

ADMINISTRATIVE PANEL DECISION

Contemporary RTW Co., LLC d/b/a Khaite v. Rui Sun
Case No. D2023-0998

1. The Parties

The Complainant is Contemporary RTW Co., LLC d/b/a Khaite, United States of America (“United States”), represented by Fixer Advisory Group, United States

The Respondent is Rui Sun, China.

2. The Domain Name and Registrar

The disputed domain name <khaitesale.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 March 7, 2023. On March 7, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 9, 2023, 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 March 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 30, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 31, 2023.

The Center appointed Peter Burgstaller as the sole panelist in this matter on April 6, 2023. 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 has rights in the mark KHAITE through trademark registration as well as a trademark assignment in the United States, *inter alia*:

- United States trademark Registration No. 5,891,490, registered on October 22, 2019, in int. class 18;
- United States trademark Registration No. 5,224,362, registered on June 13, 2017, in int. class 9;
- United States trademark Registration No. 5,229,231, registered on June 20, 2017, in int. class 25; and
- United States trademark Registration No. 6,852,770, registered on September 20, 2022, in int. class 35 (Annex 4 to the Complaint).

The Complainant provides its website under the domain name <khaite.com> where it offers women's clothing (Annex 6 to the Complaint); the domain name <khaite.com> was registered on August 13, 2015 (Annex 9 to the Complaint).

The disputed domain name was registered on August 31, 2022 (Annex 1 to the Complaint). The disputed domain name resolves to a website which shows women's clothing for sale together with the Complainant's mark KHAITE; on the Respondent's website model images, collection names and photographs are used identical to those of the Complainant's website (Annexes 5, 7 and 8 to the Complaint; Panel's independent research on April 15, 2023).

5. Parties' Contentions

A. Complainant

Since 2015, the Complainant has owned United States registered trademarks for KHAITE in standard characters covering the exact same goods and services as the Respondent is transmitting on the disputed domain under Khaite's name.

The disputed domain name is identical or confusingly similar to the Complainant's KHAITE trademark. The Respondent uses the Complainant's registered trademark KHAITE combined with the word "sale" in the disputed domain name to sell the exact goods and designs as the Complainant. The Respondent's use of the same KHAITE stylized logo on the landing page and copying of products, collection names combined with identical model images further exacerbates the confusing similarity between the disputed domain name and the Complainant's domain name <khaite.com> which are almost indistinguishable domain names. Moreover, the Respondent is unlawfully using Complainant's images from its Fall 2019 Ready-To-Wear runway show on its landing page.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. There is no evidence demonstrating the Respondent's use of, or preparations to use, the disputed domain name or any name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services prior to registration of the disputed domain name on August 31, 2022. In addition to having acquired no trademark or service mark rights, there is no evidence that the Respondent has ever been commonly known by the disputed domain name. Further, the Complainant has owned the KHAITE trademark from 2015 and has never authorized the Respondent to use such name.

The disputed domain name was registered and is being used in bad faith. The Complainant has owned and operated its authorized e-commerce site under the domain name <khaite.com> since registering on August 13, 2015. The Respondent is openly using the disputed domain name in bad faith to mislead consumers and divert web traffic to its illegitimate site through which the Respondent is offering the Complainant's products at a steep discount. The Respondent mimicked not only the same exact products, such as Knitwear that the Complainant is known for, but also used the Complainant-owned images from a past runway show, and copied product descriptions, styling images, color scheme and overall presentation.

Based on the totality of these factors, it is clear that the Respondent is acting in bad faith with intent to create a likelihood of confusion with the Complainant's mark and legitimate e-commerce website.

B. Respondent

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

6. Discussion and Findings

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.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. This test typically involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Complainant submitted evidence, which incontestably and conclusively establishes rights in the mark KHAITE.

In the present case, the disputed domain name <khaitesale.com> is confusingly similar to the KHAITE mark in which the Complainant has rights since the Complainant's KHAITE mark is clearly recognizable in the disputed domain name. It has long been established under UDRP decisions that where the relevant trademark is recognizable within the disputed domain name the mere addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) will not prevent a finding of confusing similarity under the first element of the Policy (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). This is the case at present. The addition of the term "sale" in the disputed domain name does not prevent a finding of confusing similarity.

Finally, it has also long been held that generic or country-code Top-Level Domains are generally disregarded when evaluating the confusing similarity under the first element.

Therefore, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, 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](#)). Here, the Complainant has put forward a *prima facie* case that

the Respondent lacks rights or legitimate interests in the disputed domain name, which has not been rebutted by the Respondent.

Furthermore, the nature of the disputed domain name, comprising the Complainant's mark in its entirety together with the term "sale", cannot be considered fair use as it falsely suggests an affiliation with the Complainant that does not exist (see section 2.5 of the [WIPO Overview 3.0](#)).

Noting the above and the Panel's findings below, and in the absence of any Response or allegations from the Respondent, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

As stated in many decisions rendered under the Policy (e.g. *Robert Ellenbogen v. Mike Pearson*, WIPO Case No. [D2000-0001](#)) both conditions, registration and use in bad faith, must be demonstrated; consequently, the Complainant must show that:

- the disputed domain name was registered by the Respondent in bad faith, and
- the disputed domain name is being used by the Respondent in bad faith.

(i) The Complainant has established rights in the registered trademark KHAITE, long before the registration of the disputed domain name. Further, the Complainant has a strong Internet presence under its domain name <khaite.com> for years, the Respondent offers the same products than the Complainant and uses the Complainant's logo as well as identical model images and product names on its website addressed by the disputed domain name.

It is therefore inconceivable for this Panel that the Respondent registered and used the disputed domain name without knowledge of the Complainant's rights, which leads to the necessary inference of bad faith. This finding is supported by the fact that the disputed domain name incorporates the Complainant's distinctive registered trademark entirely, together with the suffix "sale" which clearly refers to the Complainant's e-commerce business. All of which in fact indicate that the Respondent must have been aware of the Complainant's business and trademark when registering the disputed domain name.

Therefore, the Panel is convinced that the disputed domain name was registered in bad faith by the Respondent.

(ii) The Complainant put forward evidence that the disputed domain name resolves to a website which contains the Complainant's registered trademark and logo, and where the Respondent offers women's clothing for sale. Furthermore, the Respondent copied products, collection names combined with identical model images from the Complainant and uses on its website addressed by the disputed domain name. In doing so, the Respondent intentionally attempted to attract Internet users to its websites for commercial gain, by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation or endorsement of its website according to paragraph 4(b)(iv) of the Policy – this constitutes bad faith use of the disputed domain name.

Taking all these facts and evidence into consideration this Panel finds that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) 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 <khaitesale.com> be transferred to the Complainant.

/Peter Burgstaller/

Peter Burgstaller

Sole Panelist

Date: April 20, 2023