

ADMINISTRATIVE PANEL DECISION

LoveShackFancy, LLC v. Ubcsjn Jvcd
Case No. D2023-5159

1. The Parties

The Complainant is LoveShackFancy, LLC, United States of America (“United States” or “US”), represented by Sheppard, Mullin, Richter & Hampton LLP, United States.

The Respondent is Ubcsjn Jvcd, Hong Kong, China.

2. The Domain Name and Registrar

The disputed domain name <loveshackfancys.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 12, 2023. On December 12, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 14, 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 18, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 7, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 8, 2024.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on January 15, 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 company based in the US which manufactures and sells since 2013 womenswear distinguished by vintage, bohemian inspired prints, and breezy skirts and dresses.

It results from the Complainant's documented allegations, which remained undisputed, that it owns numerous United States and foreign trademark registrations for LOVESHACKFANCY. In particular, the Complaint is based on US trademark registration no. 5,280,125 registered on September 5, 2017, for goods in class 25 and first use dating back to June 30, 2013.

The Respondent registered the disputed domain name on July 7, 2022. The language of the registration agreement used by the Respondent for the disputed domain name is English.

The Complainant has provided – undisputed – evidence demonstrating that the disputed domain name resolves to a website which mimics the Complainant's website by prominently displaying the Complainant's trademark and offering (allegedly counterfeit) clothing under the trademark LOVESHACKFANCY with a pink-and-white color scheme and identical floral graphics without the Complainant's authorization. In addition, that website purports to offer original LOVESHACKFANCY products for allegedly significantly discounted prices.

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:

- (i) the disputed domain name is confusingly similar to its trademark LOVESHACKFANCY since only difference between the disputed domain name and the registered trademark is the addition of an extra letter "s" at the end of the disputed domain name;
- (ii) the Respondent has no rights or legitimate interests in the disputed domain name. In particular, the Respondent is deceptively leading visitors to believe that the Complainant is the source of the infringing website and the products featured therein. Additionally, the disputed domain name indisputably trades on the goodwill of the Complainant and its original products. The Respondent's offering of counterfeit goods and services bearing the LOVESHACKFANCY-trademark does not constitute a *bona fide* offering of goods or services that could establish any rights or legitimate interests in the disputed domain name. Furthermore, there is no evidence in the record or the Whois information that suggests the Respondent is commonly known by the disputed domain name. Finally, the Respondent is using the disputed domain name to divert internet traffic to a commercial website offering significantly discounted, counterfeit LOVESHACKFANCY products on sale, which is not a legitimate noncommercial or fair use under the Policy;
- (iii) the Respondent's registration and use of the disputed domain name constitutes bad faith. According to the Complainant, the Respondent could not have been unaware of its existence when it registered the disputed domain name. Moreover, the Respondent's use of the disputed domain name that resolves to a page called "LoveShackFancy" that sells counterfeit products using the LOVESHACKFANCY-trademark, employing a substantially similar website layout and color scheme as used on the Complainant's "www.loveshackfancy.com" website is evidence that the Respondent had actual knowledge of the Complainant's trademark prior to registering the disputed domain name. Finally, the Respondent's use of the disputed domain name to divert Internet traffic to sell unauthorized and counterfeit LOVESHACKFANCY branded products for the Respondent's financial gain also constitutes bad faith under the Policy.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to “decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements in order to obtain an order that the disputed domain name should be transferred or cancelled:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainants have 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.

The Panel is satisfied that the registrant of record for the disputed domain name is the Respondent and will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

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., *i.e.*, US trademark registration no. 5,280,125 LOVESHACKFANCY registered on September 5, 2017, for goods in class 25 and first use dating back to June 30, 2013.

The entirety of the mark LOVESHACKFANCY is reproduced within the disputed domain name, the only difference between the disputed domain name and the Complainant's trademark being the addition of an extra letter “s” at the end of the disputed domain name. Therefore, the Panel concludes that 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.

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.

(i) First, it results from the Complainant's uncontested evidence that the disputed domain name resolves to a website which mimics the Complainant's website by offering (allegedly counterfeit) clothing under the trademark LOVESHACKFANCY with a pink-and-white color scheme and identical floral graphics without the Complainant's authorization. In addition, that website purports to offer original LOVESHACKFANCY products for allegedly significantly discounted prices. In this Panel's view, such use cannot be qualified as a *bona fide* offering of goods or services in accordance with paragraph 4(c)(i) of the Policy, since such use is likely to mislead Internet users. In particular, the Complainant's uncontested allegations demonstrate that it has not authorized or licensed the Respondent's use of the LOVESHACKFANCY trademarks for registering the disputed domain name which is confusingly similar to the Complainant's trademark.

(ii) Furthermore, the Panel notes that there is no evidence in the record or Whois information showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

(iii) Finally, the Panel notes that there is no evidence in the record either showing that the Respondent might be making a noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark at issue pursuant to paragraph 4(c)(iii) of the Policy. In particular, the Panel considers it obvious that the Respondent wanted to mimic the Complainant's original website under the disputed domain name which entirely incorporates the trademark LOVESHACKFANCY. Noting the absence of any disclaimer and the impersonating nature of the website design, the disputed domain name's content exacerbates the confusion caused by the incorporation of the Complainant's trademark in the construction of the disputed domain name by further impersonating the Complainant. Accordingly, further to section 2.8 of the [WIPO Overview 3.0](#), the Respondent's use of the disputed domain name to host an impersonating webstore excludes any *bona fide* offering, noncommercial, or fair use of the disputed domain name from the outset.

Since the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

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 present case, the Panel notes that the Respondent by using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location (paragraph 4(b)(iv) of the Policy).

It is the view of this Panel that these circumstances are met in the case at hand:

It results from the documented and undisputed evidence provided by the Complainant that the disputed domain name resolves to a website which mimics the Complainant's website by offering (allegedly counterfeit) clothing under the trademark LOVESHACKFANCY with a pink-and-white color scheme and identical floral graphics without the Complainant's authorization. In addition, that website purports to offer original LOVESHACKFANCY products for allegedly significantly discounted prices. However, the Complainant has not given any authorization for such use and is not linked to the Respondent or its website. For the Panel, it is therefore evident that the Respondent positively knew the Complainant's trademarks and products. Consequently, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent also knew that the disputed domain name included the Complainant's trademark LOVESHACKFANCY entirely when it registered the disputed domain name. Registration of a domain name which contains a third party's trademark, in awareness of said trademark and in the absence of rights or legitimate interests is suggestive of registration in bad faith (see e.g., *Vorwerk International AG v. ayoub lagnadi, Lagnadi LTD*, WIPO Case No. [D2022-1592](#) with further references). While the ability to purchase the goods is not known to the Panel, the alleged commercial offering and impersonation of the Complainant is sufficient to establish the Respondent's bad faith intent to mislead Internet users.

In addition, the finding of bad faith registration and use is supported by the following further circumstances resulting from the case at hand:

- (i) the trademark LOVESHACKFANCY is fully incorporated in the disputed domain name. At the date the Respondent registered the disputed domain name, said mark existed and had been used for more than 10 years;
- (ii) the Respondent's failure to provide any evidence of actual or contemplated good-faith use;
- (iii) the absence of any disclaimer on the website, and the impersonating nature of the website design; and
- (iv) the fact that the details disclosed for the Respondent by the Registrar are incomplete and inaccurate, noting the courier's inability to deliver the Center's Written Notice.

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 <loveshackfancys.com> be transferred to the Complainant.

/Tobias Malte Müller/

Tobias Malte Müller

Sole Panelist

Date: January 29, 2024