

## **ADMINISTRATIVE PANEL DECISION**

Cactus Plant Flea Market, LLC v. Privacy Service Provided by Withheld for Privacy ehf / Aamir Ali, MillionMerch  
Case No. D2022-2405

### **1. The Parties**

The Complainant is Cactus Plant Flea Market, LLC, United States of America (“United States”), represented by Epstein Drangel LLP., United States.

The Respondent is Privacy Service Provided by Withheld for Privacy ehf / Aamir Ali, MillionMerch, Pakistan.

### **2. The Domain Name and Registrar**

The disputed domain name <cactusplantfleamarketshop.com> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 1, 2022. On July 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 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 July 5, 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 July 6, 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 July 13, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 2, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 15, 2022.

The Center appointed Reyes Campello Estebaranz as the sole panelist in this matter on August 18, 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 was founded in 2015, and it operates in the clothing and accessories industry, producing and commercializing limited-run streetwear clothing collections, as well as various collections in collaboration with celebrities and other companies in its sector.

The Complainant operates under the trademark CACTUS PLANT FLEA MARKET, owning a registration for this mark in the United States, namely United States Trademark Registration No. 4941115, registered on April 19, 2016, in Class 25.

The Complainant further owns the domain name <cactusplantfleamarket.com> (registered on September 3, 2014), which resolves to its corporate website, where the Complainant promotes and offers its products.

The disputed domain name was registered on August 2, 2021, and it resolves to a website in English language that includes the CACTUS PLANT FLEA MARKET mark at its bottom, and the letters “CPFM” and a smile emoji at its heading. This site contains various sections for clothing products (“hoodies”, “jackets”, “hats”, “sweatpants”, etc.) displaying photographs of several products in each of these sections. The letters “CPFM” are included in the description of the products included in this site, as well as in some of the graphics of the products. The prices of the products are in USD. This website does not include any information about the owner of the site or that of the disputed domain name, and it does not include any contact information except for a chat option and various links to social media pages at the bottom of the site. The social media pages linked in this site have a low number of followers, one of them is not available, and some of them are identified by the terms “uix” or “Stefano uix”.

#### **5. Parties’ Contentions**

##### **A. Complainant**

Key contentions of the Complaint may be summarized as follows:

The CACTUS PLANT FLEA MARKET mark is one of the most popular streetwear clothing brands in the world. The brand is known for its distinctive graphics, and for collaborations with celebrities, signers, and important clothing companies. To maintain an exclusive presence, the Complainant releases products randomly with limited-run capsules selling out almost immediately.

The disputed domain name is confusingly similar to the CACTUS PLANT FLEA MARKET mark. The disputed domain name incorporates the Complainant’s trademark adding the term “shop”, which does not prevent a finding of confusing similarity, and the generic Top-Level Domain (“gTLD”), which should be disregarded because it is a requirement for the registration.

The Respondent has no rights or legitimate interests in respect of the dispute domain name. The Respondent is neither an agent nor a licensee of the Complainant, has never been affiliated in with the Complainant, and has never been authorized to use the CACTUS PLANT FLEA MARKET mark. The disputed domain name is used for selling counterfeit goods, trading off the goodwill of the Complainant’s trademark, and attempting to pass the Respondent’s online store off as the official online store of the Complainant’s trademark. The Respondent’s website uses the Complainant’s trademark abbreviation “CPFM” in an attempt to deceive consumers into believing that it is the authentic official store of the mark.

Given the volume of merchandise available at the Respondent's website, as compared to the rarity of the authentic merchandise, as well as the low price of the products in this site, the Respondent is selling counterfeit merchandise.

The disputed domain name was registered and is being used in bad faith. Given the widespread renown of the Complainant and its trademark, as well as the distinctiveness of the CACTUS PLANT FLEA MARKET mark, it is impossible that the Respondent was not aware of these prior rights. The Respondent knew or should have known of this mark, and has used the disputed domain name to intentionally attempt to attract for commercial gain Internet users to its website, by creating a likelihood of confusion with the Complainant's mark. The disputed domain name is used to offer and sell counterfeit products purporting to be authentic, which has repeatedly been held to be a bad faith use of a domain name. The Complainant's representatives made a purchase directly from the website associated to the disputed domain name and confirmed the products to be counterfeits. The Complainant's authentic products are extremely exclusive and difficult to obtain, with only a few products available on its legitimate website or in retail stores. However, the Respondent's site offers an enormous collection of products in inventory spanning nearly every product ever created by the Complainant. Additionally, these products are offered at a much lower price (in some cases by hundreds of dollars) than the prices in legitimate resale websites. The Complainant provides various examples comparing the products offered in the site associated to the disputed domain name, and the same products offered at other legitimate resale websites (such as Goat, Grailed, StockX, and The RealReal).

The Complainant has cited previous decisions under the Policy and various sections of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)") that it considers supportive of its position, and requests the transfer of the disputed domain name.

## **B. Respondent**

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

## **6. Discussion and Findings**

The Complainant has made the relevant assertions as required by the Policy and the dispute is properly within the scope of the Policy. The Panel has authority to decide the dispute examining the three elements in paragraph 4(a) of the Policy, taking into consideration all of the relevant evidence, annexed material and allegations, and performing some limited independent research under the general powers of the Panel articulated, *inter alia*, in paragraph 10 of the Rules.

### **A. Identical or Confusingly Similar**

The Complainant indisputably has rights in the registered trademark CACTUS PLANT FLEA MARKET, both by virtue of its trademark registration and as a result of its use on the market since 2015.

