Decision for dispute CAC-UDRP-104679

Case number	**CAC-UDRP-104679**
Time of filing	**2022-06-28 09:36:18**
Domain names	**4505.com**

Case administrator

Organization	**Denisa Bilík (CAC) (Case admin)**

Complainant

Organization	**ASOS plc**

Complainant representative

Organization	**Stobbs IP**

Respondent

Name	**MANZU WANG**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the Disputed Domain Name.

IDENTIFICATION OF RIGHTS

In this proceeding, the Complainant relies on different trademarks "4505" and, between others:

- Australian trademark no. 1607537 "4505" registered on February 21, 2014 for classes 3, 8, 9, 14, 16, 18, 25, 35;
- EUTM no. 12398781 "4505" registered on July 22, 2014 for classes 3, 8, 9, 14, 16, 18, 25, 35;
- UK trademark no. 912398781 "4505" registered on July 22, 2014 for classes 3, 8, 9, 14, 16, 18, 25, 35; and
- IR no. 14086891 "4505" registered on October 30, 2018 for classes 3, 9, 10, 14, 16, 18, 21, 24, 25, 26, 28, 35, 38, 41 and 42.

FACTUAL BACKGROUND

The Complainant is the parent company of the ASOS group of online fashion retail companies, which includes the subsidiary ASOS.com Ltd under which the ASOS brand primarily trades.

According to the Complainant, the ASOS group operates a unique online retail (including fashion) destination at www.asos.com together with eight country-specific websites and its mobile platforms. As of 2022, ASOS is a leading global online fashion, beauty, gifting and living retailer and one of the UK’s largest online-only fashion retailer.

The Complainant informs that the "4505" brand, devised to reflect their “ASOS” house brand in numerals i.e., A(4) – S(5) – O(0) - S(5), was officially launched on the Complainant’s www.asos.com website on February 15, 2018, as a brand with a focus on activewear, sportswear and skiwear for men and women.

Furthermore, the Complainant has evidenced that the launch of the "4505" brand has been highly publicized and that the "4505" brand forms a key part of the Complainant’s offering and has performed strongly since its launch.

In addition, the Complainant has proved to be the owner of numerous trade marks across the world for the “4505” mark and that the Complainant’s rights in "4505" date back to July 22, 2014 and pre-exist the registration of the Disputed Domain Name, which was acquired by the Respondent only on December 25, 2020.

The Complainant submits that the Disputed Domain Name is identical to the Complainant’s "4505" mark as it fully incorporates the "4505" term and that the gTLD suffix “.com”, as mere integral technical part of the Disputed Domain Name, may be disregarded in the determination of confusing similarity.

Furthermore, the Complainant submits that the Respondent does not have any rights or legitimate interests in the Disputed Domain Name since, due to the considerable reputation of the Complainant’s business and brand worldwide, there is no believable or realistic reason for the registration or use of the Disputed Domain Name other than to take advantage of the Complainant’s reputation. The Complainant also submits that to the best of their knowledge, the Respondent has never been known as “4505” at any point in time

In the Complainant's view, the Respondent has not made any bona fide offering of goods and services as the website corresponding to the Disputed Domain Name resolves in a mere parking page. The Complainant further submits that the Respondent’s contact address is false as there is no building or business situated at the address stated. The Complainant additionally submits that nothing about the Disputed Domain Name suggests that the Respondent is making a legitimate non-commercial or fair use of it.

The Complainant also submits that the mark "4505", as well as trading and commercial activities of the business clearly pre-date the acquisition of the Disputed Domain Name by the Respondent on December 25, 2020 and therefore the Disputed Domain Name was registered with prior knowledge of the Complainant’s mark.

Finally, according to the Complainant, the Respondent has registered the Disputed Domain Name in order to prevent the Complainant, from reflecting the mark in a corresponding domain name.

The Complainant therefore requests the Administrative Panel appointed in this administrative proceeding the Disputed Domain Name to be transferred to the Complainant.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the Disputed Domain Name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the Disputed Domain Name has been registered and is being used

in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Paragraph 4(a) of the Policy provides that to obtain the transfer of the domain name, the Complainant must prove that each of the following elements is present:

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

A) Confusing similarity.

