

ADMINISTRATIVE PANEL DECISION

ABG Juicy Couture, LLC v. Jing Zhang
Case No. D2022-4391

1. The Parties

The Complainant is ABG Juicy Couture, LLC, United States of America (“United States” or “US”), represented by Authentic Brands Group, United States.

The Respondent is Jing Zhang, China.

2. The Domain Name and Registrar

The disputed domain name <juicy-coutures.com> is registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 17, 2022. On November 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 21, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 of the Complaint, and the proceedings commenced on November 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 18, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 20, 2022.

The Center appointed Christian Gassauer-Fleissner as the sole panelist in this matter on January 3, 2023. 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 distributes clothing bearing the designation JUICY COUTURE (“JUICY COUTURE products”) and is based in United States. JUICY COUTURE products are currently sold in 70 retail stores, shop-in-shops, and travel retail locations in over 30 countries throughout North America, Europe, Asia, and the Middle East, as well as on the website under the Complainant’s own domain <juicycouture.com>.

The Complainant is the owner of numerous trademarks for the terms JUICY and JUICY COUTURE (both “JUICY COUTURE trademarks”), including, among others:

- US Registration No. 2348674, JUICY COUTURE, registered on May 9, 2000;
- US Registration No. 2882279, JUICY COUTURE, registered on September 7, 2004;
- US Registration No. 2978046, JUICY COUTURE, registered on July 26, 2005;
- US Registration No. 3146100, JUICY COUTURE, registered on September 19, 2006;
- US Registration No. 2285232, JUICY, registered on October 12, 1999;
- US Registration No. 3633187, JUICY, registered on June 2, 2009;
- US Registration No. 2995654, JUICY, registered on September 13, 2005.

The disputed domain name was registered on August 3, 2022. It resolves to a website that promotes, among others, the sale of products showing the JUICY COUTURE trademarks.

5. Parties’ Contentions

A. Complainant

The arguments put forward by the Complainant can be summarized as follows:

On the first element of the Policy, the Complainant claims that the disputed domain name is identical or confusingly similar to the Complainant’s trademarks. The disputed domain name consists of the the plural of the Complainant’s well-known JUICY COUTURE trademarks with a hyphen in between the terms “juicy” and “couture” followed by the generic Top-Level Domain (“gTLD”) “.com”.

On the second element of the Policy, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has not been licensed, contracted, or otherwise permitted by the Complainant in any way to use the JUICY COUTURE trademarks or to apply for any domain name incorporating the JUICY COUTURE trademarks, nor has the Complainant acquiesced in any way to such use or application of the JUICY COUTURE trademarks by the Respondent. In addition, there is no evidence that “juicy coutures” is the name of the Respondent or the Respondent’s corporate entity, nor is there any evidence of fair use. Furthermore, there is no evidence that the Respondent is using or plans to use the disputed domain name incorporating the JUICY COUTURE trademarks for a *bona fide* offering of goods or services. On the contrary, the Respondent has been actively using the JUICY COUTURE trademarks in the disputed domain name and to promote its website for illegitimate commercial gains. Such unauthorized use of the JUICY COUTURE trademarks is likely to trick consumers into erroneously believing that the Complainant is somehow affiliated with the Respondent or endorsing its commercial activities, while in fact, no such relationship exists.

On the third element of the Policy, the Complainant asserts that the JUICY COUTURE trademarks are globally well-known. The Respondent was well aware of the registration and use of the JUICY COUTURE

trademarks prior to the registration of the disputed domain name. Registering a domain name that is confusingly similar to a widely-known trademark may create a presumption of bad faith. More egregiously, the Respondent is selling counterfeit JUICY COUTURE products on a website that mirrors the Complainant's website in an attempt to pass it off as an official and legitimate site of the Complainant. The exploitation of consumer confusion for the purpose of selling goods, with evident knowledge of the Complainant's rights in its trademarks, is one of the strongest examples of registration and use in bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules requires that the Panel's decision be made "on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

It has been a consensus view in previous UDRP decisions that a respondent's default (*i.e.*, failure to submit a response) would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true (see section 4.3 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the Complaint, namely that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; 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 Complainant, under the first requirement of paragraph 4(a)(i) of the Policy, needs to establish that the disputed domain name is identical or confusingly similar to a trademark or a service mark in which it has rights.

The Complainant is registered as the owner of numerous trademarks for JUICY COUTURE. Suitable evidence was submitted as proof. Consequently, the Panel finds that the Complainant has proven that it has rights in the JUICY COUTURE trademarks.

The disputed domain name contains the plural form of the JUICY COUTURE trademarks with the sole addition of a hyphen between the terms "juicy" and "coutures", as well as the gTLD ".com".

Section 1.8 of [WIPO Overview 3.0](#) states: "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element." The Panel finds that the mere addition of the letter "s" to the JUICY COUTURE trademarks does not prevent a finding of confusing similarity; the JUICY COUTURE trademarks remain wholly incorporated and clearly recognizable in the disputed domain name. Furthermore, the addition of a hyphen does not affect identity (see *The Channel Tunnel Group Ltd. v. John Powell*, WIPO Case No. [D2000-0038](#)).

