

ADMINISTRATIVE PANEL DECISION

Gallery Department, LLC v. Amir Ali
Case No. D2022-4219

1. The Parties

The Complainant is Gallery Department, LLC, United States of America (“United States”), represented by Adelman Matz P.C., United States.

The Respondent is Amir Ali, Pakistan.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 7, 2022. On November 8, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 8, 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 (Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 8, 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 November 9, 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 November 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 4, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 6, 2022.

The Center appointed Marilena Comanescu as the sole panelist in this matter on December 13, 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, based in Los Angeles, is a manufacturer of unisex clothing brand founded by the artist and designer Josue Thomas that strives to make quality products with artistic integrity.

The Complainant is promoting its products on the website available at the domain name <gallerydept.com> and registered on October 18, 2014.

The Complainant owns several trademark registrations for GALLERY DEPT. in various jurisdictions around the world, such as the following:

- the United States trademark registration number 6048485 for the words GALLERY DEPT., filed on August 27, 2018, and registered on May 5, 2020, and covering goods in Nice class 25; and
- the Chinese trademark registration number 1430638 for the words GALLERY DEPT., registered on March 6, 2019, and covering goods in Nice class 25.

The disputed domain name was registered on May 30, 2022. At the time of filing the Complaint, the disputed domain name was connected to a commercial website allegedly offering products marked GALLERY DEPT. with significant price reductions, displaying the Complainant's GALLERY DEPT. trademark and product images, and presenting as "GALLERY DEPT." on the upper banner, and as "Gallery Debt Clothing Brand" at the bottom side of the home page.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical to its trademark GALLERY DEPT. and its domain name <gallerydept.com>, that the Respondent 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.

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;
- (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 GALLERY DEPT. trademark.

The disputed domain name reproduces the Complainant's GALLERY DEPT. trademark exactly.

Further, it is well established in decisions under the UDRP that the Top-Level-Domain ("TLD") (e.g., ".com", ".site", ".info", ".ltd") 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 of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Given the above, the Panel finds that the disputed domain name is identical to the Complainant's trademark GALLERY DEPT., 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 GALLERY DEPT, 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 made a *bona fide* use of the disputed domain name, or has been 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 GALLERY DEPT. trademark and offering purportedly discounted products branded GALLERY DEPT. for sale.

In certain cases, Panels have recognized that resellers or service providers using a domain name containing the complainant's mark to undertake sales or repairs related to the complainant's goods and services may have a legitimate interest in such domain name. Relevant UDRP panel decisions in relation to this issue are 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 not trying to "corner the market" in domain names that reflect the trademark.

This summary is based on the UDRP panel decision *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#). At least one condition that is outlined has 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 and clear information regarding the Respondent's rights and its (lack of) relationship with the Complainant and no disclaimer. Further, images of the Complainant's trademarks and official product pictures were displayed without any consent from the Complainant, thus generating a likelihood of confusion for the Internet users accessing the Respondent's website and suggesting a false commercial relationship between the website under the disputed domain name and the Complainant.

In addition, and without prejudice to the above, UDRP panels have found that domain names identical to a complainant's trademark carry a high 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 GALLERY DEPT. since at least 2017 and uses the domain name <gallerydept.com> to promote its goods since 2014.

The disputed domain name was created in August 2022 and reproduces the Complainant's mark exactly.

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

The Respondent is using without permission the Complainant's trademark in order to get Internet 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 trademark in the disputed domain name, and the content on the website provided thereunder which includes the Complainant's trademark and images of official products.

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 on-line 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 reproduces the Complainant's trademark and is highly similar to the Complainant's website, the website operated under the disputed domain name displays the Complainant's trademark and product images and is offering very likely counterfeit copies of the Complainant's products, 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. This activity may also disrupt the Complainant's business.

The Respondent has not participated in the present proceedings 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 <gallerydept.ltd> be transferred to the Complainant.

/Marilena Comanescu/

Marilena Comanescu

Sole Panelist

Date: December 21, 2022