

ADMINISTRATIVE PANEL DECISION

For Love and Lemons, LLC v. Xin Xiong

Case No. D2023-5022

1. The Parties

The Complainant is For Love and Lemons, LLC, United States of America, represented by Sisun Law, United States of America (“United States” or “USA”, or “US”).

The Respondent is Xin Xiong, China.

2. The Domain Name and Registrar

The disputed domain name <forlove-lemons.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 December 1, 2023. On December 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 4, 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.

The Center verified that 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 December 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 28, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 12, 2024.

The Center appointed Anne-Virginie La Spada as the sole panelist in this matter on January 17, 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 is a US fashion/clothing company, with headquarters in Los Angeles, USA.

The Complainant owns various trademark registrations for FOR LOVE & LEMONS, among which:

- United States trademark registration no. 4186612, registered on August 7, 2012 in class 25;
- United States trademark registration no. 6045982, registered on May 5, 2020 in classes 9, 14, 18, 25 and 35;
- United States trademark registration no. 6634388, registered on February 1, 2022 in class 25

The Complainant owns the domain name <forloveandlemons.com> registered on April 12, 2009. This domain name resolves to the Complainant's commercial website proposing clothes and fashion accessories.

The disputed domain name was registered on June 18, 2022.

The disputed domain name resolved to a commercial website with contents conveying the impression that it is an official website of the Complainant, and reproducing the Complainant's trademark and logo, as well as certain images, in connection with an offer for sale of the clothing articles of the "for love & lemons" brand and of competing brands. In the general terms and conditions accessible on the website, the operator of the website designates itself as "Cheap for Love & Lemons Store".

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 disputed domain name is confusingly similar to its trademark FOR LOVE & LEMONS.

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name for the following reasons: (i) the Respondent is not commonly known by the disputed domain name; (ii) the Respondent has not been authorized by the Complainant to use its trademark within the disputed domain name; (iii) the Respondent has not used the disputed domain name in connection with any bona fide offering of goods or services, nor is the Respondent making any legitimate noncommercial use of the disputed domain name.

Finally, the Complainant contends that the disputed domain name was registered and is used in bad faith. It considers that the disputed domain name is being intentionally used to host a website to create a false affiliation between the disputed domain name and the Complainant's trademarks. The website reproduces the trademark, the logo, images and more generally the look and feel of the Complainant's website. These actions demonstrate, in the Complainant's eyes, an intention to unlawfully profit from the use of Complainant's trademark.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, a complainant must assert and prove each of the following:

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

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 disputed domain name includes the Complainant's entire trademark with the exception that the character "&" is replaced by a hyphen. This replacement is insufficient to exclude a confusing similarity.

The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark 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.

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.

Based on the information submitted by the Complainant, the Complainant has not granted to the Respondent an authorization to use the disputed domain name. Moreover, there is no evidence indicating that the Respondent is commonly known by the disputed domain name.

The Respondent does not appear to have operated any bona fide or legitimate business under the disputed domain name and is not making a noncommercial or fair use of the disputed domain name. Instead, the disputed domain name resolved to an active website purporting to be an official website of the Complainant,

reproducing the trademark and logo of the Complainant, as well as images copied from the Complainant's website, which in the Panel's view demonstrates an obvious attempt on the part of the Respondent to mislead Internet users seeking the Complainant's services and website.

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 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.

Panels have 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](#), section 2.13.1.

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.

The Panel finds it highly likely that the Respondent was aware of the Complainant's trademark when it registered the disputed domain name, given the distinctive character of such trademark and the subsequent use of the domain name, which resolved to a website imitating the Complainant's logo. The Panel accepts therefore that the disputed domain name was registered in bad faith.

In the present case, the Panel notes that the Respondent used the disputed domain name in connection with an active website purporting to be an official website of the Complainant. The commercial website connected with the disputed domain name reproduced the logo of the Complainant as well as images from the Complainant's website.

Furthermore, the Complainant asserted in the Complaint that in the general terms and conditions accessible on the website, the operator of the website designated itself as "Cheap for Love & Lemons Store". While the record did not include a copy of this section of the website operated under the disputed domain name, the Panel was able to verify this information by visiting such website. Panels are indeed allowed to undertake limited factual research, including visiting the website linked to the disputed domain name in order to obtain more information about the respondent or its use of the domain name. [WIPO Overview 3.0](#), section 4.8.

This use is apt to lead Internet users into believing that the website at the disputed domain name resolved to an official website of the Complainant, or at least a website sponsored by the Complainant. Panels have held that the use of a domain name for illegal activity here, impersonation/passing off, 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.

In the Panel's view, by using the disputed domain name in such manner, the Respondent intentionally attempted to attract, for the purposes of commercial gain, Internet users to his website by creating a likelihood of confusion with the Complainant's mark as to the source and affiliation of this website. Such behavior constitutes use in bad faith under paragraph 4(b)(iv) of the Policy.

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 name <forlove-lemons.com> be transferred to the Complainant.

/Anne-Virginie La Spada/

Anne-Virginie La Spada

Sole Panelist

Date: February 1, 2024