

ADMINISTRATIVE PANEL DECISION

Chewy, Inc. v. chao liu
Case No. D2022-3876

1. The Parties

The Complainant is Chewy, Inc., United States of America (“United States”), represented by Demys Limited, United Kingdom.

The Respondent is chao liu, China.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 17, 2022. On October 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 17, 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 October 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 10, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 14, 2022.

The Center appointed Marilena Comanescu as the sole panelist in this matter on November 21, 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, a United States corporation founded in 2011, operates one of the largest online retailers of pet food and other pet-related products in the United States, employing over 21,000 people, and being listed on the New York Stock Exchange in 2019. In 2021, the Complainant registered approximately USD 8.9 billion in revenue with 20.7 million active customers and became a Fortune 500 company.

The Complainant operates its official web store under the domain name <chewy.com> where Internet users can purchase products from more than 2,000 brands. One of the Complainant's most important brands is "American Journey", a brand for pet food.

The Complainant holds trademark registrations for AMERICAN JOURNEY, such as the following:

- the United States trademark AMERICAN JOURNEY, registration No. 5991457, filed on July 1, 2016, and registered on February 18, 2020, for goods in International Class 31; and
- the European Union Trade Mark AMERICAN JOURNEY, registration No. 016587545, filed on April 11, 2017, and registered on August 14, 2017, for goods in International Classes 5 and 31.

The Complainant owns the domain name <americanjourney.com> which is configured to redirect Internet users to the website "American Journey by Chewy" under the Complainant's main domain name <chewy.com>.

The disputed domain name was registered on August 19, 2022. At the time of filing the Complaint, the disputed domain name resolved to a commercial website which was offering "American Journey" branded products, and was featuring the Complainant's copyright material, *inter alia*, "American Journey" products images and descriptions and presenting its owner as being "American Journey Store".

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to its trademark AMERICAN JOURNEY, that the Respondent is not a genuine reseller of the Complainant, has no rights or legitimate interests in the disputed domain name, and that the Respondent registered and is using the disputed domain name in bad faith, *i.e.*, to sell counterfeit or at least "parallel import" or "grey market" goods. The Complainant requests the transfer of the disputed domain name to it.

The Complainant found that the Respondent holds at least another three domain names incorporating third parties' famous marks, all used in similar manners, for commercial purposes and to impersonate the trademark holder (Annex 16 to the Complaint).

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, the Complainant can only succeed in this 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;
- (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 concurrence of the above circumstances.

A. Identical or Confusingly Similar

The Panel finds that the Complainant holds rights in the AMERICAN JOURNEY trademark.

The disputed domain name incorporates the Complainant's trademark AMERICAN JOURNEY in its entirety with an additional letter "s" between the words composing the mark. However, such addition, misspelling does 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, descriptive, pejorative, meaningless, or otherwise) to trademarks in a domain name does not avoid a finding of confusing similarity. Also, a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for the purpose of the first element. See sections 1.8 and 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

It is well established in decisions under the UDRP that the generic Top-Level Domain ("gTLD") (as in this case, ".com") may typically be disregarded for the purposes of consideration of confusing similarity between a trademark and a domain name. See section 1.11.1 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, 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 AMERICAN JOURNEY, 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 or 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 or that the Respondent has made a *bona fide* offering of goods or services or a legitimate noncommercial or fair use under the disputed domain name.

According to the evidence provided in Annex 7 to the Complaint, the Respondent has used the disputed domain name in connection with a commercial website selling apparent "American Journey" branded goods, with the Complainant claiming that the products sold via the website at the disputed domain name are

counterfeits or at least “parallel import” or “grey market goods”.

In certain cases, UDRP panels have recognized that resellers, distributors using a domain name containing a complainant’s trademark to undertake sales related to the complainant’s goods may constitute a *bona fide* offering of goods and thus have a right or legitimate interest in such domain name. Accordingly, in this case, the key question under this element is whether the Respondent’s use of the disputed domain name amounts to a *bona fide* offering of goods or services under paragraph 4(c)(i) of the Policy.

The current state of UDRP panel consensus in relation to this issue is summarized in section 2.8 of the [WIPO Overview 3.0](#), based on panel decisions such as *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#). According to the “Oki Data” test, several cumulative requirements will be applied in the specific conditions of a UDRP case, including the fact that the site must accurately and prominently disclose the registrant’s relationship with the trademark holder (the complainant) and that the respondent must use the site to sell only the trademarked goods or services. In this case, according to the available record, on the website corresponding to the disputed domain name there is no indication regarding the relationship between the Parties, or lack thereof.

This is definitely not an activity falling under the circumstances listed by paragraph 4(c) of the Policy as demonstrating the Respondent’s rights or legitimate interests in the disputed domain name.

In addition, the nature of the disputed domain name, comprising the Complainant’s trademark in combination with an additional letter, indicates an awareness of the Complainant and its mark and intent to take unfair advantage of such, which does not support a finding of any rights or legitimate interests.

Consequently, the Panel finds that the Respondent has no rights or legitimate interests in 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 AMERICAN JOURNEY since at least 2017. The website at the disputed domain name also features the Complainant’s AMERICAN JOURNEY trademark, logo, and purportedly offers “American Journey” branded products.

The disputed domain name was registered in 2022 and reproduces the Complainant’s mark with a minor alteration, one additional letter.

From the above, the Panel finds that the disputed domain name was registered in bad faith, knowing the Complainant and targeting its trademark.

At the time of filing the Complaint, the Respondent was 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.

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 with a minor misspelling and the website operated under the disputed domain name displays the Complainant’s trademark, purportedly offers “American Journey” branded goods, displays visuals and product images of the Complainant’s goods and has no disclaimer, indeed in this Panel’s view, the Respondent has 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 with or related to the

Complainant, for the Respondent's commercial gain. This activity may also disrupt the Complainant's business and tarnish its trademark.

Paragraph 4(b)(ii) of the Policy provides another circumstance of bad faith registration and use when the respondent registered the disputed domain name in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct. Registering several domain names comprising third parties trademarks, as provided in Annex 16 to the Complaint, can be considered a pattern of abusive conduct and registration of the disputed domain name in bad faith.

The Respondent has not participated in the present proceeding in order to put forward any arguments in its favor. Such facts, together with all the other elements in this case, supports, in the eyes of this Panel, a finding of bad faith behavior.

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 <americansjourney.com> be transferred to the Complainant.

/Marilena Comanescu/

Marilena Comanescu

Sole Panelist

Date: December 5, 2022