

ADMINISTRATIVE PANEL DECISION

Next Group Plc v. Якимов Максим Владимирович/Yakimov Maxim Vladimirovich

Case No. D2023-3542

1. The Parties

The Complainant is Next Group Plc, United Kingdom, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Якимов Максим Владимирович/Yakimov Maxim Vladimirovich, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <loveandroses.store> is registered with Hosting Ukraine LLC (ua.ukraine) (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on August 22, 2023. On August 23, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 25, 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 (Hosting Ukraine LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 25, 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 August 28, 2023.

On August 25, 2023 the Center informed the Parties in English and Russian that the language of the registration agreement for the disputed domain name was Russian. On August 28, 2023, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant's request.

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 in English and Russian, and the proceedings commenced on September 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 24, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 3, 2023.

The Center appointed Assen Alexiev 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 is a British multinational clothing, footwear and home products retailer founded in 1864. It has around 700 stores in the United Kingdom, Europe, Asia and the Middle East. In 2021, the Complainant launched its Love & Roses boutique brand of women's everyday wear.

The Complainant's wholly owned subsidiary Lipsy Limited is the owner of the following trademark registrations for the sign "LOVE&ROSES" (the "LOVE&ROSES trademark"):

- the European Union trademark LOVE&ROSES with registration No. 018280430, registered on February 18, 2021 for goods and services in International Classes 18, 25 and 35; and
- the International trademark LOVE&ROSES with registration No. 1683110, registered on January 6, 2022 for goods and services in International Classes 18, 25 and 35, designating Ukraine.

The Complainant's domain name <loveandroses.co.uk>, registered on November 6, 2020, redirects to the Complainant's official website at "www.next.co.uk", displaying Love & Roses branded goods.

The disputed domain name was registered on February 27, 2023. It is currently inactive. At the time of filing of the Complaint, the disputed domain name resolved to a website displaying the text "Love&Roses Site is undergoing maintenance. Site will be available soon. Thank you for your patience!", and the copyright notice "© Love&Roses 2023".

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.

The Complainant states that the disputed domain name is confusingly similar to its LOVE&ROSES trademark, because it consists solely of this trademark. According to the Complainant, the replacement of the ampersand with the word "and" does not diminish the confusing similarity between the disputed domain name and the Complainant's trademark, as they mean the same.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it has obtained no authorization to use the Complainant's LOVE&ROSES trademark in any manner, including in domain names. The Complainant adds that the Respondent is not commonly known by the disputed domain name and his name does not resemble it. According to the Complainant, the Respondent has not used the disputed domain name for any legitimate purpose, because it directs Internet users to a website that reads "Site is undergoing maintenance" and generally lacks content.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. It notes that it has marketed and sold its goods and services using the LOVE&ROSES trademark for two years prior to the Respondent's registration of the disputed domain name on February 27, 2023. According to the Complainant, the Respondent had knowledge of the Complainant's LOVE&ROSES trademark when registering the disputed domain name, whose composition shows that the Respondent registered it targeting the Complainant's LOVE&ROSES trademark.

The Complainant notes that it first tried to contact the Respondent on June 21, 2023, through a cease-and-desist letter sent by email, but its efforts to solve the matter amicably was unsuccessful.

B. Respondent

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

6. Discussion and Findings

6.1. Procedural issue - Language of the proceeding

The language of the Registration Agreement for the disputed domain name is Russian. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the Parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#))), section 4.5.1).

The Complaint was filed in English. The Complainant requests that the language of the proceeding, stating that it is unable to communicate in Russian and the translation of the Complaint would burden it and delay the proceedings. The Complainant points out that the website at the disputed domain name features the Complainant's LOVE&ROSES trademark and includes the English language phrases "Site is undergoing maintenance" and "Site will be available soon. Thank you for your patience!".

The Center has sent all its communications to the Respondent in both English and Russian, and has invited the Respondent to express its views on the language of the proceeding. The Respondent has not submitted a Response or any objections to the Complainant's request that the proceedings be held in English.

Taking into account all the above, the Panel considers that the Respondent would not be disadvantaged if the language of the proceeding is English, and that using the English language in this proceeding would be fair and efficient.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.2. Further Procedural Considerations – Location of the Respondent

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition. The location of the Respondent disclosed by the Registrar appears to be in Ukraine, which is subject to an international conflict at the date of this Decision that may impact case notification. It is therefore appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

The record shows that the Center's written notice could not be delivered by postal mail to the Respondent's mailing address disclosed by the Registrar, in terms of the paragraph 2(a)(i) of the UDRP Rules. However, it appears that the Notification of Complaint's emails were delivered to the Respondent's email address, as provided by the Registrar. There is no evidence that the case notification was not successfully delivered to the disclosed Respondent's email address. The Notification of Complaint and the written communication were also sent by the Center via the Registrar's privacy protection email address for the disputed domain name and at the privacy service postal address, and both Notification of Complaint emails and written communication were delivered.

