

ADMINISTRATIVE PANEL DECISION

Jacques Bermon Webster II, also known as Travis Scott, and LaFlame Enterprises, Inc. v. xu zengyi, SOUFEEL JEWELRY LIMITED
Case No. D2022-4236

1. The Parties

The Complainants are Jacques Bermon Webster II, also known as Travis Scott, United States of America (“United States”), and LaFlame Enterprises, Inc., United States, represented by Kia Kamran P.C., United States.

The Respondent is xu zengyi, SOUFEEL JEWELRY LIMITED, Hong Kong, China.

2. The Domain Name and Registrar

The disputed domain name <astroworldmerch.store> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 3, 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 9, 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 sent an email communication to the Complainants on November 14, 2022, seeking confirmation of the correct disputed domain name at issue. The Complainants filed an amendment to the Complaint on November 14, 2022.

The Center verified that the Complaint together with the amendment to 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 November 15, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 5, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 6, 2022.

The Center appointed Mihaela Maravela as the sole panelist in this matter on December 15, 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.

The language of the proceeding is English, being the language of the Registration Agreement, as per paragraph 11(a) of the Rules.

4. Factual Background

According to information in the Complaint, the Complainant Jacques Bermon Webster II (the “First Complainant”) is an internationally famous recording artist known as Travis Scott, and has established worldwide fame and value in his name, nicknames and likeness in conjunction with his music career, as well as numerous other activities in the entertainment industries since the year 2009. The Complainant LaFlame Enterprises, Inc. (the “Second Complainant”) is a company owned by the First Complainant. The Complainants have used the trademark ASTROWORLD in commerce as early as the year 2018 in connection with entertainment services, live performance, music, and merchandise (such as clothing, jewelry, bags, cups, paper goods).

The First Complainant has registered several trademarks consisting of ASTROWORLD, including the United States Registration No. 5,654,691 for ASTROWORLD (word), registered on January 15, 2019, and the United States Registration No. 5,769,755 for ASTROWORLD (figurative), registered on June 4, 2019. The Second Complainant has registered several trademarks consisting of the term ASTROWORLD, including the United States Registration No. 5,930,321 for ASTROWORLD (figurative), registered on December 10, 2019.

The disputed domain name was registered on April 11, 2022 and resolves to a website purporting to sell ASTROWORLD branded goods at discounted prices.

5. Parties’ Contentions

A. Complainant

The Complainants argues that the disputed domain name is identical or confusingly similar to the Complainants’ trademark ASTROWORLD, that is included in its entirety in the disputed domain name. The addition of the generic words in the disputed domain name, do not eliminate confusion with the Complainants’ trademark.

As regards the second element, the Complainants argue that the Respondent is not commonly known by the name “astroworld”, and that it is not authorized or licensed by the Complainants to use the trademark ASTROWORLD in or as part of any trademark or domain name. The Respondent cannot claim any legitimate, noncommercial, or fair use of the disputed domain name, for criticism or as a fan site, because its primary purpose is to engage in commercial use in competition with the Complainants and primarily engage in the selling of bootleg merchandise on the website connected to the disputed domain name bearing the Complainants’ name and trademarks. The Respondent has chosen and used the disputed domain name to misleadingly attract customers to its website for the purpose of selling counterfeit merchandise of the Complainants’ goods. The Respondent fails to provide any indication to the consumers that the Respondent’s website is not the official webpage of the Complainants.

With respect to the third element, the Complainants argue that the Respondent has deliberately registered a well-known trademark ASTROWORLD as a disputed domain name, which is a clear indication of bad faith in itself. Moreover, the Respondent has registered the disputed domain name primarily for the purpose of disrupting the Complainants’ business by selling counterfeit products. The products on the website at the disputed domain name are offered at much lower prices than those which are sold by the Complainants and

its distributors. This further demonstrates that the disputed domain name was blatantly and intentionally registered to create a likelihood of confusion with the Complainants' trademark as to the source, sponsorship, affiliation, or endorsement of its website which falls within the scope of the example of bad faith to be found at paragraph 4(b)(iv) of the Policy.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Matters

No communication has been received from the Respondent in this case. However, given that the Complaint was sent to the relevant address disclosed by the Registrar, the Panel considers that this satisfies the requirement in paragraph 2(a) of the UDRP Rules to "employ reasonably available means calculated to achieve actual notice". Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainants as per paragraph 15(a) of the Rules and to draw inferences from the Respondent's failure to file any Response. While the Respondent's failure to file a Response does not automatically result in a decision in favor of the Complainants, the Panel may draw appropriate inferences from the Respondent's default.