In this procedure, the Complainant relies on a trademark registered after the creation date of the Disputed Domain Name. The Panel's view is that in order to assess the first requirement under the Policy, as UDRP panels have constantly held, it is sufficient to establish that trademark right is in existence at the time the complaint is filed (see FrogProg Limited vs. Pavlo Kucheruk, CAC Case no. 103413). As at the time of the filing of the complaint the Complainant is the owner of many registrations for "4505", the Panel is satisfied that the Respondent has standing to file this dispute, and the Panel is entitled to evaluate whether the first requirement under the Policy has been met. In this perspective, it must be considered that many UDRP panels have found that a disputed domain name is confusingly similar to a complainant's trademark where the disputed domain name incorporates the complainant's trademark in its entirety (e.g., F. Hoffmann-La Roche AG v. Jason Barnes, ecnopt, WIPO Case No. D2015-1305; Compagnie Générale des Etablissements Michelin v. Christian Viola, WIPO Case No. D2012-2102; Volkswagen AG v. Nowack Auto und Sport - Oliver Nowack, WIPO Case No. D2015-0070; The Chancellor, Masters and Scholars of the University of Oxford v. Oxford College for PhD Studies, WIPO Case No. D2015-0812; Rhino Entertainment Company v. DomainSource.com, WIPO Case No. D2006-0968; SurePayroll, Inc. v. Texas International Property Associates, WIPO Case No. D2007-0464). The Panel's view is that, in the case at hand, the trademark can be considered as identical to the Disputed Domain Name since it is well-established that the top-level domain name “.com” should be disregarded for the purpose of comparing the trademark with the domain name in dispute in order to evaluate possible confusing similarity or identity (see Playboy Enterprises International, Inc. v. John Taxiarchos, WIPO Case No. D2006-0561; Burberry Limited v. Carlos Lim, WIPO Case No. D2011-0344; Magnum Piercing, Inc. v. The Mudjackers and Garwood S. Wilson, Sr., WIPO Case No. D2000-1525). Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B) The Respondent's rights or legitimate interests in the disputed domain name.

The Complainant provided prima facie evidence that the Respondent is not commonly known under the Disputed Domain Name and that the Respondent is not making a legitimate non-commercial or fair use of it. The Respondent, in the absence of any response, has not shown any facts or elements to justify legitimate rights or interests in the Disputed Domain Name. Therefore, on the basis of the evidences submitted and in the absence of a response, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name. The fact that the Disputed Domain Name was registered in 2005, and therefore before the registration of the Complainant's mark, is totally irrelevant in assessing possible legitimate interests of the Respondent in the term "4505". This especially because the domain name in dispute was never used for an independent business activity of the Respondent. Actually, the Complainant demonstrated that the website to which the Disputed Domain Name is linked resolves in a mere parking page. Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C) Registration and use in bad faith.

The Panel has duly considered that, according to the current Whois records and to the report made available by Complainant,

the Disputed Domain Name was registered in 2005, but the ownership of the Disputed Domain Name has (apparently) changed on or about December 25, 2020. The Panel also knows that according to section 3.9 of the WIPO Overview 3.0, “the transfer of a domain name registration from a third party to the respondent is not a renewal and the date on which the current registrant acquired the domain name is the date a panel will consider in assessing bad faith”.
Now, according to Registrar verification made on June 28, 2022 the Registrant contact refer to an Individual Manzu Wang with KN (Saint Kitts e Nevis) as Registrant country. These data are consistent with the Whois record for September 22, 2020 in which the Registrant country is KN (while, in the Whois record for December 25,2020 the Registrant country is US). In consideration of the above the Panel is not convinced that a transfer of the domain name in dispute, with the meaning of section 3.9 of the WIPO Overview 3.0, effectively took place on or about December 25, 2020 as stated by the Complainant.
Anyway, according to the paragraph 10 (a) of the Policy, the Panel shall conduct the administrative proceeding in such manner as it considers appropriate in accordance with the Policy and these Rules. Therefore, the Panel has acquired a complete report from "Domaintools" and has verified that two possible transfers of the Disputed Domain Name, with the meaning of section 3.9 of the WIPO Overview 3.0, occurred. The first one was on or about June 23, 2016 when the Registrar WHOIS Server moved from whois.name.com to whois.godaddy.com and the Registrant's address changed from Kirkland (Washington) to Scottsdale (Arizona) while the second was on or about June 23, 2020 when the Registrant country changed from US to KN (highly probably the transfer to the Respondent). According to the above it is clear to the Panel that the Respondent has acquired the Disputed Domain Name after the use and registration of the "4505" mark and it is highly possible that the Respondent was aware of the "4505" trademark when he acquired <4505.com>. Moreover, as evidenced by the Complainant and as per the screenshot included in the Domaintools report obtained by the Panel, the Disputed Domain Name has been (at least since 2010) always used in connection with parking pages or blank pages (passive holding) which is sufficient to demonstrate bad faith use. Passive holding of a domain name can be bad faith when the Complainant’s mark has a strong reputation and the Respondent has provided no evidence of any actual or contemplated good faith use by it of the domain name (see Intel Corporation v. The Pentium Group, WIPO Case No. D2009-0273 and Telstra Corporation Limited v. Nuclear Marshmallows WIPO Case No. D2000-0003). Therefore, the Panel finds that paragraph 4(a)(iii) of the Policy has also been satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **4505.COM**: Transferred

PANELLISTS

Name	**Avv. Guido Maffei**

DATE OF PANEL DECISION 2022-08-04

Publish the Decision