The disputed domain name incorporates the CACTUS PLANT FLEA MARKET mark in its entirety followed by the term "shop", which does not prevent a finding of confusing similarity with the mark. The CACTUS PLANT FLEA MARKET mark is recognizable in the disputed domain name, and the gTLD ".com" is a technical requirement, generally disregarded for the purpose of the analysis of the confusing similarity. See sections 1.7, 1.8, and 1.11.1 of the [WIPO Overview 3.0](#).

Accordingly, this Panel finds that the disputed domain name is confusingly similar to the Complainant's mark, and the first element of the Policy under paragraph 4(a)(i) has been satisfied.

### **B. Rights or Legitimate Interests**

Although the Complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, UDRP panels have recognized that this could result in the often impossible task of proving a

negative, requiring information that is primarily if not exclusively within the Respondent's knowledge. Thus, the consensus view is that paragraph 4(c) of the Policy shifts to the Respondent the burden of production to come forward with relevant evidence of rights or legitimate interests in the disputed domain name, once the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests.

The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", being the Panel prepared to draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2 of the [WIPO Overview 3.0](#).

The Complainant's assertions and evidence effectively shift the burden to the Respondent of producing evidence of rights or legitimate interests in the disputed domain name, providing the circumstances of paragraph 4(c) of the Policy, without limitation, in order to rebut the Complainant's *prima facie* case. However, the Respondent has not replied to the Complainant's contentions, not providing any explanation or evidence of rights or legitimate interests in the disputed domain name.

A core factor in assessing fair use of a domain name is that it does not falsely suggest affiliation with the Complainant's trademark. The disputed domain name incorporates the Complainant's trademark in its entirety adding the term "shop", which refers to the Complainant's business generating affiliation with it, and creating the impression that it refers to the Complainant's official online shop. Therefore, the Panel considers that the addition of the term "shop" reinforces the risk of implied affiliation and confusion.

The Panel notes that the disputed domain name is used in connection to a business selling or reselling various clothing products purportedly of the Complainant's mark. The Panel further notes that website associated to the disputed domain name does not include any information about the Respondent and/or the owner of the site, and it does not include any contact information except for a chat option and various links to social media pages under different names ("uix" or "Stefano uix"), and one of them not being available.

The requirements for resellers or distributors, using a domain name containing the complainant's trademark to undertake sales related to the complainant's goods or services, commonly known as the "Oki Data test" (referring to *Oki Data Americas, Inc. v. ASD*, WIPO Case No. [D2001-0903](#)), are not met in this case. Particularly, the website associated to the disputed domain name does not accurately and prominently disclose the registrant's lack of relationship with the trademark holder. See section 2.8, [WIPO Overview 3.0](#).

Furthermore, according to the Complainant's allegations and the evidence provided, the circumstances of this case show that, in a balance of probabilities, the goods commercialized in the website associated to the disputed domain name are counterfeit merchandise. Such use cannot confer rights or legitimate interests on the Respondent. See section 2.13, [WIPO Overview 3.0](#).

It is further remarkable the Respondent has not replied to the Complaint, not providing any explanation connected to any of the circumstances included in paragraph 4(c) of the Policy or any other circumstance that may be considered as a right or legitimate interest in the disputed domain name.

All the above-mentioned circumstances lead the Panel to conclude that the Respondent has not rebutted the Complainant's *prima facie* case, and all the cumulative facts and circumstances indicate the Respondent lacks any rights or legitimate interests in the disputed domain name. Therefore, the second element of the Policy under paragraph 4(a)(ii) has been established.

### **C. Registered and Used in Bad Faith**

The Policy, paragraph 4(a)(iii), requires that the Complainant establish that the disputed domain name "has been registered and is being used in bad faith."

The applicable standard of proof is, likewise, the "balance of probabilities" or "preponderance of the evidence". See section 4.2 of the [WIPO Overview 3.0](#).

The Panel considers that all cumulative circumstances of this case point to bad faith registration and use of the disputed domain name:

(i) the disputed domain name incorporates the Complainant's trademark in its entirety adding a term ("shop"), which reinforces the likelihood of confusion or implied affiliation, giving the impression that the website associated to the disputed domain name belongs to, is sponsored, or endorsed by the Complainant;

(ii) the Complainant's trademark is notorious in its sector, and has extensive presence over the Internet;

(iii) the website linked to the disputed domain name includes prominently the CACTUS PLANT FLEA MARKET mark as well as its abbreviation (the letters "CPFM"), and it does not contain any information about its owner or that of the disputed domain name;

(iv) the information and evidence provided by the Complainant indicate, in a balance of probabilities, that the goods commercialized in the website associated to the disputed domain name are counterfeit merchandise; and

(v) the Respondent has not offered any explanation of any rights or legitimate interests in the disputed domain name, and has not come forward to deny the Complainant's assertions of bad faith, choosing not to reply to the Complaint.

Therefore, on the balance of probabilities, taking into consideration all cumulative circumstances of this case, the Panel considers that the disputed domain name was very likely registered targeting the CACTUS PLANT FLEA MARKET mark, seeking to mislead Internet users to believe that there is a connection between the disputed domain name and the Complainant, in an attempt to increase the traffic of the site associated to the disputed domain name for a commercial gain, which constitutes bad faith.

All of the above-mentioned circumstances leads the Panel to conclude that the disputed domain name was registered and is being used in bad faith. Accordingly, the Panel concludes that the Complainant has met its burden of establishing that the Respondent registered and is using the disputed domain name in bad faith under 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 <cactusplantfleamarketshop.com> be transferred to the Complainant.

*/Reyes Campello Estebanz/*

**Reyes Campello Estebanz**

Sole Panelist

Date: September 1, 2022