

## Decision for dispute CAC-UDRP-106385

Case number **CAC-UDRP-106385**

Time of filing **2024-03-27 09:48:09**

Domain names **lauraashleyeu.com**

### Case administrator

Organization **Iveta Špiclová (Czech Arbitration Court) (Case admin)**

### Complainant

Organization **Laura Ashley IP Holdings, LLC**

### Complainant representative

Organization **TLT LLP**

### Respondent

Name **Carol Martin**

#### OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the domain name <lauraashleyeu.com> ('the disputed domain name').

#### IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade marks, amongst others:

- UK trade mark registration no. UK00001231150, for the word mark LAURA ASHLEY, filed on 28 November 1984, in classes 2, 3, 11, 16, 18, 19, 20, 21, 24, 25, 26, and 27 of the Nice Classification;
- United States trade mark registration no. 1789975, for the word mark LAURA ASHLEY, filed on 22 March 1989, in classes 1, 3, 5, 6, 8, 9, 10, 12, 14, 15, 16, 20, 21, 28, 29, 30, 31, 36, and 42;
- EU trade mark registration no. 000202408, filed on 1 April 1996, for the word mark LAURA ASHLEY, in classes 3, 4, 9, 11, 14, 16, 18, 19, 20, 21, 23, 24, 26, 27, 28, 29, 30, and 42 of the Nice Classification.

(Collectively or individually referred to as 'the Complainant's trade mark', 'the Complainant's trade mark LAURA ASHLEY', or 'the trade mark LAURA ASHLEY').

The disputed domain name was registered on 22 January 2024. At the time of writing of this decision, it does not resolve to an active website (for present purposes, 'the Respondent's website').

## FACTUAL BACKGROUND

### A. Complainant's Factual Allegations

The Complainant, Laura Ashely IP Holdings, LLC supplies homeware, furniture and ladies fashion on a global basis, and in particular within the United Kingdom, throughout Europe and in the United States. The Complainant commercialises its products under 75 international stores and via e-commerce platforms operated by authorised commercial partners.

The Complainant operates its activities through various websites, for example <[www.lauraashleyusa.com](http://www.lauraashleyusa.com)> and on well-known high street retailers such as <[www.next.co.uk/laura-ashley.com](http://www.next.co.uk/laura-ashley.com)>.

The Complainant seeks to obtain the transfer of the disputed domain name <lauraashleyeu.com> on the grounds set out in the section 'Parties Contentions A.2' below.

### B. Respondent's Factual Allegations

The Respondent has defaulted in this UDRP administrative proceeding and has therefore made no factual allegations.

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## PARTIES CONTENTIONS

### A. Complainant

#### A.1 Preliminary Matter: Language of the Proceeding

With respect to the language of this UDRP administrative proceeding, the Panel notes the following:

- The Complaint is written in English;
- The registrar's verification response provided that the language of the registration agreement for the disputed domain name is Chinese; and
- Following the registrar's confirmation as to the language of the registration agreement, and at the request of CAC, the Complainant submitted a request for English to be the language of this UDRP administrative proceeding, on the following grounds: (i) the disputed domain name contains Latin characters and not Chinese characters; (ii) the content on the Respondent's website was in English and prices were in euro currency; (iii) the Respondent's e-mail contains Latin characters and not Chinese characters; (iv) the Respondent is a US resident; and (v) the translation of the Complaint into Chinese would cause additional expense and unwarranted delay.

#### A.2 Substantive grounds

##### A.2.1 The disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights

The disputed domain name <lauraashleyeu.com> makes use of a mark which is materially identical to the Complainant's trade mark LAURA ASHLEY, without its authorisation or permission.

##### A.2.2 The Respondent has no rights or legitimate interests in respect of the disputed domain name

The Respondent lacks rights or legitimate interests in respect of the disputed domain name in so far as the use of the trade mark LAURA ASHLEY therein implies that there is a commercial relationship between the Parties when there is none. The Complainant has nothing to do with the disputed domain name nor the Respondent. In addition, the Respondent's website is most likely being used to defraud third parties.

