

ADMINISTRATIVE PANEL DECISION

Sugartown Worldwide, LLC v. Xiuyun Su
Case No. D2023-2384

1. The Parties

The Complainant is Sugartown Worldwide, LLC, United States of America, represented by Kilpatrick Townsend & Stockton LLP, United States of America.

The Respondent is Xiuyun Su, China.

2. The Domain Name and Registrar

The disputed domain name <lilly-pulitzers.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 June 1, 2023. On June 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 2, 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 June 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 2, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 4, 2023.

The Center appointed Federica Togo as the sole panelist in this matter on July 25, 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 is the registered owner of many trademarks consisting of or containing in several jurisdictions LILLY PULITZER, e.g., United States of America trademark registration no. 1157374 LILLY PULITZER (word) registered on June 9, 1981 for goods in class 25.

The disputed domain name <lilly-pulitzers.com> was registered on August 25, 2022 and resolves to a website prominently displaying the Complainant's trademarks, and offering for sale apparel under the Complainant's trademarks at discounted prices and further reproducing the Complainant's copyrighted model and product photographs.

5. Parties' Contentions

A. Complainant

It results from the Complainant's allegations that it is a designer, marketer, and distributor of upscale collections of women's and girl's dresses, sportswear, and other products, including furniture and bedding. According to the Complainant, the LILLY PULITZER brand originally was created as an apparel line in the late 1950's. Over the years, it has expanded its LILLY PULITZER line of products beyond apparel to include furniture, bedding and home fashions, stationery, sunglasses, eyewear, watches and home furnishings.

The Complainant contends that its trademark LILLY PULITZER is distinctive and well known.

As a complement to its retail stores, the Complainant operates a website at the domain name <lilypulitzer.com>, advertising and selling its products.

The Complainant contends that the disputed domain name is confusingly similar to the Complainant's trademark, since it contains its trademark LILLY PULITZER in its entirety. The only differences between the Complainant's mark and the disputed domain name is the addition of a hyphen between "Lilly" and "Pulitzer" and an "s" added to pluralize the Complainant's Mark. These insignificant differences render the disputed domain name virtually identical to the Complainant's mark.

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name. According to the Complainant, its first use and first registration of its LILLY PULITZER Mark long predates any use the Registrant has made of the disputed domain name, thus the Respondent is charged with constructive knowledge of the Complainant's prior use and trademark rights in the LILLY PULITZER mark. In addition, there is no relationship between the Complainant and the Respondent giving rise to any license, permission, or other right by which Respondent could own or use any domain name incorporating its mark. The Respondent cannot establish that it is commonly known by the disputed domain name, as there is no indication that the Respondent has conducted any legitimate business under the name "Lilly-Pulitzers". Furthermore, the Respondent is not making any legitimate noncommercial or fair use of the disputed domain name. By operating the infringing website under the Complainant's LILLY PULITZER Mark (which is prominently displayed on the home pages and throughout the site), using Complainant's copyrighted model and product photographs, and purporting to offer LILLY PULITZER products, there can be no doubt Respondent is intentionally impersonating the Complainant.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. According to the Complainant, the Respondent's bad-faith registration and use of the disputed domain name is established by the fact that it purposefully incorporates the well-known LILLY PULITZER mark and was registered long after this mark became well-known to consumers. The Respondent is using the disputed domain name for personal commercial gain, by leveraging the notoriety of the LILLY PULITZER mark to attract users to the infringing website.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to “decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”. Paragraph 4(a) of the Policy requires a complainant to prove each of the following three elements in order to obtain an order that the disputed domain name be transferred or cancelled:

- (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 has been registered and is being used in bad faith.

The Panel will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must establish rights in a trademark or service mark and secondly establish that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights.

It results from the evidence provided, that the Complainant is the owner of various trademark registrations for LILLY PULITZER as indicated in the Factual Background of this Decision.

Prior UDRP panels have found that a disputed domain name is confusingly similar to a complainant's trademark where the disputed domain name incorporates the complainant's trademark in its entirety (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)) at section 1.7.

This Panel shares this view and notes that the Complainant's registered trademark LILLY PULITZER is fully included in the disputed domain name, with the addition of the letter “s” and the addition of a hyphen between “Lilly” and “Pulitzer”. Furthermore, it is the view of this Panel that the addition of the letter “s” and hyphen in the disputed domain name cannot prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark since the Complainant's trademark is clearly recognizable in the disputed domain name (see [WIPO Overview 3.0](#) at section 1.8).