As noted above, the Complainant has submitted evidence showing that the disputed domain name previously resolved to a website that contained notices in English and displayed the Complainant's LOVE&ROSES trademark. Following the submission of the Complaint, the disputed domain name was deactivated. The Respondent thus appears to be capable of controlling the disputed domain name and its content and apparently has received notification of the Complaint by email. It is also reasonable to assume that the correspondence from the Center delivered to the Registrar's privacy protection email address for the disputed domain name and to the privacy service postal address have been transmitted to the Respondent. Therefore, it appears that the Respondent would have been able to formulate and file a Response in the administrative proceeding in case it wished to do so.

The Panel therefore concludes that the Respondent allegedly located in Ukraine has been given a fair opportunity to present its case, and so that the administrative proceeding takes place with due expedition, the Panel will proceed to a Decision accordingly.

6.3. Substantive Issues

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 trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of the LOVE&ROSES trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Complainant has submitted evidence that its wholly owned subsidiary Lipsy Limited is the owner of the LOVE&ROSES trademark. As discussed in section 1.4.1 of the [WIPO Overview 3.0](#), a trademark owner's affiliate such as a subsidiary of a parent or of a holding company, or an exclusive trademark licensee, is considered to have rights in a trademark under the UDRP for purposes of standing to file a complaint. The Panel sees no reason not to apply the same approach here, and finds that the Complainant has rights in the LOVE&ROSES trademark for the purposes of the Policy.

The Panel finds the LOVE&ROSES trademark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the LOVE&ROSES trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The only difference between the LOVE&ROSES trademark and the disputed domain name is that the ampersand in the trademark is replaced by the word "and" in the disputed domain name. Since they have the same meaning, the Panel finds that this difference does not prevent a finding of confusing similarity between the disputed domain name and the LOVE&ROSES trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel therefore finds that 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 recognized 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.

There is no indication that the Respondent is commonly known by the disputed domain name, that it has used the disputed domain name in connection with a *bona fide* offering of goods or services or that it has carried out a legitimate noncommercial or fair use of it. The evidence in the case shows that the disputed domain name has resolved to a webpage containing the text “Love&Roses” both at the top and at the bottom where it was included in the copyright notice. In both places, this text is written with an ampersand, rather than with the word “and”, which makes it identical to the Complainant’s trademark. The disputed domain name is confusingly similar to the LOVE&ROSES trademark and to the Complainant’s domain name <loveandroses.co.uk>, and is registered in the “.store” generic Top-Level Domain (“gTLD”), which makes it appear as related to an online shop selling the Complainant’s Love&Roses collection. In the absence of any allegation or evidence to the contrary, all this supports the Complainant’s *prima facie* case that the Respondent is targeting the Complainant and its LOVE&ROSES trademark with the registration and use of the disputed domain name, and that it does not have rights or legitimate interests in it.

Based on the available record, the Panel therefore finds that 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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this dispute. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put. [WIPO Overview 3.0](#), section 3.3.

The webpage at the disputed domain name stated that it was undergoing maintenance and would be available soon. As discussed above in this decision, the Respondent has failed to submit a Response or to provide any evidence of actual or contemplated good-faith use of the disputed domain name, and the composition of the disputed domain name, being confusingly similar to the Complainant's LOVE&ROSES trademark and to the Complainant's domain name <loveandroses.co.uk>, creates an appearance that it is related to an online shop selling the Complainant's Love&Roses clothing collection. This appearance is further reinforced by the content of the webpage at the disputed domain name which reproduces the Complainant's LOVE&ROSES trademark with the ampersand rather than with the word "and", as in the disputed domain name itself, and by the fact that this trademark is included in the copyright notice at the bottom of the webpage. In these circumstances, it appears as more likely that the Respondent's intentions for the registration and use of the disputed domain name were to target the Complainant and its distinctive LOVE&ROSES trademark in an attempt to attract, for commercial gain, Internet users by creating a likelihood of confusion with this trademark.

Taking all the above into account, the Panel therefore finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Based on the available record, the Panel therefore finds that 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 <loveandroses.store> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: October 27, 2023