

ADMINISTRATIVE PANEL DECISION

Urban Outfitters Inc. v. OliverMonte OliverMonte
Case No. D2024-1819

1. The Parties

Complainant is Urban Outfitters Inc., United States of America (“United States”), represented by SafeNames Ltd., United Kingdom.

Respondent is OliverMonte OliverMonte, United States.

2. The Domain Names and Registrar

The disputed domain names <freepeople-dress.com> and <freepeople-wear.co> (the “Disputed Domain Names”) are registered with Dynadot Inc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 30, 2024. On May 1, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Names. On May 1, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Names which differed from the named Respondent (Redacted for Privacy, Super Privacy Service LTD c/o Dynadot) and contact information in the Complaint. The Center sent an email communication to Complainant on May 7, 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 May 8, 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 May 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 5, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on June 10, 2024.

The Center appointed Richard W. Page as the sole panelist in this matter on June 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

Complainant is a multinational lifestyle retail corporation headquartered in Philadelphia, Pennsylvania, United States. Complainant, which made net sales of USD 3.45 billion in FY2021, owns a portfolio of clothing and retail brands including FREE PEOPLE. Complainant is the parent of many subsidiary companies and relies on trademarks registered to these subsidiaries.

Complainant's FREE PEOPLE brand, which is primarily targeted towards young contemporary women aged 25 to 30, offers, among other things, a mix of causal women's apparel, intimates, shoes, accessories, home product, and gifts. Complainant's Free People Group (consisting of both the FREE PEOPLE and the FP MOVEMENT brands), as of January 31, 2021, operated 149 stores located across the United States, Canada, and Europe.

Complainant's first store was called "Free People". When Complainant opened a second store, this name was change from "Free People" to "Urban Outfitters". As the business expanded, Complainant created the Urban Outfitters private label division and later, in 1984, the FREE PEOPLE brand was reintroduced into the market. Complainant opened its first Free People store in 2002. Complainant launched an online store under the FREE PEOPLE brand in 2004, and advertised its offerings to Internet users through the website "www.freepeople.com". This website received an average of 12 million visits per month between November 2022 and January 2023.

Complainant has a popular mobile application, under the FREE PEOPLE mark, which is available on the Apple App Store. Complainant's FREE PEOPLE brand enjoys a strong social media presence, with millions of followers and subscribers to its platforms. Social media platforms under the FREE POEOPLE mark include: Facebook, X (previously Twitter), Instagram and Pinterest.

Complainant has protected its FREE PEOPLE mark by way of trademark registrations in multiple jurisdictions. Some of Complainant's trademark registrations, through its subsidiary companies, for FREE PEOPLE (the "FREE PEOPLE Mark") are:

United States Registration No. 1827547, registered on March 22, 1994 in class 25;

International Registration No. 957751, registered on March 14, 2008 in classes 25, and 35; and

European Union Registration No. 006748495, registered on October 14, 2008 in classes 25, and 35.

The Disputed Domain Name <freepeople-dress.com> was registered on September 18, 2023. The Disputed Domain Name <freepeople-wear.co> was registered on October 10, 2023. Both Disputed Domain Names resolve to virtually identical websites purporting to offer for sale products identical to Complainant's.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Names.

Complainant contends that the Disputed Domain Names include the entirety of the FREE PEOPLE Mark, with only the addition of terms “wear” and “dress.” Complainant further contends that the country code Top-Level Domain (ccTLD) “.co” and the generic Top-Level Domain (gTLD) “.com” should be ignored.

Complainant submits that Respondent has no trademark rights in the phrase “Free People”, nor has Respondent received any license from Complainant permitting the use of the FREE PEOPLE Mark in a domain name or otherwise. Complainant further submits that Respondent has not used, or prepared to use, the Disputed Domain Names in connection with any bona fide offering of goods. Complainant further submits that Respondent is not commonly known by the Disputed Domain Names. Complainant further submits that there is no other reason for Respondent to have registered the Disputed Domain Names except to take advantage of the goodwill and reputation attached to the FREE PEOPLE Mark. Complainant further submits that such activity by Respondent does not constitute bona fide, legitimate noncommercial, or fair use of the Disputed Domain Names.

Complainant alleges that its use of the FREE PEOPLE Mark predates the creation dates of the Disputed Domain Names by at least 29 years. In addition, substantial goodwill has accrued since Complainant's establishment in 1984. Complainant further alleges that Respondent's use of the Disputed Domain Names constitutes “opportunistic bad faith,” especially when used by someone with no relationship to Complainant. Complainant further alleges that Respondent's activities satisfy the bad faith elements of paragraph 4(b)(iv) of the Policy by intentionally trying to attract, for commercial gain, Internet users to Respondent's websites or other online locations by creating a likelihood of confusion with the FREE PEOPLE Mark as to the source, sponsorship, affiliation or endorsement of Respondent's websites.

