

ADMINISTRATIVE PANEL DECISION

Nicolette's Couture, LLC v. Megan Gomez, Gomez Megan
Case No. D2024-0296

1. The Parties

Complainant is Nicolette's Couture, LLC, United States of America ("United States"), represented by Neal, Gerber & Eisenberg, United States of America.

Respondent is Megan Gomez, Gomez Megan, United States.

2. The Domain Name and Registrar

The disputed domain name <dreamiere.shop> is registered with Web Commerce Communications Limited dba WebNic.cc (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on January 24, 2024. On January 24, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 25, 2024, the Registrar transmitted by email to the Center its verification response disclosing the registrant and contact information for the disputed domain name which differed from the named Respondent (unknown) and contact information in the Complaint. The Center sent an email communication to Complainant on January 30, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on January 30, 2024.

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 Respondent of the Complaint, and the proceedings commenced on February 2, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 22, 2024. Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 23, 2024.

The Center appointed Georges Nahitchevansky as the sole panelist in this matter on March 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

Complainant, Nicolette's Couture, LLC, is a limited liability company based in Iowa, United States. Complainant owns and operates an online clothing retail store accessible at the domain name <dreamirere.com> which sells children's and adult clothing, sleepwear, accessories and other products. Complainant owns and uses the name and mark DREAMIERE for its online retail shop and as the brand name for its bamboo-based clothing products sold through Complainant's website. Complainant owns a trademark registration for DREAMIERE in the United States (Registration No. 7,088,514) that issued to registration on June 20, 2023, with a claim of first use in commerce on July 5, 2022.

Respondent is an individual based in Colorado, United States. The disputed domain name was registered on November 10, 2023. At some point thereafter, Respondent started using the disputed domain name for a website offering children's and adult bamboo-based clothing, sleepwear and other products. The website uses the name and mark DREAMIERE and consists of product photographs and text that appears to have been taken from Complainant's website at the domain name <dreamiere.com>. The products sold on Respondent's website are at discounted prices and the products are designated as "Sale" products. Currently, the disputed domain name continues to resolve to Respondent's website.

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 its strong rights in the DREAMIERE name and mark predate Respondent's registration of the disputed domain name. In addition, Complainant contends that Respondent has used the disputed domain name that solely consists of the DREAMIERE name and mark for a website that offers the same type of items offered by Complainant and which attempts to pass itself off as Complainant by the use of copied product images and text. Complainant argues that such actions by Respondent establish that Respondent does not have any legitimate interests or rights in the disputed domain name and has registered and used the disputed domain name in bad faith.

B. Respondent

Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) 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.

Here, Complainant has shown rights in respect of its DREAMIERE trademark for purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Given that the disputed domain fully and solely consists of Complainant's DREAMIERE mark, the disputed domain name is identical to Complainant's mark for 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 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 Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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.

Respondent has essentially copied Complainant's website in order to offer discounted versions of clothing and other products that compete with those of Complainant. While it is not altogether clear whether Respondent is in fact selling genuine, counterfeit or knock off versions of Complainant's products, the prices shown on Respondent's site are all discounted substantially thus suggesting that these may be knock off versions of Complainant's products.

Notably, Respondent's website not only is entitled as simply "Dreamiere," but imitates Complainant's website at the domain name <dreamiere.com> on many levels. The product images included on Respondent's website either copy those used by Complainant on its website or have the same look and feel, much of the text included in products descriptions is copied directly from Complainant's website, and the layout of Respondent's website imitates Complainant's website. Moreover, given that the products offered on Respondent's website are listed as "Sale" products at reduced prices, it is more likely than not that Respondent is attempting to create an implied affiliation between Respondent's website and Complainant to make it appear that Respondent's website is perhaps some form of online outlet for Complainant's DREAMIERE products. Indeed, that implied affiliation is further heightened by the disputed domain name that fully and solely consists of the DREAMIERE mark with the gTLD ".shop" which suggests an online retail website for DREAMIERE products.

To be sure, such actions by Respondent are not legitimate or a fair use, particularly where, as here, the disputed domain name and associated website essentially impersonate Complainant. [WIPO Overview 3.0](#) at section 2.5. The Panel thus finds that 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.

In the instant case, in view of Respondent's actions as noted above, the Panel finds that Respondent has more likely than not registered and used the disputed domain name in bad faith pursuant to paragraph 4(b) of the Policy.

Here, Respondent has registered and used the disputed domain name, that on its face creates an implied affiliation with Complainant and its DREAMIERE mark, for a website that attempts to pass itself off as a sort of online outlet selling discounted products that basically imitate Complainant's products. As Respondent's website copies many elements of Complainant's website, as noted above, it is easy to infer that Respondent's registration and use of the disputed domain name was done opportunistically and in bad faith to take advantage of Complainant's rights in the DREAMIERE mark for Respondent's profit.

The Panel thus finds that 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 <dreamiere.shop> be transferred to Complainant.

/Georges Nahitchevansky/

Georges Nahitchevansky

Sole Panelist

Date: March 22, 2024