##### A.2.3 The Respondent registered and is using the disputed domain name in bad faith

#### Registration

It is inconceivable that, at the time of registration of the disputed domain name, the Respondent did not know of the similarity between the disputed domain name and the Complainant, particularly as the disputed domain name is materially identical to the trade mark LAURA ASHLEY.

#### Use

The Respondent purposefully used the trade mark LAURA ASHLEY fraudulently to deceive the public into a mistaken belief that the disputed domain name is owned by the Complainant, or is associated or connected with the Complainant, and that the Respondent is offering legitimate LAURA ASHLEY products (paragraph 4(b)(iv) of the UDRP Policy).

The Complainant therefore concludes that the Respondent has registered and is using the disputed domain name in bad faith as the sole purpose for its registration was and is to impersonate the Complainant for fraudulent purposes.

### B. Respondent

The Respondent has defaulted in this UDRP administrative proceeding and has therefore failed to advance any substantive case on the merits.

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#### RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the UDRP Policy).

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#### 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 UDRP Policy).

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#### 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 UDRP Policy).

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#### PROCEDURAL FACTORS

##### A. Complainant's Language Request

The Panel is given discretion under Rule 11 of the UDRP Rules to determine the appropriate language of the UDRP administrative proceeding. The Panel notes Rule 10 of the UDRP Rules, which vests the Panel with authority to conduct the proceedings in a manner it deems appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case.

On this particular matter, the Panel takes the liberty to adopt the language of proceeding test applied in CAC Case no. 104144, *Writera Limited v. alexander ershov*, which helpfully sets out the following six guiding factors:

(i) **the language of the disputed domain name string:** the Panel considers that English is the only identifiable language in the disputed domain name string, particularly the abbreviation 'eu' which appears to stand for 'European Union' in this context;

(ii) **the content of the Respondent's website:** the Respondent's website used to display content in English only;

(iii) **the language(s) of the Parties:** the Complainant is a company based in the United States and the Respondent is a US resident (and potentially a US national). The English language would therefore be considered a *common language* for both Parties;

(iv) **the Respondent's behaviour:** the Panel notes that the Respondent has shown no inclination to participate in this UDRP administrative proceeding;

(v) **the Panel's overall concern with due process:** the Panel has discharged its duty under Rule 10 (c) of the UDRP Rules; and

(vi) **the balance of convenience:** while determining the language of the UDRP administrative proceeding, the Panel has a duty to consider who would suffer the greatest inconvenience as a result of the Panel's determination. On the one hand, the determination of English as the language of this UDRP administrative proceeding – a widely spoken language – is unlikely to cause the Respondent any inconvenience, not least given the above circumstances. The determination of Chinese as the language of this UDRP administrative proceeding, on the other hand, is very likely to cause the Complainant inconvenience, and to interfere with the overall due expedition of this UDRP administrative proceeding.

In view of the above factors, the Panel has decided to accept the Complainant's language request, such that the decision in the present matter will be rendered in English.

##### B. Miscellaneous

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.

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#### PRINCIPAL REASONS FOR THE DECISION

## **A. UDRP Threshold**

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint based on the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy sets out the grounds which the Complainant must establish to succeed:

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

It is incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under UDRP administrative proceedings is the balance of probabilities and, on that basis, the Panel will now proceed to determine each of the three UDRP Policy grounds in turn.

## **B. Identical or Confusingly Similar**

The Panel is satisfied that the Complainant has UDRP-relevant rights in the registered trade mark LAURA ASHLEY since at least 1984.

The disputed domain name <lauraashleyeu.com> was registered in 2024 and contains the Complainant's trade mark LAURA ASHLEY in its entirety, together with the abbreviation 'eu' which has no material impact on the recognisability of the Complainant's trade mark in the disputed domain name string. On the contrary, the presence of the abbreviation 'eu' enhances the association with the Complainant to the extent that it evokes one of the Complainant's (and likely the largest) region of business operation (European Union). Furthermore, the TLDs are typically disregarded by UDRP panels under this UDRP Policy ground because the TLD is part of the domain name's anatomy.

The Panel therefore finds that the Complainant has met the requirement under paragraph 4(a)(i) of the UDRP Policy.