Complainant further alleges that the Disputed Domain Names are being used to host fraudulent online shop websites purporting to offer for sale products identical to Complainant's. In addition, Respondent is using the FREE PEOPLE logo, the FREE PEOPLE Mark and the “About Us” section of its website, to specifically speak about the history of Free People and Urban Outfitters.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

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

Even though Respondent has failed to file a Response or to contest Complainant's assertions, the Panel will review the evidence proffered by Complainant to verify that the essential elements of the claims are met. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 4.3.

Paragraph 4(a) of the Policy directs that Complainant must prove each of the following three elements:

- i) that the Disputed Domain Names registered by Respondent are identical or confusingly similar to the FREE PEOPLE Mark in which Complainant has rights; and,
- ii) that Respondent has no rights or legitimate interests in respect of the Disputed Domain Names; and,
- iii) that the Disputed Domain Names have been registered and are 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 FREE PEOPLE Mark and the Disputed Domain Names. [WIPO Overview 3.0](#), section 1.7.

[WIPO Overview 3.0](#), section 1.2.1 states that registration of a trademark is prima facie evidence of Complainant having enforceable rights in the FREE PEOPLE Mark. Complainant has shown rights in respect of the FREE PEOPLE Mark for the purposes of the Policy.

The entirety of the FREE PEOPLE Mark is reproduced within the Disputed Domain Names. Accordingly, the Disputed Domain Names are confusingly similar to the FREE PEOPLE Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms “wear” and “dress”, 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 Names and the FREE PEOPLE Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds that the ccTLD “.co” and the gTLD “.com” should be ignored. [WIPO Overview 3.0](#), section 1.11.1.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Although the overall burden of proof in UDRP proceedings is on Complainant, panels have recognized that proving Respondent lacks rights or legitimate interests in the Disputed Domain Names may result in the difficult task of “proving a negative,” requiring information that is often primarily within the knowledge or control of Respondent. As such, where Complainant makes out a prima facie case that Respondent lacks rights or legitimate interests, the burden of production on this element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Names (although the burden of proof always remains on the complainant). If Respondent fails to come forward with such relevant evidence, Complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Paragraph 4(c) of the Policy allows three nonexclusive methods for the Panel to conclude that Respondent has rights or a legitimate interest in the Disputed Domain Names:

- (i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Disputed Domain Names or a name corresponding to the Disputed Domain Names in connection with a bona fide offering of goods or services; or
- (ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Disputed Domain Names, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are making a legitimate noncommercial or fair use of the Disputed Domain Names, without intent for commercial gain to misleadingly divert consumers or to tarnish the FREE PEOPLE Mark.

Having reviewed the available record, the Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the Disputed Domain Names. 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 Names such as those enumerated in the Policy or otherwise.

In addition, panels have held that the use of a domain name for illegal activity here, claimed as applicable to this case: impersonation/passing off, or other types of fraud, can never confer rights or legitimate interests on 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.

Paragraph 4(b) of the Policy sets forth four nonexclusive criteria for Complainant to show bad faith registration and use of the Disputed Domain Names:

- (i) circumstances indicating that you [Respondent] have registered or you have acquired the Disputed Domain Names primarily for the purpose of selling, renting, or otherwise transferring the Disputed Domain Names registration to Complainant who is the owner of the FREE PEOPLE Mark or to a competitor of Complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the Disputed Domain Names; or
- (ii) you [Respondent] have registered the Disputed Domain Names in order to prevent the owner of the FREE PEOPLE Mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you [Respondent] have registered the Disputed Domain Names primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the Disputed Domain Names, you [Respondent] have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the FREE PEOPLE Mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product on your website or location.

In the present case, the Panel notes that Complainant's registration and use of the FREE PEOPLE Mark predates the creation dates of the Disputed Domain Names by at least 29 years. In addition, substantial goodwill has accrued since Complainant's establishment in 1984. Moreover, the use of the FREE PEOPLE Mark on the websites at the Disputed Domain Names reinforces the fact that Respondent was aware of Complainant at the time of registering the Disputed Domain Names.

The Panel concludes that Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's websites, by creating a likelihood of confusion with the FREE PEOPLE Mark, satisfying paragraph 4(b)(iv) of the Policy.

Panels have held that the use of a domain name for illegal activity here, claimed as applicable to this case: impersonation/passing off, or other types of fraud, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds Respondent's registration and use of the Disputed Domain Names constitutes bad faith under the Policy.

The Panel 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 Names <freepeople-dress.com> and <freepeople-wear.co> be transferred to Complainant.

/Richard W. Page/

Richard W. Page

Sole Panelist

Date: June 27, 2024