

ADMINISTRATIVE PANEL DECISION

The Gap, Inc., Gap (Apparel), LLC, Gap (ITM) Inc. v. Maqamed Turan
Case No. D2022-1804

1. The Parties

The Complainants are The Gap, Inc., Gap (Apparel), LLC, and Gap (ITM) Inc. (collectively, the “Complainant”), United States of America (“United States”), represented by Fross Zelnick Lehrman & Zissu, PC, United States.

The Respondent is Maqamed Turan, Azerbaijan.

2. The Domain Names and Registrar

The disputed domain name <gap-iran.com> is registered with Hostinger, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 19, 2022. On May 19, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 23, 2022, 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 May 31, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 20, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 21, 2022.

The Center appointed Marilena Comanescu as the sole panelist in this matter on June 23, 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 Complainant, The Gap, Inc., Gap (Apparel), LLC, and Gap (ITM) Inc., is a worldwide retailer of clothing, accessories, personal care products, and other merchandise. The Complainant began using the GAP trademark on its private label casual apparel products in 1974, and in 1976 the Complainant became a publicly listed company on the New York Stock Exchange.

The Complainant has invested substantial amount of time, effort and money in advertising and promoting the GAP mark worldwide and has achieved great success having sold billions of dollars of GAP branded goods. For example, in 2021, total sales of the GAP branded goods amounts around USD 2.6 billion.

The Complainant holds a large portfolio of GAP trademarks protected internationally, including the following:

- the United States Registration Number 1129294 for GAP word, filed on May 13, 1977 and registered on January 15, 1980, covering goods in International Class 25; and
- the Azerbaijani Trademark Registration Number N 981383 for GAP word, filed on May 2, 1995 and registered on August 28, 1998, covering goods and services in International Classes 16, 25, and 42.

The Complainant holds domain names incorporating the mark GAP such as <gap.com> (resolving to the Complainant's main website with almost 277 milion visitors in the United States in 2021), <gap.eu>, <gap.co.uk>, <gap.cn> or <gap.co.jp>.

The disputed domain name <gap-iran.com> was registered on April 3, 2022. At the time of filing the Complaint, the disputed domain name was connected to a commercial website featuring the GAP mark and promoting third parties clothing products.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to its well-known trademark GAP, the Respondent has no rights or legitimate interests in the disputed domain name, and the Respondent registered and is using the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

In view of the Respondent's default, the discussion and findings will be based upon the contentions in the Complaint and any reasonable position that can be attributable to the Respondent. Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

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

The Panel will further analyze the potential concurrence of the above circumstances.

A. Identical or Confusingly Similar

The Panel finds that the Complainant holds rights in the GAP trademark.

The disputed domain name incorporates the Complainant's trademark GAP separated by a hyphen from an additional term, "iran". However, such additions do not prevent a finding of confusing similarity as the Complainant's trademark is clearly recognizable within the disputed domain name.

Numerous UDRP panels have considered that the addition of other terms (whether geographical wording, descriptive, pejorative, meaningless or otherwise) to trademarks in a domain name does not prevent a finding of confusing similarity. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)).

Further, it is well established in decisions under the UDRP that the generic Top-Level Domain ("gTLD") (e.g., ".com", ".site", ".info", ".shop") may typically be disregarded for the purposes of consideration of confusing similarity between a trademark and a domain name. See section 1.11 of the [WIPO Overview 3.0](#).

Given the above, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark GAP, pursuant to the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

The Complainant asserts that the Respondent does not hold any trademark rights, license, or authorization whatsoever to use the mark GAP, that the Respondent is not commonly known by the disputed domain name, and that the Respondent has not used the disputed domain name in connection with a legitimate noncommercial or fair use or a *bona fide* offering of goods and services.

Under the Policy, "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". See section 2.1 of the [WIPO Overview 3.0](#).

The Respondent has not replied to the Complainant's contentions and has not come forward with relevant evidence to rebut the Complainant's *prima facie* case.

There is nothing in the record suggesting that the Respondent has ever been commonly known by the disputed domain name.

Further, there is no evidence before the Panel to suggest that the Respondent has made a *bona fide* use of the disputed domain name, or has been commonly known by this disputed domain name, or is making any legitimate noncommercial or fair use of the disputed domain name. In fact, at the time of filing the Complaint, the disputed domain name resolved to a commercial website featuring the GAP trademark and offering for sale third parties' competing products.

