

ADMINISTRATIVE PANEL DECISION

T.M. Lewin Shirtmaker Ltd. v. Hello Giller

Case No. D2023-1695

1. The Parties

Complainant is T.M. Lewin Shirtmaker Ltd., United Kingdom, represented by CSC Digital Brand Services Group AB, Sweden.

Respondent is Hello Giller, China.

2. The Domain Name and Registrar

The Domain Name <tmlcloth.online> 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 April 18, 2023. On April 18, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 18, 2023, the Registrar transmitted by email to the Center its verification response confirming that 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 Respondent of the Complaint, and the proceedings commenced on May 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 25, 2023. Respondent did not submit any response. Accordingly, the Center notified respondent’s default on June 19, 2023.

The Center appointed Richard C.K. van Oerle as the sole panelist in this matter on June 26, 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

Complainer is a men's clothing retailer founded in 1898, selling suits, outerwear, knitwear, jackets, chinos, ties, and accessories for men.

Complainant is the owner of trademark registrations for T.M. LEWIN in China (registration number 22622618, registration date June 14, 2018), United Kingdom (registration number UK00903866316, registration date September 27, 2005), European Union (registration number 003866316, registration date September 27, 2005) and the United States of America (registration number 3164209, registration date Oct. 24, 2006), hereinafter collectively referred to as the "Trademark".

Complainant operates numerous websites, including "www.tmllewin.co.uk".

The Domain Name was registered on March 15, 2023, and resolves to a website (the "Respondent's Website") purportedly offering men's clothing.

5. Parties' Contentions

A. Complainant

Complainant states, in summary and in so far as relevant, the following.

Complainant asserts that each of the elements enumerated in paragraph 4(a) of the Policy have been satisfied.

Complainant is a menswear retailer, created in 1898 by Thomas Mayes Lewin. It is renowned for its button up formal shirts. T.M. Lewin continued to grow during the 1900s and started to sell suits, outerwear, knitwear, jackets, chinos, ties, and accessories for men. T.M. LEWIN has become a heritage brand, with over 70 million shirts sold in its 120-year history. Complainant's Trademark is well-recognized by consumers, industry peers, and the broader global community, and Complainant has established considerable fame and goodwill in the Trademark and enjoys a substantial degree of public recognition in this Trademark and has seen this Trademark become uniquely associated with Complainant.

The Domain Name incorporates the "tml" element of Complainant's Trademark and combines this with the generic, descriptive term "cloth", thereby making the Domain Name confusingly similar to Complainant's Trademark. The addition of the term "cloth" does not prevent the confusing similarity. Further, Complainant is a renowned retailer of men's clothing and accessories which directly links the term "cloth" to Complainant's brand and Trademark. As such, the additional term "cloth" serves to underscore and increase the confusing similarity between the Domain Name and Complainant's Trademark.

In addition, Complainant's predecessors registered the company names "TML Realisations Limited" and "TMLG Holdings Limited" in 2020, where "tml" referred to "T.M. Lewin". In other words, the term "tml" has become a common abbreviation of Complainant's T.M. LEWIN Trademark through use. Thus, the incorporation of such term appended with the suggestive term "cloth" makes the Domain Name confusingly similar to the Trademark.

Respondent's use of the Domain Name contributes to the confusion. Respondent is using the Domain Name to resolve to Respondent's Website that claims to be "T.M.Lewin Shop Online", copies Complainant's favicon, displays Complainant's copyrighted product photos, and offers for sale seemingly the same products as those of Complainant. This suggests that Respondent intended the Domain Name to be confusingly similar to the Trademark as a means of furthering consumer confusion.

The Domain Name is therefore confusingly similar to Complainant's Trademark.

Respondent is not sponsored by or affiliated with Complainant in any way. Nor has Complainant given Respondent the license, authorization or permission to use Complainant's Trademark in any manner, including in domain names. Respondent is not commonly known by the Domain Name, which evinces a lack of rights or legitimate interests. The pertinent Whois information identifies the Registrant as "Hello Giller", which does not resemble the Domain Name in any manner. Thus, where no evidence suggests that Respondent is commonly known by the Domain Name, then Respondent cannot be regarded as having acquired rights to or legitimate interests in the Domain Name within the meaning of Paragraph 4(c)(ii).