Section 1.11.1 of [WIPO Overview 3.0](#) states: “The applicable TLD in a domain name (e.g., ‘.com’, ‘.club’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.” The gTLD “.com” will therefore be discounted in the Panel’s consideration of confusing similarity.

For the reasons above, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademarks, and that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The second element the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Regarding the second element of the Policy, section 2.1 of [WIPO Overview 3.0](#), states: “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.”

The Complainant makes its *prima facie* case by demonstrating without contradiction that it has not authorized or granted a license to the Respondent to use its trademark and that the Respondent has not been commonly known by the disputed domain name and there is no evidence in the case file to the contrary. Rather, the Respondent has been actively using the JUICY COUTURE trademarks in the disputed domain name and on the related website to promote and distribute products showing the JUICY COUTURE trademarks. In this regard, the Panel notes the use of Complainant’s JUICY COUTURE trademarks on the website is without the added “s” and hyphen found in the disputed domain name. Suitable evidence was submitted as proof by screenshots of the website accessible under the disputed domain name.

The Complainant asserts that the Respondent sells counterfeit products but omits to state arguments and provide evidence showing why the products sold by the Respondent are counterfeits. While some circumstantial evidence, such as the significant unusual discount prices covering (almost) all products offered on the website, including the entire new collection, tends to suggest the Respondent is offering counterfeit products, the Panel need not come to a final determination on this matter. In any event, the website at the disputed domain name fails to disclose the lack of relationship between the Parties and therefore takes unfair advantage of the Complainant’s JUICY COUTURE trademarks in an effort to falsely suggest that the website is operated by the Complainant, or at least sponsored or affiliated with the Complainant. The composition of the disputed domain name, wholly incorporating the Complainant’s distinctive JUICY COUTURE trademarks with the mere addition of an “s” and a hyphen carries a risk of implied affiliation as it effectively impersonates or suggests sponsorship or endorsement by the Complainant.

Given the *prima facie* case put forward by the Complainant that the Respondent has no rights or legitimate interests in the disputed domain name, which remains uncontested by the Respondent, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The third element of paragraph 4(a) of the Policy requires that Complainant demonstrate that Respondent registered or is using the disputed domain name in bad faith. Section 3.1 of [WIPO Overview 3.0](#) states, “bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark”. Section 3.2.2 of the [WIPO Overview 3.0](#) reads: “Knew or should have known: Noting the near instantaneous and global reach of the Internet and search engines and particularly in circumstances where the complainant’s mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent

should have known that its registration would be identical or confusingly similar to a complainant's mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent's claim not to have been aware of the complainant's mark."

The JUICY COUTURE trademarks have been used extensively since approximately 1999. The Complainant's trademarks are widely known in the clothing sector. A brief Internet research would have been sufficient to find the JUICY COUTURE trademarks being used by the Complainant, among others in Complainant's own domain name <juicycouture.com>. Additionally, the Respondent simply copied the Complainant's own domain name by using "juicy-coutures", the plural form of "juicycouture" with a hyphen in between these terms and promotes on the website under the disputed domain name the sale of products showing the JUICY COUTURE trademarks. This is persuasive evidence that the Respondent knew the Complainant's trademarks and deliberately used it to create confusion with customers about the origin of the products offered on the website of the Respondent.

The website of the Respondent has certain similarities with the website of the Complainant. Notably in both cases the JUICY COUTURE logo is prominently displayed on the top of the website. Circumstances which indicate that a respondent's intent in registering the disputed domain name was in fact to profit in some fashion from or otherwise exploit the complainant's trademark, and led panels to find bad faith on the part of the respondent include, among others: (i) the respondent's likely knowledge of the complainant's rights, (ii) the distinctiveness of the complainant's mark, (iii) failure of a respondent to present a credible evidence-backed rationale for registering the domain name (section 3.1.1 of [WIPO Overview 3.0](#)). Additional circumstances to be taken into account regarding the respondent's bad faith include, among others: (i) the nature of the disputed domain name (e.g., a typo of a widely-known mark or a domain name incorporating the complainant's mark plus an additional term to which a small alteration, as in the present case, is equivalent, and (ii) a clear absence of rights or legitimate interests coupled with no credible explanation for the respondent's choice of the domain name (section 3.2.1 of [WIPO Overview 3.0](#)). The present case shows all such circumstances indicating bad faith.

The Complainant has provided sufficient evidence to show the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's JUICY COUTURE trademarks, pursuant to paragraph 4(b)(iv) of the Policy. Therefore, the Panel need not come to a final determination whether the JUICY COUTURE products offered by the Respondent are counterfeits, as alleged by the Complainant.

Accordingly, the Panel finds the Complainant has satisfied the requirements 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 <juicy-coutures.com> be transferred to the Complainant.

/Christian Gassauer-Fleissner/

Christian Gassauer-Fleissner

Sole Panelist

Date: January 23, 2023