

## **ADMINISTRATIVE PANEL DECISION**

VICI Collection, LLC v. Yuhua11 Lin  
Case No. D2023-1047

### **1. The Parties**

The Complainant is VICI Collection, LLC, United States of America (“United States”), represented by Ropes & Gray LLP, United States.

The Respondent is Yuhua11 Lin, China.

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

The disputed domain name <vici-sale.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 March 8, 2023. On March 9, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 9, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on March 10, 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 March 14, 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 March 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 10, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 12, 2023.

The Center appointed Mihaela Maravela as the sole panelist in this matter on April 20, 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**

According to information in the Complaint, the Complainant provides garments for women, along with fashion advice services. The Complainant has a physical store in Nashville, Tennessee, United States, and provides shipping from its online collections across a dozen countries.

The Complainant has registered various trademarks consisting of or including VICI, such as the United States trademark registration for VICI (word), registered under No. 4,563,922 as of July 8, 2014.

The disputed domain name was registered on July 15, 2022, and resolves to a website purporting to sell VICI-branded goods at discounted prices.

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

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

The Complainant argues that the disputed domain name merely adds the descriptive term "sale" and a hyphen to the Complainant's registered trademark VICI and is therefore confusingly similar to the Complainant's registered trademark.

As regards the second element, the Complainant argues that there is no relationship or affiliation between the Complainant and the Respondent giving rise to any license, permission or other right by which the Respondent could own or use any domain name incorporating the Complainant's registered VICI trademark. The website at the disputed domain name imitates the Complainant's website and falsely pretends to be the Complainant, and to sell the Complainant's products, which evidences the Respondent's intent to attract Internet users who may be confused and believe that it is a website held, controlled by, or somehow related to or endorsed by the Complainant, for the Respondent's commercial gain.

With respect to the third element, the Complainant argues that the Respondent's registration of the disputed domain name, which is confusingly similar to the Complainant's well-known trademark, without any relationship with the Complainant, is evidence of bad-faith registration and use. The website at the disputed domain name purportedly sells the Complainant's products using the exact same photographs as those on the Complainant's official website. The Respondent's use of the Complainant's trademark in the disputed domain name and on the website at the disputed domain name demonstrates the Respondent's attempt to imitate or associate itself with the Complainant, which evidences bad faith.

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

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

## 6. Discussion and Findings

### 6.1 Preliminary Matters

No communication has been received from the Respondent in this case. However, given that the Complaint was sent to the relevant email and postal addresses disclosed by the Registrar, the Panel considers that this satisfies the requirement in paragraph 2(a) of the UDRP Rules to “employ reasonably available means calculated to achieve actual notice”. Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules and to draw inferences from the Respondent’s failure to file any Response. While the Respondent’s failure to file a Response does not automatically result in a decision in favor of the Complainant, the Panel may draw appropriate inferences from the Respondent’s default.

The applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”, and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

### 6.2. Substantive Matters

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following elements:

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

#### A. Identical or Confusingly Similar

The Complainant has proved rights over the VICI trademark. The disputed domain name consists of the VICI trademark, in addition to the term “sale”, a hyphen and the generic Top-Level Domain (“gTLD”) “.com”. The addition of “sale” and of a hyphen does not prevent a finding of confusing similarity with the Complainant’s trademarks. The fact that a domain name wholly incorporates a complainant’s trademark is sufficient to establish identity or confusing similarity for the purpose of the Policy, despite the addition of other words to such trademarks. The addition of another term (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity. See section 1.8 of the [WIPO Overview 3.0](#).

The gTLD is typically ignored when assessing whether a domain name is identical or confusingly similar to a trademark. See section 1.11.1 of the [WIPO Overview 3.0](#).

This Panel concludes that the disputed domain name is confusingly similar to the Complainant’s trademarks and therefore finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

#### B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie* case demonstrating that the Respondent has no rights or legitimate interests in the disputed domain name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

In the present case, the Complainant has established a *prima facie* case that it holds rights over the trademark VICI and claims that the Respondent has no legitimate reason to acquire and use the disputed domain name. There is no evidence that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services, nor does the Respondent appear to engage in any legitimate noncommercial or fair use of the disputed domain name within the meaning of paragraphs 4(c)(i) and (iii) of the Policy. Rather, according to the unrebutted evidence of the Complainant, the website at the disputed domain name is used to offer for sale VICI goods at a discounted price. Under these circumstances it is reasonable to infer that the products offered on the website at the disputed domain name are counterfeit of the Complainant's products. Even if the products were genuine, the lack of any disclaimer on the website at the disputed domain name as to the registrant's relationship with the trademark owner or the lack thereof, would falsely suggest to Internet users that the website to which the disputed domain name resolved is owned by the Complainant or at least affiliated to the Complainant (as per the Oki Data principles outlined in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#)). The Respondent has used the Complainant's trademark on the website to which the disputed domain name resolves to appear to be a website authorized by the Complainant in an act of passing off, which cannot be *bona fide* use.

Moreover, the nature of the disputed domain name, comprising the Complainants' trademark in its entirety, adding the term "sale" related to the Complainant's online sale activities cannot be considered fair as it falsely suggests an affiliation with the Complainant that does not exist (see section 2.5 of the [WIPO Overview 3.0](#)).

Also, there is no evidence that the Respondent is commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy.

The Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent failed to rebut that *prima facie* case because the Respondent did not respond to the Complainant's contentions.

With the evidence on file, the Panel finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

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

According to paragraph 4(a)(iii) of the Policy, the Complainant must establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith.

The Complainant's registration and use of the relevant trademarks predate the date at which the Respondent registered the disputed domain name. The disputed domain name resolves to a website reproducing the Complainant's trademark and purportedly offering for sale the Complainant's products but at a much lower price. Given the distinctiveness of the Complainant's trademark, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademarks, and to target those trademarks.

The inherently misleading disputed domain name resolves to a website, which ostensibly offers the Complainant's products at a much lower price. As such, the disputed domain name suggests affiliation with the Complainant in order to attract consumers and offer products that appear to be counterfeit.

Moreover, the Respondent has not formally participated in these proceedings and has failed to rebut the Complainant's contentions and to provide any evidence of actual or contemplated good-faith use and indeed none would seem plausible.

In the Panel's view, the circumstances of the case represent evidence of registration and use in bad faith of the disputed domain name. The Respondent failed to bring evidence as to the contrary. Consequently, the Panel concludes that the condition of paragraph 4(a)(iii) of the Policy is fulfilled.

## **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, <vici-sale.com> be transferred to the Complainant.

*/Mihaela Maravela/*

**Mihaela Maravela**

Sole Panelist

Date: May 4, 2023