

ADMINISTRATIVE PANEL DECISION

Textbrook Limited and Concept Group, LLC v. Ruslan Kasumov
Case No. D2022-0823

1. The Parties

The Complainants are Textbrook Limited, Cyprus (“Complainant 1”) and Concept Group, LLC, Russian Federation (“Complainant 2”) (hereinafter collectively “Complainants”), represented by Concept Group, LLC, Russian Federation.

The Respondent is Ruslan Kasumov, Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <infinity-lingerie.website> is registered with TLD Registrar Solutions Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 9, 2022. On March 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 14, 2022, 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 18, 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 March 24, 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 March 25, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 14, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 19, 2022.

The Center appointed Irina V. Savelieva as the sole panelist in this matter on April 25, 2022. 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 Complainants in the proceedings are Textbook Limited and Concept Group, LLC. They are known in the Russian Federation for 14 years in the business of women's and children's' clothing and women's underwear.

Their business portfolio includes, *inter alia*, the brand INFINITY LINGERIE.

The trademark INFINITY LINGERIE is registered by Complainant 1 in the Russian Federation for the following goods:

- Russian Federation trademark registration INFINITY LINGERIE (word) No.551162 registered on August 24, 2015 for the classes 25 and 35;
- Russian Federation trademark registration INFINITY LINGERIE (word/design) No.474380 registered on November 12, 2012 for the classes 18 and 25;
- Russian Federation trademark registration INFINITY LINGERIE (word/design) No.432599 registered on March 21, 2011 for the classes 25, 35 and 42.

Complainant 2 is the exclusive licensee of Complainant 1 in the Russian Federation, in respect of its trademarks, including a series of trademarks INFINITY LINGERIE.

Complainant 2 has an official website and online shop for the brand Infinity Lingerie at "www.inflin.ru".

The Respondent registered the disputed domain name <infinity-lingerie.website> on September 4, 2020.

The disputed domain name resolves to a website, which allegedly offered for sale products similar to the Complainants

5. Parties' Contentions

A. Complainant

a) Identical or confusingly similar

The Complainants contend that the disputed domain name <infinity-lingerie.website> is confusingly similar to the trademarks INFINITY LINGERIE because of graphic, phonetic and semantic similarity.

Further, the Complainants draw attention to the fact the hyphen does not add additional distinctiveness and does not affect the perception of the disputed domain name in comparison with the trademarks.

The Complainants, therefore, submit that the disputed domain name is similar to the registered trademarks INFINITY LINGERIE of the Complainants.

b) The Respondent has no rights or legitimate interests

The Complainants have not found that the Respondent has any rights or legitimate interests in the disputed domain name <infinity-lingerie.website>. The Complainants have not authorized the Respondent to use any of its trademarks or to register a domain name incorporating the trademark INFINITY LINGERIE of the Complainants.

The Respondent is not involved in *bona fide* offering of goods. In addition, the Respondent is not been known by the domain name.

On the contrary, the website linked to the disputed domain name could mislead and divert the consumers and tarnish the reputation of the Complainants.

Therefore, the Complainants contend that the Respondent does not have any rights or legitimate interests in the disputed domain name.

c) The disputed domain name was registered and is being used in bad faith

It is evident from the Respondent's use of the disputed domain name that the Respondent registered and used the disputed domain name with intention to attract Internet users for commercial gain to the website by creating a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of the website.

The website linked to the disputed domain name contains misleading information that it represents the online store of the women's underwear "Infinity Lingerie". In addition, the Complainants' attempt to purchase an item from the website was unsuccessful.

Finally, the Complainants note the fact that the Respondent was using untrue and deceptive information for his address and phone number indicates bad faith.

Consequently, the Complainants conclude that the Respondent should be considered to have registered and used the disputed domain name in bad faith.

Complainants request that the disputed domain name being transferred to Complainant 2.

B. Respondent

The Respondent did not reply to the Complainants' contentions.

6. Discussion and Findings

The Panels finds that the Respondent was given notice of this proceeding in accordance with the Rules.

However, the Respondent failed to file a response to the Complaint and has not sought to answer to the Complainant's assertions, evidence or contentions in any other manner. The Panel finds that the Respondent has been given a fair opportunity to present his case and finds no exceptional circumstances why it could not do so; and the Panel will proceed to the decision based on the Complaint in accordance with paragraph 5(f) of the Rules.

