

ADMINISTRATIVE PANEL DECISION

NSN Apparel Co, LLC v. KAI YIP CHEUNG

Case No. D2024-3720

1. The Parties

Complainant is NSN Apparel Co, LLC, United States of America (“United States”), represented by Adelman Matz P.C., United States.

Respondent is KAI YIP CHEUNG, United States.

2. The Domain Name and Registrar

The disputed domain name <thehouseofdrew.one> is registered with Dynadot Inc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 13, 2024. On September 13, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 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 / Super Privacy Service LTD c/o Dynadot) and contact information in the Complaint. The Center sent an email communication to Complainant on September 18, 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 September 23 and 28, 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 September 30, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 20, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on October 21, 2024.

The Center appointed Lorelei Ritchie as the sole panelist in this matter on October 28, 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 limited liability company based in the United States. For several years prior to the registration of the disputed domain name, Complainant has offered clothing and related goods under the marks DREW, LA MAISON DREW, and THE HOUSE OF DREW. In this regard, Complainant owns registrations in the United States and globally for these marks. These include, among others, Hong Kong, China Registrations No. 305552587 (registered on March 5, 2021) for DREW as a stylized mark; Registration No. 305552613 (registered on March 5, 2021) for a design mark; and United States Registration No. 6563146 (registered on November 16, 2021) for LA MAISON DREW (translated as “The House of Drew”). Complainant also has a pending application for THEHOUSEOFDREW, United States Application No. 87801543 (filed on February 16, 2018) with an assertion of intent-to-use the mark.

Complainant registered the domain name <thehouseofdrew.com> since at least as early as December 25, 2018.

The disputed domain name was registered on January 10, 2022. Respondent has set up a website at the disputed domain name, with information about products offered by Complainant under Complainant’s marks and purportedly selling merchandise bearing the Complainant’s marks.

5. Parties’ Contentions

A. Complainant

Complainant contends that (i) the disputed domain name is identical or confusingly similar to Complainant’s trademarks, (ii) Respondent has no rights or legitimate interests in the disputed domain name; and (iii) Respondent registered and is using the disputed domain name in bad faith.

Specifically, Complainant contends that it owns rights to the DREW, LA MAISON DREW, and THE HOUSE OF DREW marks for clothing and related goods, for which it has gained “widespread unsolicited media recognition and social media posts”, including for Complainant’s association with its founder and spokesperson, celebrity persona Justin Bieber. Complainant has included evidence of references to Complainant’s ownership of THE HOUSE OF DREW as a mark from media sources including USA Today, W magazine, Insider.com, and Page Six, among others. Complainant also asserts that it owns the registration for the domain name <thehouseofdrew.com>, which Complainant uses to communicate with prospective consumers regarding products offered under its various DREW, LA MAISON DREW, and THE HOUSE OF DREW marks.

Complainant contends that Respondent has incorporated in full Complainant’s THE HOUSE OF DREW mark into the disputed domain name, and has otherwise included Complainant’s DREW mark. Complainant further contends that Respondent lacks rights or legitimate interest in the disputed domain name, and rather has registered and is using it in bad faith, having simply acquired the disputed domain name for Respondent’s own commercial gain, in selling what appears to be counterfeit versions of Complainant’s goods.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

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 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.

Complainant has shown rights in respect of trademarks DREW, LA MAISON DREW through trademark registrations, and THE HOUSE OF DREW through common law usage, for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

Although the addition of other terms may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and Complainant's mark for purposes of the Policy. [WIPO Overview 3.0](#), sections 1.8 and 1.9.

The Panel therefore finds that the disputed domain name is confusingly similar to a trademark in which Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

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.

Complainant notes that the website associated with the disputed domain name purports to offer products that include Complainant's DREW and THE HOUSE OF DREW marks. Prior UDRP panels have indicated that a reseller may be considered to have rights or legitimate interests in a mark, provided certain requirements are met. These generally include that: (i) the site is actually offering the goods at issue; (ii) the site is used only to sell the trademarked goods; (iii) the site accurately and prominently discloses the registrant's relationship to the mark holder; and (iv) respondent does not try to "corner the market" in domain names that reflect the mark. [WIPO Overview 3.0](#), section 2.8; see also *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#).

The Panel finds that these qualifications are not fulfilled by the website associated with the disputed domain name. Rather, Complainant has submitted evidence that Respondent uses the disputed domain name to purportedly offer Complainant's clothing, but as likely counterfeit. Furthermore, the website does not appear to include a disclaimer of affiliation or endorsement by Complainant, and rather includes unauthorized use of Complainant's marks.

Respondent has not put forward any claims or evidence that would suggest rights or legitimate interests for the purposes of the Policy. The nature of the disputed domain name incorporating Complainant's DREW trademark, being identical to the Complainant's trademark application and to the domain name except for the Top-Level Domain, carries a high risk of implied affiliation, which cannot confer any rights or legitimate interests to the Respondent.

The Panel finds that Complainant has provided sufficient evidence of Respondent's lack of rights or legitimate interests in accordance with paragraph 4(a)(ii) of the Policy, which Respondent has not rebutted, and accordingly the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

There are several ways that a complainant can demonstrate that a domain name was registered and used in bad faith. As noted in Section 4 of this Decision, the available record includes evidence that the website associated with the disputed domain name is being used to offer goods related to Complainant, including clothing bearing the DREW and THE HOUSE OF DREW trademarks. The fact that Complainant's trademark application for THEHOUSEOFDREW was filed before the registration of the disputed domain name, shows the Respondent's intent in registering the domain name, which is to unfairly capitalize on Complainant's nascent trademark rights. Hence, Respondent was presumably aware of Complainant's rights when registering the disputed domain name and is trading on the goodwill of Complainant's trademarks to attract Internet users for Respondent's own commercial gain.

Therefore, the Panel finds sufficient evidence that Respondent registered and used the disputed domain name in bad faith for purposes of paragraph (4)(a)(iii) 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 <thehouseofdrew.one> be transferred to Complainant.

/Lorelei Ritchie/

Lorelei Ritchie

Sole Panelist

Date: November 12, 2024