

## Decision for dispute CAC-UDRP-105544

Case number	CAC-UDRP-105544
Time of filing	2023-06-20 09:45:02
Domain names	100cycling.com, cycle100percent.com, cycling100percent.com, onehred-us.com

## Case administrator

Name	Olga Dvořáková (Case admin)
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## Complainant

Organization	Saule, LLC
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## Complainant representative

Organization	HSS IPM GmbH
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## RESPONDENTS

Name	Jbegh Heuui
Name	Yibin Deng
Name	Mncj Imkm
Name	fan li

## 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

Complainant owns the registered trademark 100% in numerous territories, including but not limited to:

COUNTRY	TM	REG. NO.	REG DATE	OWNER	
United States	100% Combined mark	5302598	Oct 03, 2017	Saule LLC	
United States	100% Wordmark	6248245	Jan. 19, 2021	Saule LLC	
European Union	100% Combined mark	014718167	Aug. 31, 2017	Saule LLC	
Australia	100% Combined mark	1904044	Jan. 08, 2020	Saule LLC	
Philippines	100% Combined mark	1322708	Aug. 31, 2017	Saule LLC	
Costa Rica	100% Combined mark	259791	Feb. 23, 2017	Saule LLC	

## FACTUAL BACKGROUND

Saule, LLC. (hereinafter, the "Complainant") is a San Diego-based sportswear and lifestyle brand that produces performance goggles, eyewear, helmets, gloves, protective gear, and sportswear and is represented in these proceedings by HSS IPM GmbH.

Complainant owns multiple trademarks, including the brand 100%. The 100% brand is one of the premier providers of premium quality motocross, mountain bike, and sports sunglasses. The 100% brand has won design awards for its goggles and performance eyewear. It also sponsors athletes across multiple disciplines, including motocross, enduro and downhill mountain bike, road racing and triathlon.

The official website of the 100% brand is found at <https://www.100percent.com/>, which was registered on December 10, 1998.

The above trademark registrations long predate the registration of the Disputed Domain Names on May 24, 2022, September 09, 2022, September 21, 2022, and December 01, 2022, respectively. Due to extensive use, advertising, and revenue associated with 100% trademarks worldwide, Complainant has become and continues to be an established player in the manufacturing of performance goggles, eyewear, helmets, gloves, protective gear, and sportswear.

PARTIES CONTENTIONS

COMPLAINANT:

The four (4) Disputed Domain Names have numerous commonalities, as shown in the below table:

DOMAIN NAME	IP ADDRESS	IP LOCATION	REGISTRAR	CONTENT	PRIVACY POLICY	SHIPPING AND RETURNS POLICY	PAYEMENT METHOD POLICY	TERMS AND CONDITIONS	"TERM AND CONDITION" TYPO
100cycling.com	104.21.54.210	California - San Jose - Cloudflare Inc.	Name.com, Inc	<b>Copycat website.</b> As per 2023-06-08, the website is active and it resolves to a copycat website that features infringing trademark and copyright content related to 100%, such as the 100% device logo and some photos of 100% products.	-	X	-	-	X
cycle100percent.com	104.21.93.80	California - San Jose - Cloudflare Inc.	Name.com, Inc	<b>Copycat website.</b> As per 2023-06-08, the website is active and it resolves to a copycat website that features infringing trademark and copyright content related to 100%, such as the 100% device logo and some photos of 100% products.	X	O	X	X	X
cycling100percent.com	104.21.29.230	California - San Jose - Cloudflare Inc.	Name.com, Inc	<b>Copycat website.</b> As per 2023-06-08, the website resolves to a copycat website that features infringing copyright content related to 100%, such as some photos of 100% products.	X	O	X	X	X
onehred-us.com	104.21.30.137	California - San Jose - Cloudflare Inc.	Name.com, Inc	<b>Copycat website.</b> As per 2023-06-08, the website is active and it resolves to a copycat website that features infringing trademark and copyright content related to 100%,	-	X	-	-	X

				such as the 100% device logo and some photos of 100% products.				
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Complainant considers that the above Disputed Domain Names are subject to common control. In accordance with the current UDRP case law and the WIPO Jurisprudential Overview 3.0; in particular paragraph 4.11.2, one complaint can be consolidated against multiple respondents as long as the following requirements are fulfilled: (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties.