The Respondent's default does not automatically result in a decision in favor of the Complainant. The Complainant must still prove the elements required by the Policy. In accordance with paragraph 4(a) of the Policy, in order to succeed in this proceeding and obtain the transfer of the disputed domain name, the Complainant must prove that the three following elements are satisfied:

- (i) the disputed 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 disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

Pursuant to paragraph 15(a) of the Rules the Panel shall decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable. Moreover, in accordance with paragraph 14(b) of the Rules, the Panel may draw such inferences, as it considers appropriate from the Respondent's failure to reply to the Complainant's assertions and evidence or to otherwise contest the Complaint. In the circumstances, the Panel's decision is based upon the Complainant's assertions, evidence and inferences drawn from the Respondent's failure to reply.

A. Identical or Confusingly Similar

The Complainants have registered the trademarks INFINITY LINGERIE in word and design format in the Russian Federation from 2012. The Complainants submit that the disputed domain name is identical to their trademark. The disputed domain name incorporates the trademark INFINITY LINGERIE in its entirety and add a descriptive word "website".

The Panel refers to consistent practice and past UDRP decisions, which confirm that incorporating a trademark in its entirety with addition of other terms does not prevent a finding of confusing similarity. It was specifically highlighted in section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), which states that "this test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name. In some cases, such assessment may also entail a more holistic aural or phonetic comparison of the Complainant's trademark and the disputed domain name to ascertain confusing similarity."

The addition of the gTLD ".website" does not prevent a finding of confusing similarity. The same shall apply to the addition of hyphen between the words in the disputed domain name (see sections 1.8, 1.9 and 1.11 of the [WIPO Overview 3.0](#)).

In the Panel's view, the INFINITY LINGERIE trademark which is reproduced in its entirety is clearly recognizable within the disputed domain name.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainants' trademarks.

The Panel finds that the Complainants have satisfied its burden of proof under paragraph 4(a)(i) of the Policy as the first element of the Policy.

B. Rights or Legitimate Interests

The Complainants contend that the Respondent has no rights or legitimate interests in the disputed domain name.

Even though the Respondent has not filed a response to the Complaint and has not contested the Complainants' assertions, the Panel will have to consider whether the Respondent's use of the disputed domain name would indicate the Respondent's rights or legitimate interests in the disputed domain name.

According to paragraph 4(c) of the Policy the following circumstances, if proved, demonstrate a respondent's rights or legitimate interests in a domain name:

- (i) the respondent's use of or demonstrable preparations to use the domain name or corresponding name in connection with a *bona fide* offering of goods or services prior to notice of the dispute; or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the respondent is making a 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.

By not responding to the Complainant's contentions, the Respondent in this proceeding has not attempted to demonstrate his rights or legitimate interests.

The Panel further notes that the fact that the Respondent was using the disputed domain name for selling women's lingerie *per se* does not constitute a *bona fide* offering of goods or services.

According to the Complainants, the website at the disputed domain name creates an impression that it is associated with the Complainants and it contains misleading information that it represents the online store of women's underwear "Infinity Lingerie".

The Panel review of the evidence submitted by the Complainants confirm that this site is using not only the word element of trademark of the Complainants but also its designs.

In addition, the Panel notes that the Complainants' attempt to purchase an item from the website was unsuccessful.

The described use of the disputed domain name in the Panel's view, proves that the Respondent was not involved in *bona fide* offering of goods or services in respect of the disputed domain name under paragraph 4(c)(i) of the Policy.

According to *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#), the use of a trademark as a domain name by an authorized or non-authorized third party is only to be regarded as a *bona fide* offering of goods or services within the meaning of paragraph 4(c) of the Policy if the following conditions are satisfied:

- a) the respondent's use of must actually be offering the goods or services at issue;
- b) the respondent must use the site to sell only the trademarked goods; otherwise, it could be using the trademark to bait Internet users and then switch them to other goods;
- b) the site must accurately disclose the registrant's relationship with the trademark owner; it may not, for example, falsely suggest that it is the trademark owner, or that the website is the official site, if, in fact, it is only one of many sales agents; and
- d) the respondent must not try to corner the market in all domain names, thus depriving the trademark owner of reflecting its own mark in a domain name.

