

## **ADMINISTRATIVE PANEL DECISION**

Walters & Mason Retail, Inc. v. wuzh imin, wuzhimin  
Case No. D2023-3328

### **1. The Parties**

The Complainant is Walters & Mason Retail, Inc., United States of America (“United States”), represented by Venable, LLP, United States.

The Respondent is wuzh imin, wuzhimin, China.

### **2. The Domain Name and Registrar**

The disputed domain name <altardstateoutletstore.com> is registered with Web Commerce Communications Limited dba WebNic.cc (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 2, 2023. On August 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 3, 2023, 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 (Domain Admin, Whoisprotection.cc) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 25, 2023, 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 amendment to the Complaint on August 29, 2023.

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 August 30, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 19, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 21, 2023.

The Center appointed Angelica Lodigiani as the sole panelist in this matter on October 19, 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 was founded in 2009 and operates in the field of women's fashion under the ALTAR'D STATE trademark. The Complainant's products include clothing, jewelry, bags, wallets, sunglasses, hair accessories, scarves, hats, belts and home décor. The ALTAR'D STATE products are sold in more than 100 shops in 30 States of the United States. The Complainant also sells its products online through its website at "www.altardstate.com". The Complainant is present on Facebook, Instagram and Pinterest, with over a million of followers.

The Complainant is the owner of numerous registrations for the trademark ALTAR'D STATE, including the following:

- United States registration No. 3,986,450, registered on June 28, 2011, claiming first use in commerce since November 19, 2009, covering services in class 35;
- United States registration No. 4,870,948, registered on December 15, 2015, claiming first use in commerce since October 8, 2015, covering goods in classes 3, 4, 9, 14, 18, 20, 24, 25, and 26;
- United States registration No. 5,666,391, registered on January 29, 2019, claiming first use in commerce since October 8, 2015, covering services in class 35;
- China registration No. 21902235, registered on December 28, 2017, covering services in class 35.

The Respondent registered the disputed domain name on October 7, 2021. The disputed domain name leads to a website offering clothing, jewelry, shoes and accessories under the ALTAR'D STATE trademark and using photographs taken from the Complainant's website.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant maintains that the disputed domain name is confusingly similar to its ALTAR'D STATE trademark as it includes it entirely and the addition of the term "outletstore" and of the generic Top-Level Domain ("gTLD") ".com" cannot prevent a finding of confusing similarity.

The Complainant contends that the Respondent lacks rights or legitimate interests in the disputed domain name, as the Complainant never authorized the Respondent to reflect its trademark in the disputed domain name and the Respondent is not a licensee of the Complainant. Moreover, the Respondent does not appear to be commonly known by the disputed domain name. The Respondent is using the disputed domain name in connection with a website offering for sale counterfeit products under the Complainant's trademark and using official photographs belonging to the Complainant. This use does not amount to a *bona fide* offering of goods or services as the Respondent is impersonating the Complainant in order to purposefully disrupt the business of the Complainant by taking advantage of the Complainant's goodwill and the goodwill associated with the ALTAR'D STATE mark.

Lastly, the Complainant states that the Respondent has registered and is being using the disputed domain name in bad faith. The Complainant has made substantial investments in the promotion of its ALTAR'D STATE mark. Due to the long, continuous, and extensive use, advertising and promotion of the ALTAR'D STATE mark, and the commercial success of the ALTAR'D STATE retail stores and products, the ALTAR'DSTATE mark has gained reputation. Accordingly, the Respondent is likely to have had constructive notice as to the existence of the Complainant's trademark at the time of the registration of the disputed domain name. Such constructive notice suggests that the Respondent acted with opportunistic bad faith when it registered the disputed domain name. The disputed domain name resolves to a website offering for sale counterfeit goods similar or identical to the Complainant's original goods. The Respondent is therefore attempting to pass itself off as the Complainant. Hence, in the Complainant's view, the Respondent is using the disputed domain name to intentionally attempt to attract for commercial gain Internet users to its website, by creating a likelihood of confusion with the Complainant as to the source, sponsorship, affiliation or endorsement of the Respondent's website.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **A. Identical or Confusingly Similar**

The Panel finds that the Complainant has duly substantiated its earlier rights over the trademark ALTAR'D STATE. The disputed domain name consists of the Complainant's trademark followed by the wording "outletstore". The trademark ALTAR'D STATE is clearly recognizable within the disputed domain name. As specified in section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), where a domain name incorporates the entirety of a trademark, it will normally be considered confusingly similar to that mark for purposes of UDRP standing. Moreover, the addition of other terms, whether descriptive, geographical, pejorative, meaningless, or otherwise, would not prevent a finding of confusing similarity under the first element of the Policy, where the relevant mark is recognizable within the disputed domain name (see section 1.8 of the [WIPO Overview 3.0](#)).

In light of the above, the Panel finds that the Complainant has duly proved that the disputed domain name is confusingly similar to the Complainant's ALTAR'D STATE mark and therefore considers that the first condition under the Policy is met.