Based on the above, Complainant has found the following consolidation factors are applicable.

- **IP address:** The Disputed Domain Names share the first five numbers of the IP address as follows:

**104.21.54.210** - 100cycling.com

**104.21.93.80**- cycle100percent.com

**104.21.29.230** - cycling100percent.com

**104.21.30.137**- onehred-us.com

- **IP location:** The four (4) Disputed Domain Names share the same IP location - **California - San Jose - Cloudflare Inc.**
- **Registrar:** The Disputed Domain Names were registered by the same registrar: **Name.com, Inc**
- **Content:** At the time of filing this Complaint, all four (4) Disputed Domain Names are active and resolve to **copycat websites** that feature infringing trademark and copyright content related to 100%, such as the 100% wordmark and/or device logo along with some photos of 100% products.
- **Policies:** At the time of filing this Complaint, the privacy policy, shipping and returns policy, payment method policy and terms and conditions share certain commonalities as follows (please refer to):

**Privacy Policy text** - cycle100percent.com and cycling100percent.com.

**Shipping and Returns Policy text** - 100cycling.com and onehred-us.com & cycle100percent.com and cycling100percent.com.

**Payment Method Policy text** - cycle100percent.com and cycling100percent.com.

**Terms and Conditions text** - cycle100percent.com and cycling100percent.com. In addition, the four (4) domain names share the same type of typo. Usually, both the words "Terms" and "Conditions" are written in the plural. However, in the four (4) texts, the word "Terms" is written with the singular "Term".

From the points set out above, it is clear that a complex and sophisticated web of contacts and connections has been involved in the registration of the Disputed Domain Names, thus leading Complainant to conclude that they are subject to common control. In light of such common control, it would be fair and equitable to all parties to consolidate the Complaint.

## ii) THE DISPUTED DOMAIN NAMES ARE CONFUSINGLY SIMILAR WITH COMPLAINANT'S 100% TRADEMARKS

The Disputed Domain Names directly incorporate Complainant's registered trademark 100% with the addition of the following business-related terms such as cycling and cycle in <100cycling.com>, <cycle100percent.com> and <cycling100percent.com>, and the 100% term in words instead in numbers plus the "-" punctuation mark and the geographic term "us" in onehred-us.com, where Complainant's business is located. Although the latter does not visually incorporate the entirety of the Complainant's trademark because of the abbreviation/misspelling, it phonetically and conceptually refers to Complainant's registered trademark.

All the above-mentioned terms are closely connected to Complainant's business. Complainant's marks are the initial, dominant and only distinctive element in the Disputed Domain Names. The business and geographic-related terms add no distinguishing character, are irrelevant and do not prevent a finding of confusing similarity between the Disputed Domain Names and the Complainant's trademarks.

Further, numerous prior UDRP panels have recognized that the incorporation of a trademark in its entirety or a dominant feature of a trademark is sufficient to establish that a domain name is identical or confusingly similar to the complainant's mark. See [WIPO Case No. D2021-1790 Kasznar, Leonardos Advogados and Kasznar Leonardos Barbosa Colonna Rosman Vianna Agentes da Propriedade Industrial Ltda v. Jose Claudio de Amorim](#) where the Panel stated:

*"As numerous prior UDRP panels have recognized, the incorporation of a trademark in its entirety or a dominant feature of a trademark is sufficient to establish that a domain name is identical or confusingly similar to the complainant's mark. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 1.7. The Panel finds that paragraph 4(a)(i) of the Policy has been proved by the Complainants, i.e., the disputed domain name is confusingly similar to the Complainants' trademark."*

The reference to the business and geographic related terms in the Disputed Domain Names exaggerate the impression that Respondent is somehow affiliated with Complainant, and Respondent is somehow doing business in specific countries using Complainants' trademarks.