As the Complainants contest with reference to its evidence, the Respondent fails at least on two elements of the above test: firstly, the Respondent does not publish a disclaimer on his website; and secondly, the Respondent presents himself as the trademark owner by using the Complainants' official INFINITY LINGERIE trademarks on his website.

As to paragraph 4(c)(ii) of the Policy, there is no evidence that the Respondent has been commonly known by the disputed domain name.

The Panel recalls that the Respondent registered the disputed domain name in 2021; this is long after the Complainants have registered their INFINITY LINGERIE trademarks starting from 2012. The trademarks

and the Complainants' activity are known and recognizable within its industry.

There is no further evidence that the Respondent is making or has made legitimate noncommercial or fair use of the disputed domain name. Moreover, the Respondent is using the disputed domain name with the purpose of gaining profit. Therefore, paragraph 4(c)(iii) of the Policy does not apply.

The Panel finds the Complainants have established its *prima facie* case to show that the Respondent has no rights or legitimate interests in the disputed domain name, which has not been rebuffed by the Respondent, and, accordingly, the Complainants have satisfied the requirements under paragraph 4(a)(ii) of the Policy as the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy, provides that the following circumstances are deemed to evidence that a respondent has registered and is using a domain name in bad faith:

- (i) circumstances indicating that the respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of the complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent 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.

The Complainants contend that the Respondent has registered the domain name in bad faith because the disputed domain name has been registered with the Respondent's knowledge of the Complainant's trademarks, business and reputation.

The Complainants use and registration of INFINITY LINGERIE and trademarks predate any use the Respondent may have made of the disputed domain name. The disputed domain name was registered on September 4, 2021, many years after the Complainants, first use of their registered trademarks.

The website at the disputed domain name allegedly offers for sale the products similar to the Complainants'.

It is the Panel's view, under the present circumstances, that the Respondent most likely registered the disputed domain name with full awareness of the Complainants' trademarks as well as the goodwill associated with them.

It is clear in the Panel's opinion that in the mind of an Internet user, the disputed domain name could be directly associated with the Complainants' trademarks, which is likely to be confusing to the public as suggesting either an operation of the Complainants or one associated with or endorsed by it (see *AT&T Corp. v. Amjad Kausar*, WIPO Case No. [D2003-0327](#)).

Further, the Respondent has never been granted permission to register the disputed domain name. The Respondent takes advantage of INFINITY LINGERIE trademark by intentionally attempting to attract Internet users to the Respondent's website by creating a likelihood of confusion with the Complainants' trademarks

as to the source, sponsorship, affiliation or endorsement of the Respondent's website or a product or service on the Respondent's website.

The Panel finds that the Respondent's registration and use of the disputed domain name shows the Respondent's intent to rely on a risk of confusion with the Complainants' activity and trademarks as to the source, sponsorship, affiliation or endorsement of the disputed domain name and the website associated with it.

This conduct has been considered as bad faith under the Policy, as in *Philip Morris Incorporated v. Alex Tsypkin*, WIPO Case No. [D2002-0946](#), in which the Panel stated: "It follows from what has been said about legitimacy that the Panel is satisfied that the Respondent is using the disputed domain name intentionally to attempt to attract, for commercial gain, Internet users to his web site by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of his website." Pursuant to Policy paragraph 4(b)(iv), this constitutes evidence of both bad faith registration and bad faith use, for the purposes of paragraph 4(a)(iii)."

In addition, the Panel takes a notice of the Complainants' allegation that the Respondent used false and deceptive information about his address and telephone number for registration of the disputed domain name. Moreover, the Panel considers as an inference of bad faith registration the fact the Respondent used Whois privacy services. According to the [WIPO Overview 3.0](#), the provision of false contact information underlying a privacy of proxy service is further evidence of bad faith." ([WIPO Overview 3.0](#), section 3.6).

These findings, together with the finding that the Respondent has no rights or legitimate interests in the disputed domain name, lead the Panel to conclude that the disputed domain name was registered and is being used by the Respondent in bad faith.

Therefore, the Panel finds that the Respondent has registered and used the disputed domain name in bad faith and, accordingly, the Complainants have satisfied the requirements of paragraph 4(a)(iii) of the Policy as 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 <infinity-lingerie.website> be transferred to Complainant 2.

/Irina V. Savelieva/

Irina V. Savelieva

Sole Panelist

Date: May 10, 2022