

ADMINISTRATIVE PANEL DECISION

Gallery Department, LLC v. Jahanzaib Arfan
Case No. D2024-4298

1. The Parties

Complainant is Gallery Department, LLC, United States of America (“United States”), represented by Adelman Matz P.C., United States.

Respondent is Jahanzaib Arfan, Pakistan.

2. The Domain Name and Registrar

The disputed domain name <gallerysdept.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 18, 2024. On October 18, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 18, 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, Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on October 22, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on October 28, 2024.

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 Respondent of the Complaint, and the proceedings commenced on October 31, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 20, 2024. Respondent did not submit a formal Response, but sent informal email communications to the Center on October 22, 2024.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on November 29, 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 company organized under the laws of the United States that is active in the fashion industry.

Complainant has provided evidence that it is the registered owner of numerous trademarks relating to its company name and brand GALLERY DEPT., including, but not limited to, the following:

- Word mark GALLERY DEPT. registered with the United States Patent and Trademark Office (USPTO), registration number 6,048,485, registered on May 5, 2020, and currently active.

Moreover, Complainant has demonstrated ownership since 2014 of the domain name <gallerydept.com> which resolves to Complainant's main website at "www.gallerydept.com", used to promote Complainant's fashion products internationally.

Respondent, according to the disclosed Whois information for the disputed domain name, is located in Pakistan. The disputed domain was registered on August 3, 2023. Complainant has demonstrated that at some point before the filing of the Complaint (e.g. in October 2024), the disputed domain name resolved to a website at "www.gallerysdept.com", selling allegedly counterfeit fashion products containing Complainant's GALLERY DEPT. trademark. When initially accessed by the Panel, the disputed domain name resolved to the Google search engine but has since begun displaying the aforementioned content again.

On February 28, 2024, as well as on March 15, 2024, Complainant sent two cease-and-desist letters to Respondent informing of Complainant's rights in the GALLERY DEPT. trademark and demanding that Respondent take down all merchandise with such trademark, which remained unanswered.

Complainant requests that the disputed domain name be transferred to Complainant.

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 name. Notably, Complainant contends to be a well-known unisex clothing brand based in Los Angeles founded by artist and designer Josué Thomas that makes quality products with artistic integrity.

Complainant submits that the disputed domain name is confusingly similar to Complainant's GALLERY DEPT. trademark, as it incorporates the latter in its entirety, the only difference being the addition of the letter "s" to the word "gallery". Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name since: (1) Respondent is not associated in any way with Complainant, and has never given Respondent any admission to use its GALLERY DEPT. trademark; (2) it is Complainant, and not Respondent, who is commonly known as "Gallery Dept."; (3) Respondent is not at all and has never been an authorized retailer of Complainant's merchandise, nor has Respondent ever been granted any rights or licenses in Complainant's GALLERY DEPT. trademark; and (4) Respondent is blatantly selling illegitimate counterfeit merchandise containing Complainant's duly owned GALLERY DEPT. trademark on its unauthorized website with its unauthorized domain name, and at a price similar to that of Complainant's authentic merchandise. Finally, Complainant argues that Respondent has registered and is using the disputed domain name in bad faith since: (1) Respondent is directly using Complainant's

GALLERY DEPT. trademark as part of the disputed domain name and on Respondent's website thereunder; and (2) thereby, Respondent intentionally attracts consumers to its own website where it is selling counterfeit merchandise, thereby using Complainant's GALLERY DEPT. trademark without any authorization to do so, for its own commercial gain and to the detriment of Complainant.

B. Respondent

Respondent did not formally reply to Complainant's contentions, but sent informal email communications to the Center on October 22, 2024, stating e.g. that it wondered why the disputed domain name was put by the Registrar under its "risk management" regime.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) that Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

Respondent's default in the case at hand does not automatically result in a decision in favor of Complainant, however, paragraph 5(f) of the Rules provides that if Respondent does not submit a formal response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint. Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from Respondent's failure to submit a formal Response as it considers appropriate.

A. Identical or Confusingly Similar

First, 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 GALLERY DEPT. 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 its GALLERY DEPT. trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. The entirety of such trademark is reproduced within the disputed domain name, simply added by the letter "s" to the word "gallery". Accordingly, the disputed domain name is confusingly similar to Complainant's GALLERY DEPT. trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. The fact that the addition of such letter "s" obviously constitutes an intentional misspelling of Complainant's undisputedly well-known GALLERY DEPT. trademark is not in contrast to such finding. UDRP panels agree that domain names which consist e.g. of an intentional misspelling of a trademark are considered to be confusingly similar under the UDRP. [WIPO Overview 3.0](#), section 1.9.

The Panel, therefore, holds that the first element of the Policy has been established.

B. Rights or Legitimate Interests

Second, 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 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.

In particular, Respondent has not been authorized to use Complainant's GALLERY DEPT. trademark, either as a domain name or in any other way. Also, there is no reason to believe that Respondent's name somehow corresponds with the disputed domain name and Respondent does not appear to have any trademark rights associated with the term "gallery dept." on its own. To the contrary, Complainant has demonstrated that, at some point before the filing of this Complaint, the disputed domain name resolved to a website at "www.galleriesdept.com", offering apparently unlawful counterfeit fashion products under Complainant's GALLERY DEPT. trademark without any authorization to do so. Such use of the disputed domain name neither qualifies as a bona fide offering of goods or services nor as using the disputed domain name for a legitimate, noncommercial or fair purpose. In this context, UDRP panels have held that the use of a domain name for illegitimate/illegal activity (here, the sale of counterfeit goods) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel, therefore, finds the second element of the Policy has been established, too.

C. Registered and Used in Bad Faith

Third, 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 present case, the Panel recognizes that the disputed domain name is an obvious and intentional misspelling of Complainant's undisputedly well-known GALLERY DEPT. trademark, which, in turn, is a clear indication that Respondent was fully aware of such trademark when it registered the disputed domain name, and that the latter is directly targeting such trademark. Moreover, using the disputed domain name to operate a website at "www.galleriesdept.com", offering apparently counterfeit fashion products under Complainant's GALLERY DEPT. trademark without any authorization to do so, is a clear indication that Respondent intentionally attempted to attract, for commercial gain, Internet users to its own website by creating a likelihood of confusion with Complainant's GALLERY DEPT. trademark as to the source, sponsorship, affiliation or endorsement of Respondent's website. Such circumstances are evidence of registration and use of the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy. In this context, UDRP panels have held that the use of a domain name illegitimate/illegal activity (here, the sale of counterfeit goods) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Finally, it also carries weight in the eyes of the Panel that Respondent obviously provided false or incomplete contact information in the Whois register for the disputed domain name since, according to the email correspondence between the Center and the postal courier, the Written Notice on the Notification of Complaint dated October 31, 2024 could not be delivered due to a "bad address". This fact at least throws a light on Respondent's behavior which supports the Panel's bad faith finding.

The Panel, therefore, holds that Complainant has established the third element of the Policy, too.

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, <gallerysdept.com>, be transferred to Complainant.

/Stephanie G. Hartung/

Stephanie G. Hartung

Sole Panelist

Date: December 11, 2024