americanjourneypet.store> (“Domain Name”) 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 November 24, 2022. On November 24, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On November 27, 2022, 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 Protection Services, Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 28, 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 November 29, 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 December 2, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 22, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 10, 2023.

The Center appointed Willem J. H. Leppink as the sole panelist in this matter on January 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 following facts are undisputed.

The Complainant is a large American online retailer of pet food and other pet-related products founded in 2011 and headquartered in Florida, United States. In 2019, the Complainant went public on the New York Stock Exchange. The Complainant employs over 21,000 people. At the end of 2021 fiscal year, the Complainant registered approximately USD 8.9 billion in revenue with 20.7 million active customers and became a Fortune 500 company.

One of the Complainant's most important brands is AMERICAN JOURNEY, a pet food brand. It owns various trademark registrations worldwide for AMERICAN JOURNEY, including a trade mark registration for the word mark in China, registered on March 7, 2019, for goods in class 31 and with registration number 23703044 ("Trademark").

The Complainant is also the registrant of <americanjourney.com> which is configured to redirect Internet users to the Complainant's "American Journey by Chewy" website located at "www.chewy.com/brands/american-journey-6422".

The Domain Name was registered on June 27, 2022. The Domain Name resolves to a live website which appears to offer the Complainant's AMERICAN JOURNEY products ("Website"). The Website features *inter alia* the Complainant's AMERICAN JOURNEY logotype, product images, and descriptions that also appear on the Complainant's website.

5. Parties' Contentions

A. Complainant

Insofar as relevant for deciding this matter, the Complainant contends the following.

The Domain Name incorporates the Trademark in its entirety, with the addition of the dictionary word "pet". This adornment does nothing to distinguish the Domain Name from the Trademark, which is the most recognizable element in the Domain Name. As AMERICAN JOURNEY is one of the Complainant's brands of pet food and as such the adornment "pet" is closely associated with it and its activities. The Top-Level Domain ".store" is wholly generic in that it is required only for technical reasons and, as is customary in proceedings under the Policy, it should be disregarded for the purposes of comparison with the Complainant's name and marks. However, in this case the Top-Level Domain ".store" is closely associated with the Complainant as its primary activity is online sale of pet related products. The Complainant therefore contends that the Domain Name is confusingly similar to the Trademark.

The Respondent has no rights or legitimate interests in the Domain Name. The Respondent was not authorized, licensed or permitted to register or use the Domain Name. The Respondent is also not known as AMERICAN JOURNEY. The Domain Name is also not used in connection with a *bona fide* offering of goods or services.

The Respondent is not a genuine reseller of AMERICAN JOURNEY products. The products sold on the Website are counterfeit or at least "parallel import"/"grey market" goods. Even if the products offered on the Website are not counterfeit, the Website does not meet the requirements set out by numerous panel

decisions for a *bona fide* offering of goods. The so-called Oki Data criteria are not met in this case, in particular that the Website does not accurately and prominently disclose the Respondent's relationship (or, more accurately, non-relationship) with the Complainant. On the contrary, by *inter alia* using the Complainant's copyright material, the Respondent is intentionally attempting to mislead Internet users into believing that the Respondent's website is the official Complainant's website, or at least authorized or endorsed by the Complainant.

The Domain Name was registered and is being used in bad faith. The Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Website by creating a likelihood of confusion with the Trademark. The Website lacks any disclaimer that would dispel the confusion regarding the Domain Name and the Website.

B. Respondent

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

6. Discussion and Findings

Pursuant to paragraph 4(a) of the Policy, the Complainant must prove each of the following three elements:

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

Noting the burden of proof on the Complainant, the Respondent's default (*i.e.*, failure to submit a formal response) would not by itself mean that the Complainant is deemed to have prevailed. The Respondent's default is not necessarily an admission that the Complainant's claims are true. See in this regard WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3: "In cases involving wholly unsupported and conclusory allegations advanced by the complainant, or where a good faith defense is apparent (*e.g.*, from the content of the website to which a disputed domain name resolves), panels may find that – despite a respondent's default – a complainant has failed to prove its case. Further to paragraph 14(b) of the UDRP Rules however, panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case *e.g.*, where a particular conclusion is *prima facie* obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent".

A. Identical or Confusingly Similar

The Complainant must demonstrate that it has rights in a trademark or service mark and, if so, the Domain Name must be shown to be identical or confusingly similar to that mark.

