

ADMINISTRATIVE PANEL DECISION

Lenox Corporation v. xiuying liu
Case No. D2023-1735

1. The Parties

The Complainant is Lenox Corporation, United States of America (“United States”), represented by Norvell IP llc, United States.

The Respondent is xiuying liu, China.

2. The Domain Name and Registrar

The disputed domain name <lenoxushop.com> (the “Disputed Domain Name”) 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 19, 2023. On April 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On April 24, 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 April 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 18, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 25, 2023.

The Center appointed Nicholas Weston as the sole panelist in this matter on June 2, 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 is a United States corporation founded in 1889 that operates a business promoting and selling tableware, houseware, and giftware products. The Complainant holds registrations for the trademark LENOX and variations of it in numerous countries, including in the United States pursuant to the Registration No. 821,949, registered on January 10, 1967.

The Complainant is also the owner of, *inter alia*, the domain name <lenox.com>, which it registered in 1997 and resolves to the company's main website.

The Disputed Domain Name <lenoxushop.com> was registered on November 10, 2022. The Complainant has supplied uncontested evidence that this Disputed Domain Name redirected to a website containing content lifted from the Complainant's official website and offering for sale tableware, houseware, and giftware products similar to the products offered by the Complainant on the Complainant's official website.

5. Parties' Contentions

A. Complainant

The Complainant cites its trademark registrations for LENOX in various countries as *prima facie* evidence of ownership.

The Complainant submits that the trademark LENOX "is distinctive, well-known, and widely recognized around the world" and that its rights in that trademark predate the Respondent's registration of the Disputed Domain Name <lenoxushop.com>. It submits that the Disputed Domain Name is confusingly similar to its trademark, because the Disputed Domain Name incorporates in its entirety the LENOX trademark and that the similarity is not removed by the addition of the letter "u" and the word "shop".

The Complainant contends that the Respondent has no authorized rights or legitimate interests in respect of the Disputed Domain Name and that "Respondent is not affiliated with or connected to Complainant in any way".

Finally, the Complainant alleges that the registration and use of the Disputed Domain Name was, and currently is, in bad faith, contrary to the Policy and the Rules. It submits that "it is obvious Respondent was aware of the LENOX Mark" and that "[t]he website at the [Disputed] Domain Name features products currently sold by Complainant in addition to Complainant's LENOX Mark and logo" and that such use is "an attempt to impersonate Complainant and lure Complainant's customers to interact and provide sensitive personal and financial information" as evidence of registration and use of the Disputed Domain Name in bad faith.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant has the burden of proving the following:

- (i) that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has 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 has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has produced sufficient evidence to demonstrate that it has registered trademark rights in the mark LENOX. The propriety of a domain name registration may be questioned by comparing it to a trademark registered in any country (see WIPO Overview of WIPO Panel Views on Selected URDP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2.1).

Turning to whether the Disputed Domain Name is identical or confusingly similar to the LENOX trademark, the Panel observes that the Disputed Domain Name comprises: (a) an exact reproduction of the Complainant's LENOX trademark; (b) followed by the letter "u"; (c) followed by the word "shop"; (d) followed by the generic Top-Level Domain ("gTLD") ".com".

It is well established that the gTLD used as technical part of a domain name may be disregarded (see section 1.11.1 of the [WIPO Overview 3.0](#)). The relevant comparison to be made is with the second-level portion of the Disputed Domain Name, specifically: "lenoxushop".

It is also well-established that in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing (see [WIPO Overview 3.0](#), section 1.7).

This Panel accepts that the addition of letter "u" and the word "shop" does not preclude a finding of confusing similarity to the Complainant's trademark (see [WIPO Overview 3.0](#), section 1.8).

