

ADMINISTRATIVE PANEL DECISION

Next Group Plc v. Ya Lin, Nameplus
Case No. D2023-3797

1. The Parties

The Complainant is Next Group Plc, United Kingdom, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Ya Lin, Nameplus, China.

2. The Domain Name and Registrar

The disputed domain name <lipsy.app> (the “Domain Name”) is registered with Global Domains International, Inc. DBA DomainCostClub.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 12, 2023. On September 12, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On September 13, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (DCC Private Registration/<DomainCostClub.com>) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 14, 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 amended Complaint on September 18, 2023.

The Center verified that the Complaint together with the amended 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 September 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 9, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 12, 2023.

The Center appointed Nicholas Smith as the sole panelist in this matter on October 16, 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 the parent company of Lipsy Limited, a fashion and cosmetic retailer located in the United Kingdom. Since 1988 the Complainant, through its subsidiary, has sold clothing, accessories and beauty products under a trademark consisting of the word LIPSY (the “LIPSY Mark”). LIPSY products are sold online through the Complainant’s various websites as well as through approximately 40 stores.

The Complainant has held trademark registrations the LIPSY Mark since at least 2005 in various jurisdictions including a registration of the LIPSY Mark with the United States Patent and Trademark Office (“USPTO”) dated February 8, 2005, for goods in class 25 (trademark number 2,926,041).

The Complainant registered or acquired the <lipsy.co.uk> and <lipsy.com> domain names in 1999 and 2008.

The Domain Name was registered on May 30, 2023, and does not presently resolve to an active website. The Domain Name previously resolved to a website (the “Respondent’s Website”) that indicated that the Domain Name was for sale for a sum of USD 5,000.

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 Domain Name.

Notably, the Complainant contends that;

- a) It is the owner of the LIPSY Mark, having registered the LIPSY Mark in multiple jurisdictions. The Domain Name is identical or confusingly similar to the LIPSY Mark as it reproduces the LIPSY Mark in its entirety and adds the generic Top-Level domain (“gTLD”) “.app”.
- b) There are no rights or legitimate interests held by the Respondent in respect of the Domain Name. The Complainant has not granted any license or authorization for the Respondent to use the LIPSY Mark. The Respondent is not commonly known by the LIPSY Mark, nor does it use the Domain Name for a *bona fide* purpose or legitimate noncommercial purpose. Indeed, the Domain Name does not currently resolve to an active webpage and previously resolved to a website advertising the Domain Name for sale.
- c) The Domain Name was registered and is being used in bad faith. There is no plausible circumstance under which the Respondent could legitimately use the Domain Name, which is identical to the LIPSY Mark, other than in bad faith. Given the reputation of the highly distinctive LIPSY Mark, the Respondent must have been aware of the Complainant’s mark at the time of registration. In such circumstances, the Respondent’s use of the Domain Name for a website advertising the Domain Name as being for sale for a significant sum amounts to use of the Domain Name in bad faith.

B. Respondent

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

6. Discussion and Findings

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 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 a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1

The Panel finds the entirety of the mark is reproduced within the Domain Name. Accordingly, the Domain Name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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 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 Domain Name.

The Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.
- the Respondent (as an individual, business, or other organization) has not been commonly known by the Domain Name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.
- the Respondent is not making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the Domain Name.

There is no evidence of any demonstrable preparations to use the Domain Name in connection with a *bona fide* offering of goods or services any other evidence that would give rise to rights or legitimate interests in the Domain Name. The use of the Domain Name for a page advertising itself for sale does not, in the absence of other evidence, amount to a use for a *bona fide* offering of goods or services.

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.

Having reviewed the record, the Panel finds the Respondent's registration and use of the Domain Name constitutes bad faith under the Policy. At some point shortly after the Domain Name was registered, the Respondent created the Respondent's Website which advertised that the Domain Name was for sale for USD 5,000. The presence of an advertisement indicating that the Domain Name was for sale shortly after the registration of the Domain Name, along with the lack of any evidence supporting any other explanations as to the possible (legitimate) use of the Domain Name leads the Panel to conclude that the Respondent registered the Domain Name primarily for the purpose of selling it for an amount likely in excess of its out-of-pocket costs. Pursuant to the Policy the Respondent has registered and used the Domain Name in bad faith.

Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the record, the Panel finds the current non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding.

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 Domain Name, <lipsy.app> be transferred to the Complainant.

/Nicholas Smith/

Nicholas Smith

Sole Panelist

Date: October 24, 2023