The addition of the generic Top-Level Domain (gTLD) ".com", does not add any distinctiveness to the Disputed Domain Names. See as an example paragraph 1.11 of the WIPO Overview 3.0 as well as the International Business Machines Corporation v. Sledge, Inc. / Frank Sledge WIPO Case No. D2014-0581 where the Panel stated the following *"In addition, it is generally accepted that the addition of the top-level suffix in the domain name (e.g., ".com") is to be disregarded under the confusing similarity test".*

The same reasoning should apply in the current case and the Disputed Domain Names should be considered as confusingly similar to the Complainant's trademarks, as they contain the trademark in dominant part merely with the addition of business and geographic-related terms.

## iii) THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTEREST IN RESPECT OF THE DISPUTED DOMAIN NAMES

As to the second element of the Policy, according to WIPO Overview 3.0, Section 2.1, panelists have the following consensus view:

*"To demonstrate rights or legitimate interests in a domain name, non-exclusive respondent defenses under UDRP paragraph 4(c) include the following: (i) before any notice of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or (ii) the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue".*

## NO BONA FIDE OFFERING

The Disputed Domain Names are not being used in connection with a bona fide offering of goods or services. At the time of preparing this Complaint, the Disputed Domain Names host online shops with the infringing use of Complainant's trademark "100%", that purport to sell a variety of the Complainant's goods, such as tracksuits, twinsets, t-shirts, hoodies, bottoms, shorts, sweatshirts, pants, etc.

Following Oki Data Americas, Inc. v. ASD, Inc. WIPO Case No. D2001-0903, the use of a trademark as a domain name by an authorized or non-authorized third party is only to be regarded as a bona fide offering of goods or services within the meaning of paragraph 4(c) of the Policy if the following conditions are satisfied:

1. the respondent must actually be offering the goods or services at issue;
2. the respondent must use the site to sell only the trademarked goods or services;
3. the site must accurately and prominently disclose the registrant's relationship with the trademark holder; and
4. the respondent must not try to "corner the market" in domain names that reflect the trademark.

As to Condition a), Respondent offers goods at below market prices, even out-of-stock goods. Due to the well-below-market-rate prices and lack of any authorization or distributorship, it can be inferred that the Respondent is selling counterfeit versions of Complainant's goods. Therefore, the Respondent is not offering the Complainant's actual goods and for these reasons, Condition a) is not satisfied.

Regarding Condition b), although Respondent offers only the trademarked goods, as mentioned above, they are offered at below-market prices which is evidence of counterfeit products. Further, the websites associated with the Disputed Domain Names include an online form login page. There are fields for the user to input "username or email address and password", and then below these fields is a button labeled "log in". As such, this online form appears to be an attempt to phish customers' personal information as the website asks the visitor to submit an email address and password. Such improper and potentially fraudulent use indicates that the Respondent is not using the site to sell only trademarked goods but is using it to steal users' sensitive information. Therefore, Condition b) is not satisfied.

In regards to Condition c), Respondent did not disclose or disclaim its total lack of relationship or connection to the Complainant anywhere on the website linked to the Disputed Domain Name. In fact, the only information that appeared at the footer of the websites is the following: " Copyright 2023 © [www.100cycling.com](http://www.100cycling.com)", " Copyright 2023 © [www.cycle100percent.com](http://www.cycle100percent.com)", Copyright 2023 © [www.cycling100percent.com](http://www.cycling100percent.com)", and " Copyright 2023 © [www.onehred-us.com](http://www.onehred-us.com)", respectively. This information does not meet the Oki Data standard of "accurately and prominently" disclosing the Respondent's relationship with the Complainant.

As to Condition d), Respondent tries to corner the market in the Disputed Domain Names because they are composed of common business and geographical related terms for the Complainant and which are relevant to Complainant's business of selling performance goggles, eyewear, helmets, gloves, protective gear, and sportswear.

For these reasons, the Respondent's use of the Disputed Domain Names did not satisfy the Oki Data requirements.