The Panel finds that the Complainant has established paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists the ways that the Respondent may demonstrate rights or legitimate interests in the Disputed Domain Name. The Policy also places the burden of proof on the Complainant to establish the absence of the Respondent's rights or legitimate interests in the Disputed Domain Name. Because of the inherent difficulties in proving a negative, the consensus view is that the Complainant need only put forward a *prima facie* case that the Respondent lacks rights or legitimate interests. The burden of production then shifts to the Respondent to rebut that *prima facie* case (see [WIPO Overview 3.0](#), section 2.1).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because it has not licensed, permitted or authorized the Respondent to use the Complainant's trademark or to sell its products and for those reasons, the Respondent is not making a *bona fide* offering of goods or services. The Complainant submits that "Complainant's first use of the LENOX Mark dates back to 1894, over one hundred years ago" and that "Respondent has not used, and is not using or preparing to use, the Domain Name in connection with *bona fide* offerings of goods or services. Instead, the Domain Name is designed to deceive customers, creating the false impression that Respondent's products and services are associated with Complainant's. Respondent is intentionally creating this false association and confusion by using the entirety of the LENOX Mark in the Domain Name and using the Domain Name to impersonate Complainant and lure Complainant's customers to provide their identifying information to Respondent under the pretenses that they are providing sensitive information to Complainant".

This Panel accepts that the Respondent is not an authorized reseller with a legitimate interest in a domain name incorporating a Complainant's mark, and there is no disclaimer on the website the Disputed Domain Name resolves to, therefore it cannot meet the tests set out in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#). Nor, alternatively, is the Respondent commonly known by the Disputed Domain Name. Nor, alternatively, is the Respondent making use of, or demonstrable preparations to use, the

Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a *bona fide* offering of goods or services.

The composition of the Disputed Domain Name consists of the Complainant's trademark with the letter "u", added as well as the word "shop". In this Panel's view, the Complainant has made out an initial *prima facie* case that the Respondent lacks rights or legitimate interests because the evidence demonstrates that it has 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 (see [WIPO Overview 3.0](#), section 2.1).

In the absence of countervailing evidence, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because it is engaging in an illegitimate commercial use of the Disputed Domain Name by suggesting some association with the Complainant and misleading consumers who are seeking out the Complainant's mark LENOX to opportunistically divert Internet traffic to its web page.

The Panel finds for the Complainant on the second element of the Policy.

C. Registered and Used in Bad Faith

The third element of the Policy that a complainant must also demonstrate is that the disputed domain name in question has been registered and used in bad faith. Paragraph 4(b) of the Policy sets out certain circumstances to be construed as evidence of both.

The evidence that the Respondent has registered and used the Disputed Domain Name in bad faith is overwhelming.

On the issue of registration, given the composition of the Disputed Domain Name, the Panel is satisfied that the Respondent targeted the Complainant's trademark LENOX when it registered the Disputed Domain Name and the Panel is prepared to infer that the Respondent knew, or should have known, that its registration would be identical or confusingly similar to the Complainant's trademark despite the additional letter "u" and word "shop" (see [WIPO Overview 3.0](#), section 3.2.1).

On the issue of use, the uncontradicted evidence of record is that the Disputed Domain Name was used to resolve to a website bearing the Complainant's trademark and copyright product images apparently lifted from the Complainant's official website, and offering the same current products for sale. In line with prior UDRP panel decisions, the Panel finds that this misconduct is an intentional attempt to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website (see [WIPO Overview 3.0](#), section 3.1.4).

Also, it appears that the Respondent did not provide proper contact details when it registered the Domain Name by supplying a false address, in further evidence of bad faith (see [WIPO Overview 3.0](#), section 3.6).

This Panel accepts the Complainant's uncontested evidence and finds that the Respondent has registered and used the Complainant's trademark LENOX in the Disputed Domain Name, without the Complainant's consent or authorization, for the likely purpose of capitalizing on the reputation of the trademark to infringe upon the Complainant's rights.

Accordingly, the Panel finds that the Complainant has satisfied the requirements 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 Disputed Domain Name, <lenoxushop.com> be transferred to the Complainant.

/Nicholas Weston/

Nicholas Weston

Sole Panelist

Date: June 16, 2023