

## ADMINISTRATIVE PANEL DECISION

Norma Kamali v. 朱杰 (jie zhu)

Case No. D2024-1025

### 1. The Parties

The Complainant is Norma Kamali, United States of America ("United States"), represented by Gottlieb, Rackman & Reisman, PC, United States.

The Respondent is 朱杰 (jie zhu), China.

### 2. The Domain Name and Registrar

The disputed domain name <allnormakamali.com> is registered with Chengdu West Dimension Digital Technology Co., Ltd. (the "Registrar").

### 3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "**Center**") on March 7, 2024. On March 12, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 13, 2024, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 13, 2024, 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 amendment to the Complaint in English on March 15, 2024.

On March 13, 2024, the Center informed the parties in Chinese and English, that the language of the registration agreement for the disputed domain name is Chinese. On March 15, 2024, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant's submission.

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 in Chinese and English of the Complaint, and the proceedings commenced on March 19, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 8, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on 16 April 2024.

The Center appointed Douglas Clark as the sole panelist in this matter on April 16, 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 fashion designer and businesswomen of clothing, accessories, and related products. The Complainant advertises and promotes her products worldwide using the NORMA KAMALI trademarks.

The NORMA KAMALI trademark was first registered in 1985 in the United States and later in multiple jurisdictions, including China. The Complainant has many trademark registrations, and the relevant ones are listed below:

Trade Mark	Registration Number	Registration Date	Jurisdiction
NORMA KAMALI	1327105	March 26, 1985	United States
NORMA KAMALI	1908036	August 1, 1995	United States
NORMA KAMALI	11390405	January 28, 2014	China
NORMA KAMALI	11390406	April 14, 2015	China
NORMA KAMALI	11390407	June 14, 2016	China
NORMA KAMALI	11390408	June 28, 2016	China
NORMA KAMALI	16425526	April 21, 2016	China
NORMA KAMALI	31518725	April 21, 2020	China
NORMA KAMALI	304008708	December 30, 2016	Hong Kong, China

The Complainant, through her company, Norma Kamali, Inc., (“NKI”), sells goods designed by her. NKI also operates websites via domain name <normakamali.com>.

The Respondent is an individual based in China. The Respondent registered the disputed domain name <allnormakamali.com> on November 5, 2023. It redirected to a website showing copyrighted photos of NKI’s goods without authorization or disclaimer of a lack of relationship with the Complainant and purportedly offering to sell such products.

#### 5. Parties’ Contentions

##### A. Complainant

The Complainant contends that:

- a) The disputed domain name is confusingly similar to the Complainant’s trademarks. The disputed domain name wholly incorporates the Complainant’s NORMA KAMALI trademark prefaced by a generic term “all”. The long use of the trademark and the substantial advertising and promotion results in confusing similarity.

- b) The NORMA KAMALI trademark is displayed prominently on the website of the disputed domain name. The website also offers products with the NORMA KAMALI trademark.
- c) The Respondent has no rights or legitimate interests in the disputed domain name. The Complainant nor NKI has not licensed, authorised or sanctioned the Respondent's use of the "NORMA KAMALI" trademark for any purpose. NKI has also been using the NORMA KAMALI trademark for 40 years.
- d) The Respondent has not made bona fide use of the NORMA KAMALI trademark. There is no indication that the Respondent is or has been known as by a name consisting of or incorporating NORMA KAMALI. The Respondent is not commonly known by the disputed domain name. The Respondent also does not offer goods or service in connection with the dispute domain name. The only purpose of the Respondent's used was to drive traffic from NKI's website to the website under the disputed domain name so as to trick internet users to mistake that they are connected in some way.
- e) The disputed domain name was registered and used in bad faith. The Complainant's marks are distinctive with wide and extensive use. The Respondent registered the disputed domain name 40 years after the Complainant first registered its NORMA KAMALI trademark. In view of the fact that NKI sells in major retailers throughout the globe, the Respondent cannot reasonably dispute that he/she was unaware of the NORMA KAMALI trademark.
- f) The disputed domain name impersonates the Complainant's marks, constituting bad faith. The Respondent's use of the website under the disputed domain name to purportedly sell NORMA KAMALI goods is for commercial gain, as it provides for a "purchase" and "buy" function to trick confused internet users into purchasing. The use of the disputed domain name attracts consumers to a scam website that requests sensitive personal information from confused consumers. Credit card information is requested when one is attempting to purchase from the website under the disputed domain name. After provision of credit card information, the website is redirected for purchase of a "subscription".