In fact, it is undeniable that Respondent was aware of Complainant's marks prior to the acquisition of the Disputed Domain Names and the establishment of Respondent's websites. Respondent has made no claims to either having any relevant prior rights of its own or to have become commonly known by the Disputed Domain Names. Complainant has never authorized Respondent to use its trademarks or contents in any manner, so the use of the Disputed Domain Names could not be considered legitimate use.

Additionally, Respondent apparently uses the Disputed Domain Names to perpetrate a phishing scheme that cannot constitute legitimate rights and interests in the Disputed Domain Name pursuant to Policy 4(a)(ii). Respondent is using the Disputed Domain Names in a fraudulent scheme to deceive Internet users into providing their personal information. Panels in previous cases under Policy have found that the use of a Disputed Domain Name to pass oneself off as a Complainant in furtherance of a phishing scam that steals users' sensitive information does not constitute a bona fide offering of goods or services nor a legitimate noncommercial fair use. See *Bittrex, Inc. v. Matheus Lemos*, FA1807001797378 (Forum Aug. 16, 2018), where the Panel stated:

*"Where a respondent's website contains nearly identical content and color scheme as a complainant's website, 'Respondent attempts to pass off as Complainant to engage in a phishing scheme to obtain information from users. Passing off in furtherance of a phishing scheme can evince a failure to make a bona fide offering of goods or services or legitimate noncommercial or fair use.'"*

Thus, the use of the Disputed Domain Names is not in connection with a bona fide offering of goods or services as required by the Policy.

#### **NOT COMMONLY KNOWN BY THE DISPUTED DOMAIN NAMES**

Complainant has not found that Respondent is commonly known by the Disputed Domain Names or that it has any interest in the Domain Names or the major part of them. The WHOIS information is the only evidence that relates Respondent to the Disputed Domain Names. Besides, when entering the term "100%" in the Google search engine, the returned results point to Complainant and its business activity. The Respondent could easily perform a similar search before registering the Disputed Domain Names and would have quickly learned that Complainant owns the trademarks and that Complainant has been using its trademarks extensively. As mentioned above, Complainant has not authorized Respondent to use any of its trademarks, and Complainant does not have any other relationship or association, or connection with Respondent.

#### **NO LEGITIMATE NON-COMMERCIAL OF FAIR USE WITHOUT INTENT FOR COMMERCIAL GAIN**

Complainant has not found any evidence that Respondent has made any known legitimate, non-commercial use of the Disputed Domain Names. The websites associated with the Disputed Domain Names are not being used for the purposes of information or criticism or any other use that could potentially be deemed fair use. Respondent is not making a legitimate, noncommercial, or fair use of the Disputed Domain Names but instead, is using the Disputed Domain Names in furtherance of fraudulent activity, namely posing as Complainant.

Accordingly, the Respondent fails on all three of the above-mentioned conditions. In conclusion, according to the evidence available to the Complainant, there is no indication that Respondent has any rights or legitimate interests in the Disputed Domain Names.

#### **iv) THE DISPUTED DOMAIN NAMES WERE REGISTERED AND ARE BEING USED IN BAD FAITH**

##### **THE DISPUTED DOMAIN NAMES WERE REGISTERED IN BAD FAITH**

Complainant's 100% trademarks long predate the registration of the Disputed Domain Names and Respondent has never been authorized by Complainant to register the Disputed Domain Names. The active business presence of the Complainant in different markets, and on a significant scale around the world, makes it apparent that the Respondent was aware that the registration of the Disputed Domain Names was unauthorized and improper.

The trademark 100% is registered by the Complainant in numerous territories and has been used by Complainant's group for several years. Further, as mentioned above, when entering the term "100%" in the Google search engine, the returned results point to Complainant's business activity. That points to an inference of knowledge and, therefore, of bad faith targeting. In the [WIPO Overview 3.0, section 3.2.2](#), it is stated as follows:

*"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."*

For these reasons, it is reasonable to infer that Respondent knew or should have known of Complainant's mark at the time of registration.

