

ADMINISTRATIVE PANEL DECISION

Chewy, Inc v. Gbdsh Tvded

Case No. D2023-4443

1. The Parties

The Complainant is Chewy, Inc, United States of America ("United States"), represented by Winterfeldt IP Group PLLC, United States.

The Respondent is Gbdsh Tvded, Hong Kong, China.

2. The Domain Name and Registrar

The disputed domain name <petamericanjourney.com> 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 October 24, 2023. On October 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 27, 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 and contact information in the Complaint. The Complainant filed an amended Complaint on November 16, 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 November 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 6, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 11, 2023.

The Center appointed Andrea Mondini as the sole panelist in this matter on December 13, 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 2011 and is an online retailer of pet supplies.

The Complainant is headquartered in the United States and has 24 physical locations throughout the United States, including Florida, Massachusetts, Arizona, Indiana, Kentucky, Nevada, Pennsylvania, Ohio, North Carolina, Texas, Minnesota and Washington, and employs more than 20,000 people.

The Complainant holds several domain names, among them <americanjourney.com> which redirects Internet users to the Complainant's webpage "www.chewy.com".

The Complainant owns numerous trademark registrations in several jurisdictions, including:

TRADEMARK	JURISDICTION	REGISTRATION NUMBER	REGISTRATION DATE	INTERNATIONAL CLASS
AMERICAN JOURNEY	United States	5,281,428	September 5, 2017	31
AMERICAN JOURNEY	European Union	016587545	August 14, 2017	5, 31
AMERICAN JOURNEY	Mexico	2114219	August 26, 2020	31
AMERICAN JOURNEY	Brazil	918993032	September 1, 2020	31
AMERICAN JOURNEY	China	23703045	February 21, 2019	5

Because the Respondent did not file a Response, nothing is known about the Respondent.

The disputed domain name was registered on June 27, 2022.

According to the evidence submitted with the Complaint, the disputed domain name resolves to an imitation website offering pet supply products for sale under the trademark AMERICAN JOURNEY, using copyright-protected product photographs and descriptions from the Complainant's Website without authorization.

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 as follows:

The disputed domain name is confusingly similar to the AMERICAN JOURNEY trademark in which the Complainant has rights, because it incorporates this trademark in its entirety, and the addition of the descriptive term "pet" is not sufficient to avoid confusing similarity.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The trademark AMERICAN JOURNEY has been extensively used to identify the Complainant and its products. The Respondent has not been authorized by the Complainant to use this trademark, is not commonly known by the disputed domain name, and there is no evidence of the Respondent's use, or demonstrable preparation to use, the disputed domain name in connection with a *bona fide* offering of goods and services. To the contrary, the disputed domain name currently resolves to an imitation website offering pet supply products for sale under the AMERICAN JOURNEY trademark and that contains copyright-protected product photographs and descriptions lifted from the Complainant's website without the Complainant's authorization.

Accordingly, the Respondent is monetizing the disputed domain name by trading on the goodwill associated with the AMERICAN JOURNEY trademark to draw Internet users to the Respondent's website. Such use of the disputed domain name does not constitute any legitimate *bona fide* sale of goods or services or legitimate non-commercial or fair use.

The disputed domain name was registered in bad faith because it is obvious that the Respondent had knowledge of both the Complainant and its well known trademark AMERICAN JOURNEY at the time it registered the disputed domain name.

The Respondent is using the disputed domain name in bad faith to operate an imitation website selling pet supplies under the trademark AMERICAN JOURNEY, using the Complainant's logos and copyrighted images, and without disclosing that the Respondent is not affiliated with the Complainant. The impression created by this website would lead consumers to believe that the Respondent is somehow associated with the Complainant, when in fact it is not.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, in order to succeed, a complainant must establish each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to the trademark or service mark in which the complainant has rights; and
- (ii) the respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

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 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 disputed domain name.

Although the addition of other terms such as here "pet" may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available 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 Complainant has shown that the Respondent posted a website under the disputed domain name offering the Complainant's products. The Respondent's use of the disputed domain name does not meet the “Oki Data Test”, because this site does not disclose the lack of relationship between the Respondent and the Complainant. [WIPO Overview 3.0](#), section 2.8.

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.

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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the view of the Panel, noting that the Complainant's trademark predates the registration of the disputed domain name and considering that the disputed domain name resolves to a website featuring the Complainant's logo and depictions of its products, it is inconceivable that the Respondent could have registered the disputed domain name without knowledge of the Complainant's well known trademark. In the circumstances of this case, this is evidence of registration in bad faith.

The disputed domain name resolves to an imitation website impersonating the Complainant and selling pet supplies under the trademark AMERICAN JOURNEY and thereby using the Complainant's logos and copyright-protected images and without disclosing the Respondent's lack of a relationship with the Complainant. The impression given by this website would cause consumers to believe that the Respondent is somehow associated with the Complainant when, in fact, it is not. The Panel holds that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its web site in the sense of Policy, paragraph 4(b)(iv).

Moreover, panels have held that the use of a domain name for illegal activity such as in the present case impersonating the Complainant constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Based on the available record, the Panel finds that the Complainant has established the third element of the Policy with regard to the disputed domain name.

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 <petamericanjourney.com> be transferred to the Complainant.

/Andrea Mondini/
Andrea Mondini
Sole Panelist
Date: December 27, 2023