Assuming that the products or at least some of the products offered for sale under the disputed domain name were genuine GAP branded products, another question under this element is whether the Respondent's use of the disputed domain name for such resale amounts to a *bona fide* offering of goods under paragraph 4(c)(i) of the Policy. The current state of UDRP panel decisions in relation to this issue is helpfully summarized in section 2.8 of the [WIPO Overview 3.0](#) as follows:

Normally, a reseller, distributor or service provider can be making a *bona fide* offering of goods and services

and thus have a legitimate interest in the domain name if its use meets certain requirements. These requirements normally include the actual offering of goods and services at issue, the use of the site to sell only the trademarked goods, the site's accurately and prominently disclosing the registrant's relationship with the trademark holder and the respondent must not try to "corner the market" in domain names that reflect the trademark.

This summary is based on UDRP panel decisions such as *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. D2001-0903. At least two conditions that are outlined have clearly not been satisfied by the Respondent in this case: at the time of filing the Complaint, on the website under the disputed domain name, there was no accurate information regarding the Respondent and its lack of relationship with the Complainant thus generating a likelihood of confusion for the Internet users accessing the Respondent's website; and, the goods offered for sale on the website under the disputed domain name were third parties' competing goods, and not the Complainant's goods.

In addition, and without prejudice to the above, the nature of the disputed domain name, comprising the Complainant's trademark in its entirety in combination with a geographical term, carries a risk of implied affiliation. See section 2.5.1 of the [WIPO Overview 3.0](#).

For all these reasons, the Panel finds that the second element of the Policy is established, and the Respondent has no rights or legitimate interests in respect of the disputed domain name, pursuant to the Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

The Complainant holds registered trademark rights for GAP since 1969 and has gained reputation worldwide. See also *Gap, Inc., Gap (Apparel), LLC, and Gap (ITM) Inc. v. yu zhang, zhangyu*, WIPO Case No. [D2022-0289](#); and *The Gap, Inc., Gap (Apparel), LLC, Gap (ITM) Inc. v. Domains By Proxy, LLC / Anthony Banks / Trey Connally*, WIPO Case No. [D2020-3469](#).

The disputed domain name was created in 2022 and incorporates the Complainant's mark with an additional geographical term "iran".

From the above, the Panel finds that the disputed domain name was registered in bad faith, with knowledge of the Complainant, its business, and particularly targeting its GAP trademark.

The Respondent is using without permission the Complainant's distinctive trademark in order to get traffic on its web portal and to obtain commercial gain from the false impression created for the Internet users with regard to a potential connection with the Complainant. This impression is created particularly by the incorporation of the Complainant's well-known trademark in the disputed domain name, together with a geographical term, the content on the website provided thereunder, which includes the Complainant's trademark, promotion of competing goods, and the lack of any disclaimer on this website.

Paragraph 4(b)(iv) of the Policy provides that the use of a domain name to intentionally attempt "to attract, for commercial gain, Internet users to [the respondent's] 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 [the respondent's] website or location or of a product or service on [the respondent's] website or location" is evidence of registration and use in bad faith.

Given that the disputed domain name incorporates the Complainant's trademark and the website operated under the disputed domain name displays the Complainant's trademark, indeed in this Panel's view, the Respondent intended to attract Internet users accessing the website corresponding to the disputed domain name who may be confused and believe that the website is held, controlled by, or somehow affiliated or related to the Complainant, for its commercial gain.

The Respondent has not participated in the present proceedings in order to provide arguments in its favor.

Having in view the other circumstances of this case, such fact further supports a finding of bad faith.

Furthermore, it was consistently found by previous UDRP panels that the mere registration of a domain name that is identical or confusingly similar to a third party's well-known trademark can by itself create a presumption of bad faith for the purpose of Policy. See section 3.1.4 of the [WIPO Overview 3.0](#).

For all the above reasons, the Panel finds that the Respondent registered and is using the disputed domain name in bad faith, pursuant to the Policy, paragraph 4(a)(iii).

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 <gap-iran.com> be transferred to the Complainant.

/Marilena Comanescu/

Marilena Comanescu

Sole Panelist

Date: July 5, 2022