##### **THE DISPUTED DOMAIN NAMES ARE BEING USED IN BAD FAITH**

The Disputed Domain Names are in use, and they resolve to a website on which customers can purchase clothes at a very low price. The websites associated with the Disputed Domain Names have the appearance of being official webshops of the Complainant, in particular, because they contain the Complainant's 100% word or device trademark and they reproduce photographs – without permission – copied from the Complainant's official website. Moreover, the websites associated with the Disputed Domain Names claim to offer a diverse catalogue of products at below prices and even out-of-stock products that are also sold by the Complainant. The foregoing makes it very likely that Internet users will assume that there is an association between the Disputed Domain Names and the Complainant. The addition of the geographic and business-related terms in the Disputed Domain Names makes it even more likely that the Respondent wishes to give the impression that the webshops are affiliated with Complainant. This indicates the Respondent's intention to attempt to attract Internet users to its websites by creating a likelihood of confusion between the Disputed Domain Names and the 100% trademarks. For this reason, Respondent must have had actual knowledge of Complainant's rights in the mark since the Disputed Domain Names almost fully incorporate Complainant's mark and resolve to copycat websites. This demonstrates that Respondent was not only aware of Complainant's rights but specifically targeted it as part of an attempt to deceive potential customers

into believing that the Disputed Domain Names’ websites are owned or operated by Complainant.

From the Complainant’s point of view, Respondent intentionally chose the Disputed Domain Names based on the trademark 100%, along with the geographic and business-related terms in order to try to generate more traffic to its own business. Respondent uses the Disputed Domain Names to intentionally attempt to attract, for commercial gain, internet users to the website by creating a likelihood of confusion with Complainant’s trademarks as to the source, sponsorship, affiliation or endorsement of its websites. This conduct has been considered as bad faith under the Policy, and other WIPO decisions have also arrived to the same conclusion, for example, Philip Morris Incorporated v. Alex Tsykin, WIPO Case No. D2002-0946, where the Panel stated:

*“It follows from what has been said about legitimacy that the Panel is satisfied that Respondent is using the disputed domain name intentionally to attempt to attract, for commercial gain, Internauts to his website by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation or endorsement of his web site. Pursuant to Policy paragraph 4(b)(iv), this constitutes evidence of both bad faith registration and bad faith use, for the purposes of paragraph 4(a)(iii)”.*

Based on the above, Complainant is convinced that the Disputed Domain Names have been used in bad faith by Respondent.

RESPONDENT:

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Disputed Domain Names are 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 Names (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 Names have been registered and are 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

The Complainant has pointed out several common elements between the sites for which the Disputed Domain Names are used. The Respondent has not answered this Complaint to deny that the Disputed Domain Names are not in common ownership. On the evidence presented the Panel finds it is more likely than not that the Disputed Domain Names are all held by one entity operated with the use of aliases.

The Disputed Domain Names registered in 2022 are each confusingly similar to the Complainant's trade mark first registered in 2017 using its dominant element and only adding generic term(s) and/or a hyphen and a gTLD which do not prevent said confusing similarity. When abbreviating the Complainant's trade mark the Respondent is using the Disputed Domain Names precisely because the Complainant's trade mark is still recognisable therein.

The Respondent is not authorised by the Complainant or commonly known by any of the Disputed Domain Names.

The Disputed Domain Names have been used for web sites using the Complainant's logo and/or its trade mark as a masthead so the sites appear to be official sites of the Complainant when they are not. As such this is not a bona fide offering of goods or services. The use is commercial so cannot be legitimate non commercial fair use.

It is registration and use in bad faith. The use of the Complainant's logo and material copied from the Complainant's site shows the Respondent has actual knowledge of the Complainant and the Complainant's rights, business and goods. The Respondent has intentionally attempted to attract, for commercial gain, internet users to its websites by creating a likelihood of confusion with Complainant’s trademark as to the source, sponsorship, affiliation or endorsement of the Respondent's websites disrupting the Complainant’s business.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **100cycling.com**: Transferred
- 2. **cycle100percent.com**: Transferred
- 3. **cycling100percent.com**: Transferred
- 4. **onehred-us.com**: Transferred

PANELLISTS

Name Dawn Osborne

DATE OF PANEL DECISION 2023-07-24

