

ADMINISTRATIVE PANEL DECISION

Walters & Mason Retail, Inc. v. wang pingsheng
Case No. D2023-5224

1. The Parties

The Complainant is Walters & Mason Retail, Inc., United States of America (“United States”), represented by Venable, LLP, United States.

The Respondent is wang pingsheng, China.

2. The Domain Name and Registrar

The disputed domain name <altardstateoutletonline.com> is registered with Gransy, s.r.o. d/b/a subreg.cz (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 14, 2023. On December 15, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 18, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Registrant Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 18, 2023, the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed a Supplement and Amendment to the Complaint on December 18, 2023.

The Center verified that the Complaint together with the amendment to 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 22, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 11, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 15, 2024.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on January 19, 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

It results from the Complainant's documented allegations, which remained undisputed, that it is a rapidly growing women's fashion brand with more than 100 boutiques in 30 states in the United States. Its product range includes clothing, jewellery, bags and wallets, sunglasses, hair accessories, scarves, hats, belts and home décor which are sold in more than 100 retail stores.

Further, it is the owner of a portfolio of registered trademarks for the sign "ALTAR'D STATE", such as United States trademark registered on December 15, 2015, with no 4,870,948 for goods in classes 3, 4, 9, 14, 18, 20, 24, 25 and 26.

The Respondent registered the disputed domain name on January 12, 2022.

Finally, the Complainant has provided – undisputed – evidence demonstrating that the disputed domain name resolves to a website which mimics the Complainant's website offering for sale counterfeit products under the trademark ALTAR'D STATE and using original photographs taken from the Complainant's authentic website without the Complainant's 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 that:

- (i) the disputed domain name is confusingly similar to its trademark since it incorporates the entire ALTAR'D STATE trademark, with the addition of the words "outlet" and "online" and the generic Top-Level Domain ("gTLD") ".com".
- (ii) the Respondent has no rights or legitimate interests in the disputed domain name. In particular, the Respondent is not commonly known by the disputed domain name. Furthermore, the Complainant contends that the Respondent is not one of his licensees or distributors and is not related in any way with the Complainant. The use of a domain name that incorporates a well-known trademark to direct visitors to a website unconnected with the trademark owner cannot constitute use in connection with a bona fide offering of goods and services or otherwise be considered a legitimate interest in a domain name. Impersonation of a complainant, by using its trademark in a disputed domain name and seeking to defraud or confuse users, indicates a lack of rights or legitimate interests by a Respondent;
- (iii) the Respondent's registration and use of the disputed domain name constitutes bad faith. According to the Complainant, Respondent makes references to the Complainant and its trademark and logo on the website, as it attempts to pass off as the Complainant. It is therefore reasonable to infer that the Respondent has registered and used the disputed domain name with full knowledge of the Complainant's trademark. Furthermore, the disputed domain name is an attempt to pass off as the Complainant and the disputed domain name redirects to a website offering for sale counterfeit products, thus, to purposefully disrupt the business of the Complainant. . Using a domain name in order to disrupt the business of the owner of the relevant mark is bad faith. Consequently, 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 the Respondent's website or location or of a product or service on the respondent's website or location.

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 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.

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., such as United States of America trademark ALTAR'D STATE no. 4,870,948 registered on December 15, 2015, for goods in classes 3, 4, 9, 14, 18, 20, 24, 25 and 26.

The entirety of the mark is reproduced within the disputed domain name, with the exception of the apostrophe, which is, however, phonetically not perceivable, and impossible of reproduction in a 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. Although the addition of other terms here, "outlet" and "online" 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.

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 made allegations of a serious nature regarding the use of the disputed domain name for the purposes of selling counterfeits. 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.

First, it results from the Complainant's uncontested evidence that the disputed domain name resolves to a website which mimics the Complainant's website and uses original photographs taken from the Complainant's authentic website without the Complainant's authorization. In the 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.

It should be further noted that, even if the products sold through the website at the disputed domain name were not counterfeits, the composition of the disputed domain name with the addition of the terms "outlet" and "online" to the disputed domain name carries a risk of implied affiliation of the disputed domain name with the Complainant.

In addition, the Respondent did not submit any evidence of *bona fide* pre-Complaint preparations to use the disputed domain name. In particular, the Complainant's uncontested allegations demonstrate that it has not authorized or licensed the Respondent's use of the ALTAR'D STATE trademark for registering the disputed domain name which is confusingly similar to said trademark.

Furthermore, the Panel notes that there is no evidence in the record showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy; 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 uses the disputed domain name in an attempt to pass itself off as Complainant. By registering the disputed domain name and by offering for sale counterfeit goods similar or identical to authentic goods sold by the Complainant under the ALTAR'D STATE Marks, the Respondent has intentionally attempted to attract for commercial gain Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant as to the source, sponsorship, affiliation or endorsement of the Respondent's website.

The 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 offering for sale products under the trademark ALTAR'D STATE and using original photographs taken from the Complainant's authentic website. However, the Complainant has not given any authorization for such use and is not linked to the Respondent or its website. On the contrary, the Complainant claims the products offered on the website are counterfeits, yet the Respondent has chosen to remain silent and has made neither any attempt to refute the Complainant's allegations nor to challenge or counter the evidence that the Complainant has put forward.

For the Panel, it is 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 entire trademark ALTAR'D STATE (excluding the hyphen) when it registered the disputed domain name, being registered due to its similarity. Registration of a domain name which is confusingly similar to 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 *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 ALTAR'D STATE is almost fully and identically incorporated in the disputed domain name (except for the apostrophe). At the date the Respondent registered the disputed domain name, said mark was already registered and had been used for many years;
- (ii) the Respondent's failure to provide any evidence of actual or contemplated good faith use;
- (iii) the implausibility of any good faith use to which the disputed domain name may be put, 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 <altardstateoutletonline.com> be transferred to the Complainant.

/Tobias Malte Müller/

Tobias Malte Müller

Sole Panelist

Date: February 2, 2024.