

ADMINISTRATIVE PANEL DECISION

Gallery Department, LLC v. Aamir Ali, Aamir and Amir Ali, Kaamy Group
Case No. D2023-4793

1. The Parties

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

The Respondent is Aamir Ali, Aamir, Pakistan and Amir Ali, Kaamy Group, Pakistan.

2. The Domain Names and Registrars

The disputed domain names <deptcart.com> and <shopgallerydept.com> are registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 17, 2023. On November 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On November 20, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names 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 November 20, 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 November 22, 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 22, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 12, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 13, 2023.

The Center sent an email communication to the Complainant on December 18, 2023, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrar, requesting the Complainant to either file separate complaint(s) for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity, and invited the Respondent to indicate whether it would like to participate in the proceeding by December 28, 2023. The Complainant filed an amended Complaint on December 21, 2023. The Respondent did not submit any response.

The Center appointed Jeremy Speres as the sole panelist in this matter on January 8, 2024. 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, based in Los Angeles, United States, trades as a unisex clothing brand. The Complainant has owned and operated a website at the domain name <gallerydept.com> since 2014 and operates retail stores in Los Angeles and Miami.

The Complainant owns trade mark registrations for its GALLERY DEPT. mark, and variations of it, in numerous jurisdictions including:

- United States Trade Mark Registration No. 6048485 GALLERY DEPT. in class 25, having a registration date of May 5, 2020 ;
- United Kingdom Trade Mark Registration No. UK00003797617 DEPT. in class 25, having a registration date of October 28, 2022.

The disputed domain name <shopgallerydept.com> was registered on June 24, 2022, and the disputed domain name <deptcart.com> was registered on December 20, 2022. The former resolves to a website headed "GALLERY DEPT." purporting to be an online clothing store offering GALLERY DEPT. clothing at significant price reductions. The website is composed, amongst others, of product images sourced from the Complainant's website as well as other information referencing the Complainant, such as the name of the Complainant's founder. The latter disputed domain name simply redirects to the former.

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 names. Notably, the Complainant contends that the disputed domain names were registered and have been used in bad faith given their usage to offer counterfeit merchandise targeting the Complainant.

B. Respondent

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

6. Discussion and Findings

A. Consolidation: Multiple Respondents

The amended Complaint was filed in relation to nominally different disputed domain name registrants.

The Complainant alleges that the disputed domain name registrants are one and the same person and requests consolidation pursuant to paragraph 10(e) of the Rules. The disputed domain names registrants did not comment on the Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2.

As regards common control, the Panel notes that it is more likely than not that the disputed domain name registrants are one and the same person. The registrant names differ by a single letter. Their telephone numbers are identical. Their addresses overlap. They used the same registrar. Finally, one of the disputed domain names redirects to the other.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as "the Respondent") in a single proceeding.

B. 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 trade mark and the disputed domain names. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. The entirety of the Complainant's GALLERY DEPT. and DEPT. marks are respectively reproduced within the disputed domain names insofar as full stops cannot be reproduced in the Domain Name System ("DNS"). Accordingly, the disputed domain names are confusingly similar to the marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the first element of the Policy has been established.

C. 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.

The Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names. 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 names such as those enumerated in the Policy or otherwise.

The general impression created by the website to which the disputed domain names resolve is one of impersonation of the Complainant. UDRP panels have categorically held that the use of a domain name for illegal activity (here impersonation/passing off) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#) at section 2.13.1. To the extent that the disputed domain names' website might be considered that of a reseller of the Complainant's products, it does not meet the requirements of the well-known *Oki Data* test given that the site does not accurately and prominently disclose the Respondent's relationship with the Complainant. *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#); and [WIPO Overview 3.0](#) at section 2.8.

The Panel finds the second element of the Policy has been established.

D. 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.

The website to which the disputed domain names resolve clearly impersonates the Complainant. Considering this and the composition of the disputed domain names wholly incorporating the Complainant's marks, the Respondent must have had the Complainant in mind when registering and using the disputed domain names. It is clear in these circumstances that the Respondent sought to impersonate the Complainant, falling squarely within paragraph 4(b)(iv) of the Policy (*Ebay Inc. v. Wangming*, WIPO Case No. [D2006-1107](#)). This conclusion is made all the more likely given that the Respondent was previously found to have targeted the Complainant in earlier UDRP proceedings. See *Gallery Department, LLC v. Amir Ali*, WIPO Case No. [D2022-4219](#).

The Panel finds that the Complainant has established the third element 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 names <deptcart.com> and <shopgallerydept.com> be transferred to the Complainant.

/Jeremy Speres/

Jeremy Speres

Sole Panelist

Date: January 19, 2024