

ADMINISTRATIVE PANEL DECISION

Lenzing Aktiengesellschaft v. Dinh Tran

Case No. D2023-1897

1. The Parties

The Complainant is Lenzing Aktiengesellschaft, Austria, represented by BMVN International LLC, Viet Nam.

The Respondent is Dinh Tran, Viet Nam.

2. The Domain Name and Registrar

The disputed domain name <judytencel.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 27, 2023. On April 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 28, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 28, 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 May 2, 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 May 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 23, 2023. The Respondent sent an email communication to the Center on May 4, 2023, but did not submit a formal response. On May 24, 2023, the Center notified the Parties that it would proceed to panel appointment.

The Center appointed Adam Taylor as the sole panelist in this matter on June 15, 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

Since around 1996, the Complainant and its group have distributed textile fibres worldwide under the mark TENCEL, including in Viet Nam since 2016. The Complainant's products include "TENCEL Lyocell", "TENCEL Modal" and "TENCEL Lyocell Filament".

The Complainant holds an international portfolio of registered trade marks for TENCEL including Vietnamese trade mark No. 40022307000, registered on September 10, 1996, in classes 22, 24 and 25.

The Complainant operates a website at "www.tencel.com".

The disputed domain name was registered on May 3, 2022.

The Respondent used the disputed domain name to resolve to a website in Vietnamese that was branded "JUDY TENCEL" and offered bedding for sale. Amongst other things, the website claimed that it was "a seasoned business in the bedding industry, exposed to various textile materials and collaborating with numerous established fabric manufacturers on a daily basis" and that it "focuses on the highest quality material, which is TENCEL". The site also contained menu links and product names including the word "Tencel" such as "Topper Tencel Microfiber" and "Topper Tencel Modal".

When reviewed by the Panel on June 28, 2023, the disputed domain name redirected to a website at <judydrap.vn>, which appeared to be similar to the previous website at the disputed domain name except that the business has been rebranded from "Judy Tencel" to "Judy Drap".

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends: that it has extensively advertised its TENCEL mark internationally in conventional media and online; that its mark is well-known worldwide in its industry; that the Complainant's reputation, and the content of the Respondent's website, show that the Respondent was aware of the Complainant's mark when it registered the disputed domain name; and that the Respondent used the disputed domain name and corresponding website to confuse customers into thinking that the Respondent was associated with the Complainant.

B. Respondent

The Respondent did not reply to the Complainant's contentions, but sent an email to the Center on May 4, 2023, stating that it had "changed" the disputed domain name and was not using it any more. The Respondent added that it was "so sorry for this mistake".

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 the 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.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms (here, “judy”) 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 the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While 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 often-impossible 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. 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 record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

Based on the available record, 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.

The Panel considers that the record of this case reflects that:

The Respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site or other on-line location, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s web site or location or of a product or service on the Respondent’s web site or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

In the present case, the Panel notes the following:

1. The extensive references on the Respondent’s website to the term “TENCEL” in the context of a type of fibre – see section 4 above – indicate that the Respondent incorporated this word in the disputed domain name, and used it within the Respondent’s brand name and on the Respondent’s website, because it corresponded to the Complainant’s mark and not because it was part of a personal name, whether real or fictional.

2. Far from contesting the Complainant's allegations, the Respondent apologised for its "mistake" and changed its brand name from "Judy Tencel" to "Judy Drap".

Based on the available record, the Panel finds the third element of the Policy has been established.

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

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: June 29, 2023