

## **ADMINISTRATIVE PANEL DECISION**

NSN Apparel Co, LLC v. Viesturs Brazdeikis, risehype

Case No. D2023-3530

### **1. The Parties**

The Complainant is NSN Apparel Co, LLC, United States of America (“United States”), represented by Adelman Matz P.C., United States.

The Respondent is Viesturs Brazdeikis, risehype, Latvia.

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

The disputed domain name <drewhype.com> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 21, 2023. On August 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 22, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 24, 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 24, 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 29, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 18, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 22, 2023.

The Center appointed Reyes Campello Estebaranz as the sole panelist in this matter on September 27, 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 operates internationally in the clothing industry, producing and commercializing unisex clothing and apparel under the brands DREW, THE HOUSE OF DREW, DREW HOUSE, LA MAISON DREW, and the DREW Logo (depicted below). These brands are based on the middle name (“Drew”) of Justin Bieber, a famous singer/musician who is one of the founders of the Complainant.

The Complainant owns various trademark registrations comprising its brands, including:

- International Trademark Registration No. 1645597, DREW HOUSE, word, registered on October 17, 2021, in class 28;
- United States Trademark Registration No. 6,563,146, LA MAISON DREW, word, registered on November 16, 2021, in class 25; and
- New Zealand Trademark Registration No. 1169973, DREW, figurative, registered on August 4, 2021, in classes 18, 25, and 35, with the following representation:



The aforementioned trademark registrations will collectively be referred to as the “DREW marks”, and individually as the “DREW mark”, the “DREW HOUSE mark”, and the “MAISON DREW mark”, respectively.

The Complainant further owns various registrations comprising its logo, including United Kingdom Trademark Registration No. UK00003619079, registered on October 15, 2021, in class 25, for the following DREW logo:



The Complainant further owns the domain name <thehouseofdrew.com> (registered on February 20, 2018), which resolves to its corporate website and official online store.

According to the evidence provided by the Complainant, the Complainant’s products are sold online through its official website at “www.thehouseofdrew.com” at least since December 25, 2018, and, since the first use of the DREWS marks, they have been subject of a widespread unsolicited media recognition and social media posts.

The disputed domain name was registered on May 5, 2020, and, at the time of drafting this decision, it is apparently inactive resolving to an Internet browser error message. According to the evidence provided by the Complainant, the disputed domain name previously resolved to a website, in English language, that purported to offer for sale a wide range of DREW marks’ products at discounted prices. This website did not include any reference to the owner of the site or that of the disputed domain name, and/or its lack of relationship with the Complainant and its trademarks. The site owner identified itself as “drew hype” with no indication of its company name or contact details.

On April 28, 2023, and February 7, 2023, the Complainant sent cease and desist letters to the Respondent, informing it of the Complainant's prior intellectual property rights. The Respondent failed to respond to these letters.

## **5. Parties' Contentions**

### **A. Complainant**

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the DREW marks and the DREW logo are well-known worldwide and continually used since 2018, with total sales over 62 million units.

The disputed domain name is confusingly similar to the DREW marks, as it incorporates in its entirety the DREW mark adding the term "hype", which denotes the positive publicity associated with the Complainant's trademarks and enhances the confusing similarity.

The Respondent has no rights or legitimate interests to the disputed domain name. The Respondent is not commonly known by the disputed domain name, it is not authorized to use the Complainant's trademarks and it has never used the disputed domain name in connection with a *bona fide* offering of goods and services. The Respondent registered the disputed domain name to intentionally confuse and redirect consumers to a website that offers illegitimate and unauthorized counterfeit merchandise bearing the DREW marks and/or the DREW logo. The Respondent has tried to associate its website with Complainant's.

The disputed domain name was registered and is being used in bad faith. The Respondent is intentionally trying to attract consumers to its website for commercial gain by selling counterfeit merchandise using Complainant's DREW marks and DREW logo without authorization. Any trademark search or domain name search at the time of registering the disputed domain name would have revealed the Complainant's trademarks and domain name. Additionally, due to the popularity and well-known character of the Complainant's prior rights worldwide, the Respondent knew or should have known of these rights. The use of the disputed domain name and the lack of response of the Complainant's cease and desist letters further corroborate the Respondent bad faith.

### **B. Respondent**

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

## **6. Discussion and Findings**

The Complainant has made the relevant assertions as required by the Policy and the dispute is properly within the scope of the Policy. The Panel has authority to decide the dispute examining the three elements in paragraph 4(a) of the Policy, taking into consideration all the relevant evidence, annexed material and allegations, and performing some limited independent research under the general powers of the Panel articulated, *inter alia*, in paragraph 10 of the Rules.

### **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. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of registered trademarks, as well as has established unregistered trademark rights for the purposes of the Policy. The Panel finds that the Complainant has rights in the DREW marks, both by virtue of its trademark registrations and as a result of its continuous use of these trademarks in the market (since 2018). [WIPO Overview 3.0](#), section 1.2.1, and 1.3.