The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

6.2. Multiple Complainants

The Complaint was filed by two Complainants, who allege that they have a common legal interest in the trademark rights that are affected by the Respondent's infringing conduct and therefore they have a common grievance against the Respondent.

According to section 4.11.1 of the [WIPO Overview 3.0](#), "In assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels look at whether (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation".

It is well accepted that a single complaint may be brought under the Policy by multiple complainants where the multiple complainants have a common grievance against the respondent and one example of a common grievance entitling consolidation of complainants is where the complainants share an interest in trademarks allegedly affected by the respondent's registration of the disputed domain name. In this case, the Complainants allege trademark rights and a corporate connection. The Respondent has not objected to the Complainants' consolidation request. Under the circumstances of the case, the Panel accepts that consolidation is procedurally efficient, fair and equitable to all Parties, and will accept both Complainants as party to the proceedings.

6.3. Substantive Matters

Paragraph 4(a) of the Policy directs that the Complainants must prove each of the following elements:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainants have rights; and

- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainants have proved rights over the ASTROWORLD trademark.

The disputed domain name incorporates the trademark ASTROWORLD in its entirety, with the only difference that in the disputed domain name the word “merch” is added, which does not in the view of the Panel prevent the Complainants’ trademark from being recognizable within the disputed domain name. Many UDRP panels have found that a disputed domain name is confusingly similar where the relevant trademark is recognizable within the disputed domain name. See section 1.7 of the [WIPO Overview 3.0](#).

It is well accepted by UDRP panels that a gTLD, such as “.store”, is typically ignored when assessing whether a domain name is identical or confusing similar to a trademark. See section 1.11 of the [WIPO Overview 3.0](#).

This Panel concludes that the disputed domain name is confusingly similar to the Complainants’ trademarks and therefore finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie* case demonstrating that the Respondent has no rights or legitimate interests in the disputed domain name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

In the present case, the Complainants have established a *prima facie* case that they hold rights over the trademark ASTROWORLD and claim that the Respondent has no legitimate reason to acquire and use the disputed domain name. There is no evidence that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services. Rather, according to the unrebutted evidence of the Complainants, the website at the disputed domain name is used to offer for sale ASTROWORLD branded goods at a discounted price. Under these circumstances it is reasonable to infer that the products offered on the website at the disputed domain name are counterfeits of the Complainants’ products. Even if the products were genuine, the lack of any disclaimer on the website at the disputed domain name as to the registrant’s relationship with the trademark owner or the lack thereof, would falsely suggest to Internet users that the website to which the disputed domain name resolved is owned by the Complainants or at least affiliated to the Complainants (as per the principles outlined in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#)).

Also, there is no evidence that the Respondent is commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy.

Furthermore, the nature of the disputed domain name, that includes the Complainants’ well-established trademark, carries a risk of implied affiliation and cannot constitute a fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainants. See section 2.5.1 of the [WIPO Overview 3.0](#)

The Panel considers that the Complainants have made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent failed to rebut that *prima facie* case because the Respondent did not respond to the Complainants’ contentions.

With the evidence on file, the Panel finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, “in particular but without limitation”, be evidence of the disputed domain name’s registration and use in bad faith.

The Complainants’ registration and use of the relevant trademarks predate the date at which the Respondent registered the disputed domain name. The disputed domain name resolves to a website reproducing the Complainants’ trademark and purportedly offering for sale the Complainants’ products but at a much lower price. Under these circumstances, and also given the distinctiveness of the Complainants’ trademark, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainants’ trademarks, and to target those trademarks.

The inherently misleading disputed domain name resolves to a website, which ostensibly offers the Complainants’ products at a much lower price. As such, the disputed domain name suggests affiliation with the Complainants in order to attract consumers and offer products that appear to be counterfeit.

Moreover, the Respondent has not formally participated in these proceedings and has failed to rebut the Complainants’ contentions or to provide any evidence of actual or contemplated good-faith use, and indeed none would seem plausible.

In the Panel’s view, the circumstances of the case represent evidence of registration and use in bad faith of the disputed domain name. The Respondent failed to bring evidence as to the contrary. Consequently, the Panel concludes that the condition of paragraph 4(a)(iii) of the Policy is fulfilled.

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 <astroworldmerch.store> be transferred to the Complainants.

/Mihaela Maravela/

Mihaela Maravela

Sole Panelist

Date: December 27, 2022