### **B. Rights or Legitimate Interests**

While the overall burden of proof rests with the complainant, UDRP panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge 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 shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

In the instant case, the Complainant states that it has no relation with the Respondent and that it did not authorize the Respondent to use its trademark in a domain name. Furthermore, there is no evidence in the file that the Respondent has acquired trademark rights or other rights in the word "altardstate", and that the Respondent is commonly known by the name "altardstateoutletstore".

The composition of the disputed domain name, consisting of the Complainant's trademark ALTAR'D STATE followed by the wording "outletstore", which is directly related to the Complainant's activity, carries a risk of implied affiliation, as it is suggesting sponsorship or endorsement of the Respondent's website by the Complainant. As a result, Internet users looking for the Complainant are likely to be diverted to the Respondent's website in order to buy ALTAR'D STATE products at what appears as reduced prices.

The Complainant affirms that the products on sale on the Respondent's website are counterfeit and that the photographs reproduced on such a website are taken from the Complainant's official website. The Panel notes that the Complainant did not provide evidence of the counterfeit nature of the products offered for sale on the Respondent's website, nor of the fact that the photographs displayed therein are copyrighted photographs of the Complainant. As also explained in section 2.13.2 of the [WIPO Overview 3.0](#), "[p]anels are generally not prepared to accept merely conclusory or wholly unsupported allegations of illegal activity, including counterfeiting, even when the respondent is in default. On the other hand, panels have found that circumstantial evidence can support a complainant's otherwise credible claim of illegal respondent activity". In reviewing the screenshot of the Respondent's website enclosed to the Complaint, the Panel notes that the ALTAR'D STATE mark is prominently reproduced with the same peculiar graphic adopted by the Complainant. The layout of the Respondent's website is very similar to that of the Complainant's. The photographs on the Respondent's website, albeit not identical to those of the Complainant's website have the same general appearance, which induce the Panel to believe that indeed the photographs appearing on the Respondent's website are copyrighted photos of the Complainant. Moreover, the prices of the products offered for sale on the Respondent's website are approximately half those of the Complainant's official products. The Respondent's website displays a physical address in the United States and an email address and telephone number. Noting in particular the general powers of a panel, articulated *inter alia* in paragraphs 10 and 12 of the UDRP Rules, the Panel has conducted some limited searches on the Internet. The Panel has found that the physical and email addresses and phone numbers appearing on the Respondent's website are associated with other domain names and related websites, which Internet users have reported as fraudulent on the Scan Watcher platform.

In light of the above, although it is not possible to conclude with absolute certainty that the site corresponding to the disputed domain name offers counterfeit products, it is highly likely that the activity perpetrated by the Respondent on that site is illegal.

Furthermore, regardless of whether the goods offered by the Respondent are indeed counterfeit, the above-mentioned use of the disputed domain name cannot confer on the Respondent any rights or legitimate interests in the disputed domain name, as it does not amount to a *bona fide* offering of goods or services, or to a legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue, as the evidence clearly shows that the Respondent has attempted to pass itself off as the Complainant. See sections 2.8 and 2.13 of the [WIPO Overview 3.0](#).

In light of the above, the Panel finds that the Complainant has made a *prima facie* case, that the Respondent lacks rights or legitimate interests in the disputed domain name. The burden of production now shifts to the Respondent to demonstrate that it owns rights or legitimate interests in the disputed domain name. The Respondent has chosen not to file a Response and therefore has failed to rebut the Complainant's *prima facie* case.

Accordingly, the Panel is satisfied that the second condition under the Policy is met.

### **C. Registered and Used in Bad Faith**

As far as bad faith is concerned, the Panel finds that it is highly likely that the Respondent registered the disputed domain name with full knowledge of the Complainant's trademark. The Complainant's mark is distinctive as it consists of an invented word, deprived of any meaning. The disputed domain name incorporates the Complainant's mark followed by the term "outletstore", which refers to the Complainant's business activity, as the Complainant sells fashion products and accessories and could run an outlet store. All these circumstances along with the use of the disputed domain name as described under paragraph B. above, lead to the conclusion that the registration of the disputed domain name cannot be the result of a mere coincidence. Rather, the Panel believes that the Respondent registered the disputed domain name primarily to disrupt the Complainant's business and therefore in bad faith.

The Respondent is using the disputed domain name to resolve to a website offering for sale alleged Complainant's goods at discounted prices. In the past, the same contact details appearing on the Respondent's website were associated with other domain names and websites used fraudulently. At this stage, it is not possible for the Panel to determine with enough certainty whether the goods offered for sale on the Respondent's website are counterfeit or exist at all. However, what is clear is that the Respondent's use of the disputed domain name aims at obtaining an unfair advantage from the distinctive character of the Complainant's trademark. Therefore, the Panel finds that by using the disputed domain name, the Respondent has intentionally attempted 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, or the products on sale on this website.

Therefore, the Panel is satisfied that also the third and last condition under the Policy is met.

## **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, <altardstateoutletstore.com>, be transferred to the Complainant.

*/Angelica Lodigiani/*

**Angelica Lodigiani**

Sole Panelist

Date: November 2, 2023