The disputed domain name incorporates the DREW mark in its entirety adding the term “hype”. The DREW mark as well as the dominant feature of all the DREW marks is recognizable in the disputed domain name, and the generic Top Level Domain suffix “.com” is a technical requirement, generally disregarded for the purpose of the analysis of the confusing similarity. Accordingly, the Panel finds that the disputed domain name is identical to the DREW mark and confusingly similar to all other DREW marks for the purposes of the Policy. See sections 1.7, 1.8, and 1.11, [WIPO Overview 3.0](#).

Therefore, based on the available record, the Panel finds the first element of the Policy has been established.

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

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

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. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Panel notes that, according to the evidence provided by the Complainant, the disputed domain name has been used in connection with a website that purported to offer for sale a wide range of DREW marks’ products at discounted prices.

Panels have recognized that resellers using a domain name containing the complainant’s trademark to undertake sales of the complainant’s goods may be making a *bona fide* offering of goods and thus have a legitimate interest in such domain name if certain cumulative requirements are met, namely the following: (i) the respondent must actually be offering the goods at issue; (ii) the respondent must use the site only to sell the trademarked goods; (iii) the site must accurately and prominently disclose the registrant’s relationship with the trademark holder; and (iv) the respondent must not try to “corner the market” in domain names that reflect the trademark. [WIPO Overview 3.0](#), section 2.8.

However, the Panel notes that the Respondent’s website did not comply with these cumulative requirements, as it did not accurately and prominently disclose the Respondent’s lack of relationship with the Complainant, and contained no information as to the identity the operator or the website, the seller of the products, or the owner of the disputed domain name.

The Panel further notes that the Complainant has alleged that the products offered in the Respondent's website were counterfeit merchandise bearing its trademarks and/or logo without permission. The Panel notes that the Respondent's website offered what purported to be authentic goods, but considering the numerous products purportedly for sale and the substantially discounted prices, it is in the Panel's view a legitimate inference, in a balance of probabilities, to consider that these products may have been counterfeit merchandise. In this respect, panels have 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. [WIPO Overview 3.0](#), section 2.13.1.

The Panel further notes that the Respondent did not reply to the cease and desist letters forwarded by the Complainant, and has chosen not to reply to the Complaint, not providing any evidence of any rights or legitimate interests in the disputed domain name. The Respondent's reaction to the notification of the Complaint has apparently been to take down the website that was linked to the disputed domain name, which, in the Panels view, is another indication of its lack of rights or legitimate interests in the disputed domain name.

Therefore, the Respondent has not rebutted the Complainant's *prima facie* case and nothing in the record gives any reason to consider that the Respondent has any rights or legitimate interests in respect of the disputed domain name.

Based on the available record, the Panel finds the second element of the Policy has been established.

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

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel finds that the Respondent knew about the DREW mark and deliberately included in the disputed domain name to increase the Internet traffic to its website for commercial gain.

The Panel notes the strong presence over the Internet of the Complainant's trademarks and logo. In this respect, the Panel has verified, under its general powers, that any search over the Internet for the term "drew" reveals the Complainant's DREW marks and its DREW logo.

The Panel has further verified that the DREW marks and DREW logo have a strong presence over the social media and communication media in general, and the popularity of one of the Complainant's founders, the musician Justin Drew Biber, exacerbates the popularity and notoriety of these brands internationally. These circumstances make possible to consider that the DREW marks and the DREW logo are at least notorious in the clothing and accessories industry worldwide.

The use of the disputed domain name in connection to a website that purported to offer for sale merchandise bearing the Complainant's trademarks and/or logo, corroborates the Respondent knew about these intellectual property rights when it registered the disputed domain name targeting these marks and logo in bad faith.

The Panel further notes that, according to the Complainant's allegations, the Respondent's website resembles the look and feel of the Complainant's official website, using a similar color yellow for its background as the one used in the logos and various features of the Complainant's official website, a similar design and similar images of youth groups wearing the Complainant's products.

The circumstances of this case further indicate, in a balance of probabilities, that the goods commercialized in the Respondent's website were not authentic, which constitutes bad faith under the Policy. Panels have 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) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. The Respondent's lack of response to cease and desist letters and to the Complaint is a further element that corroborates the Respondent's bad faith.

Under these circumstances, the Panel finds that the current apparent non-use of the disputed domain name does not prevent and finding of bad faith under the doctrine of passive holding. In this respect, while panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put. [WIPO Overview 3.0](#), section 3.3.

All of the above-mentioned circumstances lead the Panel to conclude that the disputed domain name was registered and is being used in bad faith. Accordingly, based on the available record, the Panel finds the third element of the Policy has been established.

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

*/Reyes Campello Estebarez/*

**Reyes Campello Estebarez**

Sole Panelist

Date: October 4, 2023