Respondent registered the Domain Name on March 15, 2023, which is significantly after the above mentioned registrations of the Trademark, the first use in commerce of the Trademark in 1898, and the registration of the domain names <tmlewin.co.uk> on February 22, 1995, and <tmlewin.com> on May 5, 2002.

Likelihood of user confusion is further evidenced by Respondent's use of the Domain Name. The Domain Name directs internet users to Respondent's Website that copies and attempts to duplicate Complainant's official website by prominently displaying the Trademark, as well as using the favicon and photos found on Complainant's website. As such, the website where the Domain Name resolves to has purposely been designed to serve as a means of deceiving Internet users into believing that the Domain Name and its website are associated with Complainant. Respondent's attempt to pass off the Domain Name as being affiliated with Complainant, and in fact as being Complainant, is in itself evidence of the fact that Respondent does not have rights and legitimate interests in the Domain Name pursuant to Paragraph 4(a)(ii).

Respondent also uses the Domain Name in connection with a commercial website (purportedly) offering Complainant's products at discounted prices. Compared to the products sold at Complainant's official website, the products offered for sale in the website where the Domain Name resolves to are disproportionately below market value, which suggests that Respondent is potentially offering counterfeited versions of Complainant's products.

Referring to the above-mentioned, Respondent has no rights or legitimate interest in respect of the Domain Name.

The Trademark is known internationally, with trademark registrations across numerous countries. Complainant has marketed and sold its goods and services using the Trademark since 1898, which is well before Respondent's registration of the Domain Name. By registering a domain name that incorporates the "tml" element of the Trademark along with the related term "cloth", Respondent has created a Domain Name that is confusingly similar to the Trademark, as well as its <tmlewin.co.uk> and <tmlewin.com> domain names. As such, Respondent has demonstrated a knowledge of and familiarity with Complainant's Trademark and business. Further, by copying Complainant's official website, it is "not possible to conceive of a plausible situation in which Respondent would have been unaware of" the Trademark at the time the Domain Name was registered.

Moreover, the inclusion of the generic Top-Level Domain ("gTLD") ".online" in the Domain Name corresponds to Complainant's area of trade or business, and thus, further indicates that Respondent was aware of Complainant and the Trademark. In particular, ".online" refers to Complainant's online shop found at its primary domain name <tmlewin.co.uk>.

Respondent created a likelihood of confusion with Complainant and its Trademark by copying or attempting to copy Complainant's favicon and photos, with Respondent then attempting to profit from such confusion by (purportedly) selling Complainant's products at discounted prices. As such, Respondent is attempting to cause consumer confusion in a nefarious attempt to profit from such confusion. The impression given by the Domain Name and its website would cause consumers to believe Respondent is somehow associated with Complainant when, in fact, it is not. Respondent's actions create a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the Domain Name, and Respondent is thus using the fame of the

Trademark to improperly increase traffic to the website listed at the Domain Name for Respondent's own commercial gain. It is well established that such conduct constitutes bad faith.

Respondent's use of the Domain Name constitutes a disruption of Complainant's business and qualifies as bad faith registration and use under Policy paragraph 4(b)(iii) because Respondent's Domain Name is confusingly similar to Complainant's Trademark and the website at the Domain Name is being used to offer Complainant's products at disproportionately low prices. Regardless of whether these products are in fact counterfeit, they are being sold by Respondent without Complainant's authorization or approval.

Furthermore, Respondent provided false Whois information to the relevant registrar (noted to be in breach of its registration agreement). By providing a non-existent address, Respondent attempted to conceal its true identity. Such falsified information is another indication of Respondent's bad faith.

Finally, on balance of the facts set forth above, it is more likely than not that Respondent knew of and targeted Complainant's Trademark, and Respondent should be found to have registered and used the Domain Name in bad faith.

Complainant requests that the Panel appointed in this administrative proceeding transfer the Domain Name to Complainant.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Dealing, first, with respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under these Rules, the Panel shall be entitled to draw such inferences from this omission, as it considers appropriate.

