

ADMINISTRATIVE PANEL DECISION

Revlon Consumer Products LLC v. umer zia
Case No. D2023-5411

1. The Parties

The Complainant is Revlon Consumer Products LLC, United States of America, represented by Dorsey & Whitney, LLP, United States of America.

The Respondent is umer zia, Pakistan.

2. The Domain Name and Registrar

The disputed domain name <revloncolor.com> is registered with GoDaddy.com, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 29, 2023. On January 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 2, 2024, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 8, 2024, 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 amendment to the Complaint on January 8, 2024.

The Center verified that the Complaint together with the amendment to 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 January 11, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 31, 2024. The Respondent sent an email communication to the Center on January 11, 2024. On January 11, 2024, the center sent a possible settlement email to the Parties. The Complainant did not request for a suspension of the proceedings. An informal reply to the Complainant's contentions was filed with the Center on January 19, 2024. The Center notified Commencement of Panel Appointment Process on February 1, 2024.

The Center appointed John Swinson as the sole panelist in this matter on February 5, 2024. 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 manufactured, marketed, and sold beauty products under the well-known REVLON trademark continuously since 1932.

The Complainant pioneered the use of celebrities in advertising, featuring prominent actors, singers, and models from around the world. This distinguished list includes, for example, Halle Berry, Emma Stone, Christie Brinkley, Cindy Crawford, Linda Evangelista, Audrey Hepburn, Elle Macpherson, Claudia Schiffer, Tom Selleck, Brooke Shields, and Frank Sinatra.

The Complainant owns many trademark registrations for REVLON including Pakistan Registration No. 24716 and 117185, and United States of America Registration No. 1625545, registered December 4, 1990.

The disputed domain name was registered on October 10, 2023.

The Respondent did not file a formal Response, so little information is known about the Respondent. The Respondent has an address in Lahore, Pakistan. According to the Respondent's informal email communications, the Respondent is associated with a company registered in Pakistan as a partnership under the name of MS/Revlon Color Co.

The website at the disputed domain name is titled "Revlon Colour Co", with the term "Revlon" in larger font and using the Complainant's REVLON stylized device. The website advertises what appears to be the Complainant's products. A consumer cannot buy directly from the website. The website appears to invite consumers to visit the Respondent's premises in Lahore.

The Complainant's lawyers in India sent a detailed cease and desist letter to the Respondent on November 29, 2023. The Complainant did not receive a response to that letter.

On January 10, 2024, the Respondent emailed the Center, stating: "We are already unpublished site". At the date of this decision, the website at the disputed domain name is active.

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 that the registration and use in any form of a famous trademark which belongs to somebody else, without proving any rights or legitimate interests in it, represents bad faith registration and use.

The Complainant states that the Respondent's alleged retail shop referred to on the website at the disputed domain name is listed as located in Lahore, Pakistan, along with business hours. However, an onsite investigation of the area did not disclose a storefront and it is not believed that any such storefront exists.

The Complainant also contends that the Panel should make a negative inference from the Respondent's failure to respond to the Complainant's cease and desist letter.

B. Respondent

The Respondent filed an informal reply to the Complainant's contentions. The Respondent contends that the disputed domain name is not identical to the Complainant's REVLON trademark. The Respondent also states that he is doing business in Pakistan and that he has applied to the Intellectual Property Organization of Pakistan. The Respondent also asserts that "a company of mine is registered in Pakistan as a partnership under the name of MS/Revlon Color Co."

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (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 onus of proving these elements is on the Complainant.

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced 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.

Although the addition of other terms (here, "color") may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available 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.

The Respondent is an individual, and states that he is associated with a company or partnership with the name "MS/Revlon Color Co". No evidence was provided to prove the name of this entity or the Respondent's association to this entity.

An asserting party needs to establish that it is more likely than not that the claimed fact is true. An asserting party cannot meet its burden by simply making conclusory statements unsupported by evidence. To allow a party to merely make factual claims without any supporting evidence would essentially eviscerate the requirements of the Policy as both complainants or respondents could simply claim anything without any proof. For this reason, UDRP panels have generally dismissed factual allegations that are not supported by any bona fide documentary or other credible evidence. *Captain Fin Co. LLC v. Private Registration, NameBrightPrivacy.com / Adam Grunberg*, WIPO Case No. [D2021-3279](#).

The website at the disputed domain name promotes what may (and appear to) be the Complainant's products. This raises the question of whether the Respondent would have a right or legitimate interest under the principles set out in *Ok! Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#). The Complainant does not explicitly address such principles in the Complaint but does say that the Complainant has no relationship with the Respondent. The *Ok! Data* principles describe a fair use exception (for legitimate resellers, distributors and dealers) to a general rule that it is generally not permissible to register domain name that is the same as (or confusingly similar to) another's trademark to seek to generate traffic to a competing commercial website. . *WABCO IP Holdings LLC v. Hasan Mohammadnia*, WIPO Case No. [D2016-2235](#).

Upon review of the Respondent's website, while the products displayed bear the Complainant's trademark, it is unclear if the Respondent is selling genuine products of the Complainant. (In the informal Response, the Respondent makes negative comments about the Complainant. It would be puzzling if the Respondent was, considering the Respondent's views of the Complainant, selling genuine products from the Complainant.) In any event, the Respondent's website does not accurately disclose the Respondent's relationship with the Complainant or include any disclaimers; to the contrary, at the footer, it says "Revlon Color Co Pakistan" which gives the (false) impression it is associated with the Complainant. Accordingly, the Panel finds that the *Ok! Data* factors do not assist the Respondent in this case.

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.

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by the complainant. *Fifth Street Capital LLC v. Fluder (aka Pierre Olivier Fluder)*, WIPO Case No. [D2014-1747](#).

The Respondent's conduct demonstrates the Respondent's knowledge of the Complainant and the Complainant's trademark. By registering the disputed domain name which includes the Complainant's famous trademark along with the word "color", and then using the disputed domain name to operate a website that prominently displays the Complainant's trademark and logo, demonstrates that the Respondent specifically knew of and targeted the Complainant.

The website at the disputed domain name potentially misleads Internet users into believing that this website is operated or sponsored by the Complainant or, alternatively, that the website is operated by the Complainant's official distributor or licensee in Pakistan.

As stated above, the Respondent has not presented any evidence of good faith that he might have.

The Panel finds that the Respondent has intentionally attempted to attract for commercial gain Internet users to its website by creating likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the website under paragraph 4(b)(iv) of the Policy. This also could disrupt the business of the Complainant.

The Panel finds that the Complainant has established the third element 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 <revloncolor.com> be transferred to the Complainant.

/John Swinson/

John Swinson

Sole Panelist

Date: February 19, 2024