Moreover, this Panel emphasizes that the case at hand is a typical case of “typosquatting”, which occurs when a domain name consists of a misspelling of the complainant's trademark. According to the consensus view of UDRP case-law, a domain name which consists of a common, obvious or intentional misspelling of a trademark normally is found to be confusingly similar to such trademark, where the domain name contains sufficiently recognizable aspects of the relevant mark, see [WIPO Overview 3.0](#) at section 1.9 with further references.

Finally, the generic Top-Level Domain (“gTLD”) “.com” of the disputed domain name may be disregarded under the first element confusing similarity test (see [WIPO Overview 3.0](#) at section 1.11.1).

In the light of the above, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must secondly establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests to the disputed domain name.

In the Panel's view, based on the undisputed allegations stated above, the Complainant has made a *prima facie* case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name.

According to the Complaint, which has remained unchallenged, the Complainant has no relationship in any way with the Respondent and did, in particular, not authorize the Respondent's use of the Complainant's trademark LILLY PULITZER, e.g., by registering the disputed domain name comprising the said trademark entirely.

Furthermore, the Panel notes that there is no evidence showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

Moreover, the Panel notes that the disputed domain name contains the Complainant's registered trademark LILLY PULITZER, that trademark is not a trademark that one would legitimately adopt as a domain name unless to suggest an affiliation with the Complainant. The Panel finds it most likely that the Respondent registered the disputed domain name with the intention to take advantage of the Complainant's reputation by registering a domain name containing the Complainant's trademark with the intent to attract Internet users for commercial gain.

Furthermore, the composition of the disputed domain name, being a typical case of typosquatting, signals an intention on the part of the respondent (corroborated by the infringing website content) to confuse users seeking or expecting the Complainant.

This is also confirmed by the content of the website to which the disputed domain name resolves, prominently displaying without authorization the Complainant's trademark, utilizing the Complainant's copyrighted model and product photographs, and offering for sale apparel under the Complainant's trademarks.

It is acknowledged that once the panel finds a *prima facie* case is made by a complainant, the burden of production under the second element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name (see [WIPO Overview 3.0](#) at section 2.1). Since the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name and the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds, in the circumstances of this case, that the Respondent has no rights or legitimate interests in the disputed domain name.

The Panel finds that the Complainant has therefore satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must thirdly 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. One of these circumstances is that the Respondent by using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to its 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 its website or location or of a product or service on its website or location (paragraph 4(b)(iv) of the Policy).

It is the view of this Panel that these circumstances are met in the case at hand.

It results from the Complainant's documented allegations that the disputed domain name resolves to a website prominently displaying the Complainant's trademarks, and offering for sale apparel under the Complainant's trademarks and further reproducing the Complainant's copyrighted model and product photographs.

For the Panel, it is therefore evident that the Respondent positively knew the Complainant's mark. Consequently, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent also knew that the disputed domain name included the Complainant's trademark when it registered the disputed domain name. This is underlined by the fact that the disputed domain name is clearly constituted by the Complainant's trademark followed by the letter "s", being a typical case of typosquatting. Registration of a disputed domain name which contains a third party's mark, in awareness of said mark and in the absence of rights or legitimate interests amounts to registration in bad faith. In the circumstances of this case, the Panel finds that the registration of the disputed domain name was in bad faith.

Finally, the further circumstances surrounding the disputed domain name's registration and use confirm the findings that the Respondent has registered and is using the disputed domain name in bad faith (see [WIPO Overview 3.0](#) at section 3.2.1):

- (i) the nature of the disputed domain name (a typical case of typosquatting);
- (ii) the content of the website to which the disputed domain name directs, displaying the Complainant's trademark, and purportedly offering for sale apparel under the Complainant's trademark, and further reproducing the Complainant's copyrighted model and product photographs;
- (iii) a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent's choice of the disputed domain name.

The Panel finds that the Complainant has therefore satisfied 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 <lilly-pulitzers.com> be transferred to the Complainant.

/Federica Togo/

Federica Togo

Sole Panelist

Date: August 8, 2023