Paragraph 4(a) of the Policy provides that Complainant prove each of the following three elements in order to succeed in its Complaint:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Complainant has provided details of its trademark registrations for T.M. LEWIN, in respect of which full details are set out above, and has thereby established its rights in this mark.

The Domain Name consists of the acronym of the Trademark, combined with the word "cloth". The Panel finds that the presence of the acronym in the Domain Name is sufficient for the Trademark to be recognizable in the Domain Name. The Panel notes that this acronym was also used by Complainant's predecessors in their company names "TML Realisations Limited" and "TMLG Holdings Limited". A dominant feature of a mark, such as its acronym or abbreviation, may be sufficient for the mark to be recognizable in a domain name. See section 1.7 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). Such is the case here. Moreover, while the content of the website is typically disregarded under the first element analysis, the Panel notes here notes that the

website at the Domain Name claims to be “T.M.Lewin Shop Online”, copies Complainant’s favicon, displays Complainant’s copyrighted product photos, and offers for sale seemingly the same products as those of Complainant, which confirms the confusing similarity. See [WIPO Overview 3.0](#), section 1.5. The addition of the dictionary word “cloth” in the Domain Name does not prevent a finding of confusing similarity. See [WIPO Overview 3.0](#), section 1.8.

In view of all these facts and circumstances, considered jointly and interrelated, this Panel finds that the Domain Name is confusingly similar to the Trademark, and the first element of the Policy under paragraph 4(a) has been satisfied.

B. Rights or Legitimate Interests

This, the second element of the Policy paragraph 4(a)(ii), essentially calls for a complainant to prove a negative, which is far from easy where the relevant information as to respondent’s rights or legitimate interests is often primarily within the knowledge of respondent. The matter is addressed in section 2.1 of [WIPO Overview 3.0](#) as follows:

“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.”

This is not a case where Respondent has rebutted Complainant’s *prima facie* case. The facts speak for themselves:

- Respondent’s Website is so similar to Complainant’s website that consumers will think they are visiting the website of Complainant or an affiliated company;
- alleged “suspicious products” as if they were legitimate Complainant products, for a price well below that of the original product, using photos and videos taken from the official website of Complainant, are offered on Respondent’s Website.

As found by the panel in *Philipp Plein v. Privacy Protection Service INC d/b/a PrivacyProtect.org / Norma Brandon, cheapphilipplein*, WIPO Case No. [D2015-1050](#): “The Respondent’s use of a domain name that is confusingly similar to Complainant’s trade marks in order to attract Internet users looking for genuine products of Complainant’s company and to offer them unauthorized copies instead is a ‘bait and switch’ strategy that lacks *bona fides* and does not give rise to rights or a legitimate interests under the Policy”. See also section 2.13.1 of the [WIPO Overview 3.0](#) which explains that “Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent”.

Having regard to the above considerations, the Panel finds that the Domain Name is not being used in connection with a *bona fide* offering of goods and services, and the second element of the Policy under paragraph 4(a) has been satisfied.

C. Registered and Used in Bad Faith

The Panel finds that at the time of registration of the Domain Name, Respondent was aware of the Trademark. Complainant is well known, and in any event, a trademark register search, or even a simple online search prior to the registration of the Domain Name would have informed respondent of the existence

of Complainant's Trademark rights and its extensive use of the Trademark as a source identifier. Moreover, the composition of the Domain Name itself strongly suggests that Respondent targeted the Trademark.

The fact that Respondent's website has a similar "look and feel" as Complainant's official website, shows the Trademark, as well as images and photographs of Complainant falsely suggests affiliation with Complainant and demonstrates that the Domain Name has intentionally been used by Respondent in an attempt to attract, for commercial gain, Internet users to Respondent's website by creating a likelihood of confusion with the Trademark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on that website.

Furthermore, the failure of Respondent to submit a response or to provide any evidence of actual or contemplated good faith use, is further evidence of bad faith, given the circumstances of the case (see, [WIPO Overview 3.0](#), section 3.2).

Therefore, the Panel finds that the Domain Name has been registered and is being used in bad faith within the meaning of 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 Domain Name, <tmlcloth.online> be transferred to Complainant.

/Richard C.K. van Oerle/

Richard C.K. van Oerle

Sole Panelist

Date: July 6, 2023