

ADMINISTRATIVE PANEL DECISION

Lucy & Yak Limited v. YioJp RTue
Case No. D2023-0010

1. The Parties

The Complainant is Lucy & Yak Limited, United Kingdom (“UK”), represented by Moore Law, UK.

The Respondent is YioJp RTue, China.

2. The Domain Name and Registrar

The disputed domain name <lucyjak.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 January 3, 2023. On January 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 6, 2023, 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 (Domain Protection Services, Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 6, 2023, 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 amended Complaint on January 11, 2023.

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 the Respondent of the Complaint, and the proceedings commenced on January 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 2, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 13, 2023.

The Center appointed Mihaela Maravela as the sole panelist in this matter on February 17, 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.

The language of the proceeding is English, being the language of the Registration Agreement, as per paragraph 11(a) of the Rules.

4. Factual Background

According to information in the Complaint, the Complainant is the registered owner of the LUCY & YAK trademarks in various jurisdictions, for clothing and other similar goods, including the UK trademark No. 00003368099, registered on January 18, 2019.

The disputed domain name was registered on January 10, 2022, and it redirects to a website purporting to sell Complainant's branded goods at discounted prices.

5. Parties' Contentions

A. Complainant

The Complainant argues that the disputed domain name is identical or confusingly similar to the Complainant's trademarks and domain name <lucyandyak.com>. The use of the Complainant's logo, trademarks and copyright images (all without permission) on the website at the disputed domain name is intended to compound the confusion.

Further, the Complainant argues that the Respondent has registered the disputed domain name without permission. The Complainant is the exclusive seller and distributor of its products, and the Respondent is not authorized to sell the Complainant's products. Further, the Complainant alleges that the website at the disputed domain name is a sham or scam website: according to the Complainant, customers are purchasing or attempting to purchase the Complainant's products through the website at the disputed domain name, but no products are delivered. In addition, the Respondent is not authorized and has no permission to use copyrighted material from the Complainant's official website.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Matters

No communication has been received from the Respondent in this case. However, given that the Complaint was sent to the relevant email and postal addresses disclosed by the Registrar, the Panel considers that this satisfies the requirement in paragraph 2(a) of the Rules to "employ reasonably available means calculated to achieve actual notice". Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules and to draw inferences from the Respondents' failure to file any Response. While the Respondent's failure to file a Response does not automatically result in a decision in favor of the Complainant, the Panel may draw appropriate inferences from the Respondent's default.

The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

6.2. Substantive Matters

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

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

A. Identical or Confusingly Similar

The Complainant has provided evidence of its rights in the LUCY & YAK trademarks. The disputed domain name differs from the Complainant's trademark by the removal of the ampersand ("&") between the two words forming the Complainant's trademark. The almost identical incorporation of the Complainant's distinctive trademark in the disputed domain name is sufficient for the Panel to find confusing similarity between the Complainant's trademark and the disputed domain name.

It is well accepted by UDRP panels that a generic Top-level-Domain ("gTLD"), such as ".com", is typically ignored when assessing whether a domain name is identical or confusing similar to a trademark. See section 1.11 of the [WIPO Overview 3.0](#).

This Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademarks and therefore finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name. As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie* case demonstrating that the Respondent has no rights or legitimate interests in the disputed domain name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

In the present case, the Complainant has established a *prima facie* case that it holds rights over the trademarks LUCY & YAK and claims that the Respondent has no legitimate reason to acquire and use the disputed domain name.

There is no evidence that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services, nor does the Respondent appear to engage in any legitimate noncommercial or fair use of the disputed domain name. Rather, according to the un rebutted evidence put forward by the Complainant, the disputed domain name resolves to an online retail shop reproducing the Complainant's LUCY & YAK trademark and logo and purportedly offering for sale the Complainant's various products. Such use does not confer in the Panel's view rights or legitimate interests on the Respondent.

Under certain circumstances, UDRP Panels have recognized that resellers, distributors, or service providers using a domain name containing the complainant's trademark to undertake sales or repairs related to the complainant's goods or services may be making a *bona fide* offering of goods and services and thus have a legitimate interest in such domain name (see [WIPO Overview 3.0](#), section 2.8.1), if certain requirements are met. As outlined in the "Oki Data test", such requirements normally include the respondent actually be offering the goods or services at issue, the respondent using the site to sell only the trademarked goods or services, the website accurately and prominently disclosing the registrant's relationship with the trademark holder. Also, the respondent must not try to "corner the market" in domain names that reflect the trademark. See *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#). In this case, the website to which

the disputed domain name resolves does not disclose the relationship or lack of relationship with the trademark owner. Therefore, the Panel considers that the above-mentioned criteria are not met in this case and the disputed domain name has not been used for a *bona fide* offering of goods in the meaning of the Policy.

Also, according to the unrebutted allegations of the Complainant, the website to which the disputed domain name resolves uses official product images of the Complainant. The Complainant denies extending an authorisation for such use. The Respondent has not rebutted these allegations and the Panel concludes that such use does not confer rights or legitimate interests on the Respondent.

Also, there is no evidence that the Respondent is commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy.

The Respondent has not replied to the Complainant's contentions, claiming any rights or legitimate interests in the disputed domain name. With the evidence on file, the Panel finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith.

According to the unrebutted assertions of the Complainant, its trademark was used in commerce before the registration of the disputed domain name. The trademark LUCY & YAK of the Complainant is a fanciful combination. The website associated to the disputed domain name purportedly offers for sale the goods of the Complainant and displays the LUCY & YAK trademark and logo. Under these circumstances, the Panel considers that the Respondent has registered the disputed domain name with knowledge of the Complainant and its trademarks and to target these.

As regards the use of the disputed domain name, from the evidence put forward by the Complainant and not rebutted by the Respondent, the disputed domain name directs Internet traffic to a website reproducing the Complainant's LUCY & YAK trademark and purportedly offering for sale the Complainant's various products. In addition, the website at the disputed domain name includes product images of the Complainant without authorisation. Therefore, the Panel considers that the Respondent intentionally tried to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation of its website.

Moreover, the Respondent has not participated in these proceedings and has failed to rebut the Complainant's contentions and to provide any evidence of actual or contemplated good-faith use and indeed none would seem plausible. Also, the Respondent seems to have provided false physical address details in the Whois. This is an indicator of bad faith (section 3.2.1. of the [WIPO Overview 3.0](#)).

In the Panel's view, these circumstances represent evidence of registration and use in bad faith of the disputed domain name. The Respondent failed to bring evidence as to the contrary. Consequently, the Panel concludes that the condition of paragraph 4(a)(iii) of the Policy is fulfilled.

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, <lucyyak.com> be transferred to the Complainant.

/Mihaela Maravela/

Mihaela Maravela

Sole Panelist

Date: March 3, 2023