The Complainant has shown that it has rights in the Trademark.

As set out in the [WIPO Overview 3.0](#), section 1.7, the first element functions primarily as a standing requirement. The threshold test for confusing similarity between the Domain Name and the Trademark involves a relatively straightforward comparison.

In light of the foregoing, the Panel finds that the Domain Name is confusingly similar to the Trademark. The Domain Name consists of the Trademark in its entirety, with the addition of the word "pet". This additional term does not prevent a finding of confusing similarity.

Therefore, the Panel is satisfied that the first element of the Policy is met.

B. Rights or Legitimate Interests

The Panel has carefully considered the factual allegations that have been made by the Complainant and are supported by the submitted evidence.

In particular, the Respondent has failed to offer the Panel any of the types of evidence set forth in paragraph 4(c) of the Policy from which the Panel might conclude that the Respondent has rights or legitimate interests in the Domain Name, such as:

(i) use or preparation to use the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services prior to notice of the dispute; or

(ii) being commonly known by the Domain Name (as an individual, business or other organization) even if the Respondent has not acquired any trademark or service mark rights; or

(iii) making legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent does not seem to be affiliated with the Complainant in any way. There is no evidence that “americanjourneypet” is the Respondent’s name or that the Respondent is commonly known under this name. There is also no evidence that the Respondent is, or has ever been, a licensee of the Complainant or that the Respondent has ever asked, or has ever been permitted in any way by the Complainant to register or use the Trademark, or to apply for or use any domain name incorporating the Trademark.

Further, the Complainant’s assertions have not been rebutted by the Respondent to indicate whether it has any rights or legitimate interests in the Domain Name. There was also no evidence put forward by the Respondent to indicate that the Respondent was licensed or authorized by the Complainant to use the Trademark.

The Respondent used the Domain Name to operate a website allegedly offering the Complainant’s products.

Assuming that this offer is genuine, which *prima facie* seems to be doubtful, panels have found that domain names identical to a complainant’s trademark carry a high risk of implied affiliation. Even where a domain name consists of a trademark plus an additional term (at the second- or top-level), panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. In between, certain additional terms within the trademark owner’s field of commerce or indicating services related to the brand, may or may not by themselves trigger an inference of affiliation, and would normally require a further examination by the panel of the broader facts and circumstances of the case – particularly including the associated website content – to assess potential respondent rights or legitimate interests. (See [WIPO Overview 3.0](#), section 2.5.1).

The Panel finds that the Website effectively impersonates or suggests endorsement by the Complainant given the prominent use on the Website of the Complainant’s logo and Trademark, the use of official marketing materials and product images, in addition to the lack of an adequate disclosure of the identity of the provider of the Website.

Such impersonation and suggested endorsement is sufficient to conclude that the Respondent lacks rights or legitimate interest in the Domain Name.

Even if the so-called Oki Data test (*Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#)) would have to be applied, the Respondent clearly fails this test anyway as in this case, the Website does not accurately or prominently disclose the Respondent’s relationship with the Complainant, in particular that it has no particular connection with the Complainant.

Therefore, the Panel is satisfied that the second element of the Policy is met.

C. Registered and Used in Bad Faith

The Panel finds that the Domain Name was registered and is being used in bad faith.

The Panel refers to its considerations under section 6.B and adds the following.

Taking into account the lay-out of the Website which appears to be offering the Complainant's AMERICAN JOURNEY products, and which features *inter alia* the Complainant's AMERICAN JOURNEY logotype, product images, and descriptions that also appear on the Complainant's website, the Respondent must have been aware of the existence of the Complainant's activities and rights at the time the Respondent registered the Domain Name. In the Panel's view, there is no plausible explanation why the Respondent registered and used the Domain Name other than the Respondent intending to trade off the goodwill and reputation associated with the Complainant. The Panel finds that the Respondent has intentionally attempted to attract Internet users to the Website by creating a likelihood of confusion with the Trademark and the Complainant.

Last, the Respondent seem to have provided a false name and an incomplete address and did not avail itself of the opportunity to respond to the claims made by the Complainant, which are also additional factors for considering a registration in bad faith (see [WIPO Overview 3.0](#), section 3.6).

Therefore, the Panel is satisfied that the third element of the Policy is met.

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 <americanjourneypet.store> be transferred to the Complainant.

/Willem J. H. Leppink/

Willem J. H. Leppink

Sole Panelist

Date: January 24, 2023