The Complainant requests the transfer of the disputed domain name.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **6.1 Language of the Proceeding**

Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

In this case, the language of the Registration Agreement for the disputed domain name is Chinese. There is no agreement between the Complainant and the Respondent regarding the language of the proceeding. The Respondent did not respond in respect of the language of these proceedings. The Complainant has filed its Complaint in English and has requested that English be the language of the proceeding under the following grounds:

- (a) there is evidence that the Respondent can understand English;
- (b) the disputed domain name consists of English characters;
- (c) the information on the website associated with the disputed domain name is in English, in particular the "About Us" page whereby the operator of the website introduces themselves, is also in English;
- (d) it is unfair and may cause unwarranted delay to require the Complainant to translate the Complaint into Chinese in view of the Complainant being located in the United States and is an American designer.

She also conducts her business in English;

(e) the currency accepted on the website and for its subscription under the disputed domain name is USD.

In accordance with paragraph 11(a) of the Rules, the Panel hereby determines that the language of the proceeding shall be in English after considering the following circumstances:

- the Center has notified the Respondent of the proceeding in both English and Chinese;
- the Respondent has not commented on the language of the proceeding;
- the website under the disputed domain name is wholly in English;
- an order for the translation of the Complaint will result in significant expenses for the Complainant and a delay in the proceeding.

Further, this Panel decided in *Zappos.com, Inc. v. Zufu aka Huahaotrade*, WIPO Case No. [D2008-1191](#), that a respondent's failure to respond to a preliminary determination by the Center as to the language of the proceeding "*should, in general, be a strong factor to allow the Panel to decide to proceed in favour of the language of the Complaint*".

## 6.2 Substantive Issues

The Complainant must satisfy all three elements of paragraph 4(a) of the Policy in order to succeed in its action:

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

### A. Identical or Confusingly Similar

The disputed domain name <allnormakamali.com> is composed of the Complainant's registered trademark NORMA KAMALI and the word "all" as a prefix. It is confusingly similar to the Complainant's registered trademark. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7. According to previous UDRP decisions, the "addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element". [WIPO Overview 3.0](#), section 1.8.

The Complainant has therefore satisfied the first element under paragraph 4(a) of the Policy.

### B. Rights or Legitimate Interests

The Respondent has not asserted any rights or legitimate interests in relation to the disputed domain name. None of the circumstances in paragraph 4(c) of the Policy, which sets out how a respondent can prove its rights or legitimate interests, are present in this case.

Further, the Complainant asserts that disputed domain name, by using the Complainant's trademarks and copyrighted photos of NKI's products without authorization, purportedly acts as a clickbait to direct traffic into the website, thereby giving a false impression that the Complainant and the Respondent was somehow affiliated. However, there is nothing that indicates that the Respondent is or has ever been affiliated with the Complainant. The Respondent is not authorized nor licensed to use the Complainant's NORMA KAMALI trademark or to apply for registration of the disputed domain name. There is no evidence that the Respondent is commonly known by the name "Norma Kamali".

Panels have held that the use of a domain name for illegal activity here, claimed impersonation/passing off, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Section 2.1 of the [WIPO Overview 3.0](#) provides:

“While 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 often impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.”

Therefore, based on the evidence presented, the Panel finds that the Complainant has made a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not provided any evidence to rebut this claim, and henceforth, the Panel concludes that the Respondent has no rights or legitimate interests in relation to the disputed domain name.

The Complainant has therefore satisfied the second element under paragraph 4(a) of the Policy.

### **C. Registered and Used in Bad Faith**

Based on the given evidence, the disputed domain name was registered and is being used in bad faith.

The disputed domain name was registered long after the Complainant has registered the NORMA KAMALI trademark, and the use of the Complainant’s NORMA KAMALI trademark cannot be a coincidence. The NORMA KAMALI trademark is used by the Complainant to conduct its business and the Complainant has been using the trademark for 40 years. The Panel is satisfied that the Respondent was aware of the Complainant and its NORMA KAMALI trademark when he or she registered the disputed domain name.

The Respondent has registered the disputed domain name to attract Internet users to the website for commercial gain in accordance with paragraph 4(b)(iv) of the Policy. The disputed domain name displays pictures of NKI products without accurately and prominently disclosing its lack of relationship with the Complainant and directs Internet users to select NKI products for purchase by adding to a cart and buy said product by checking out.

Furthermore, panels have held that the use of a domain name for illegal activity here, claimed impersonation/passing off constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

For the above reasons, the Panel finds that the disputed domain name was registered and is being used in bad faith.

The Complainant has therefore satisfied the third element under paragraph 4(a) 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 <allnormakamali.com> be transferred to the Complainant.

*/Douglas Clark/*

**Douglas Clark**

Sole Panelist

Date: May 8, 2024