## **C. Rights or Legitimate Interests**

The Panel notes that the Complainant denies any affiliation and/or association with, or authorisation for, the Respondent of any nature. There is no contractual arrangement between the Parties to that effect, nor has the Complainant otherwise authorised the Respondent to make any use of the Complainant's trade mark. Moreover, there is no evidence on the record to suggest that the Respondent (as an individual, business, or other organisation) has been commonly known by the disputed domain name. The Panel is therefore mindful of the heightened risk of misrepresentation in this case.

The Panel also notes that the Complainant claims not to have authorised the Respondent to use the Complainant's trade mark nor to commercialise the Complainant's goods and services on the Respondent's website. On this particular point, the Panel alludes to paragraph 2.8 of the WIPO Panel Views on Selected UDRP Questions, Third Edition, paragraph 3.1.4 ('the WIPO Jurisprudential Overview 3.0'), according to which resellers, distributors or service providers using a domain name containing a complainant's trade mark 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. UDRP panels have termed this as the 'Oki Data test' (Oki Data Americas, Inc. v ASD, Inc., WIPO Case No. D2001-0903), which comprises the following four cumulative requirements:

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

The Parties are reminded that the above requirements are cumulative, so that the failure to satisfy any of them would result in a finding for the Complainant regarding this UDRP Policy ground. Upon review of the available record, the Panel notes that the Respondent would have failed the Oki Data test under item 3 above, as the Panel was unable to locate any disclaimer regarding the relationship between the Respondent and the Complainant.

The Panel is furthermore unconvinced that, before any notice of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services.

The Respondent has submitted no evidence to refute the Complainant's claims. Instead, there is evidence on the available record suggesting that the Respondent has attempted to impersonate the Complainant, as discussed under section D. below.

The Panel therefore finds that the Complainant has succeeded under paragraph 4(a)(ii) of the UDRP Policy.

## **D. Registered and Used in Bad Faith**

The Complainant raises a number of factors that may indicate registration and use in bad faith of the disputed domain name. Firstly, the

Complainant's trade mark predates the registration of the disputed domain name by many years, in fact for nearly four decades. Secondly, the disputed domain name bears the trade mark LAURA ASHLEY in its string, coupled with the abbreviation 'eu' which is immaterial to affect the recognisability of the Complainant's trade mark. The Panel has no hesitation in finding that the Respondent registered the disputed domain name with knowledge of, and intention to target, the Complainant.

As regards the use in bad faith, the Complainant submits that the Respondent has engaged in the conduct described in paragraph 4(b) (iv) of the UDRP Policy, which provides as follows:

'(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website 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 website or location or of a product or service on the respondent's website or location'.

As mentioned in the above section 'Identification of Rights', the disputed domain name does not currently resolve to an active website. Nevertheless, the Panel has considered the available record and found compelling indicia that the Respondent would have attempted to offer the Complainant's goods and services through the Respondent's website, without authorisation and absent any disclosure as to the relationship between the Respondent and the Complainant. The Panel considers that the Respondent would have attempted to impersonate the Complainant through the use of the trade mark LAURA ASHLEY on the Respondent's website as well as unduly mimicking the Complainant's website more generally. The Respondent's behaviour would therefore fall into the remit of circumstance (iv) of paragraph 4(b) of the UDRP Policy.

For the sake of completeness, given that the Respondent's website is currently inactive, the Panel takes stock of paragraph 3.3 of the WIPO Jurisprudential Overview 3.0, according to which UDRP panels have recognised various types of evidence to support a finding of bad faith on the basis of the non-use of a domain name. In the case at hand, the Panel takes the view that the following factors would sway in favour of the Complainant in the circumstances (i) the degree of distinctiveness or reputation of the Complainant's trade mark; (ii) the Respondent's default; and (iii) the implausibility of any good faith use to which the disputed domain name may be put.

In view of the above, the Panel finds that the Complainant has succeeded under paragraph 4(a)(iii) of the UDRP Policy.

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FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **lauraashleyeu.com** : Transferred

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## PANELLISTS

Name	<b>Yana Zhou (Presiding Panelist)</b>
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DATE OF PANEL DECISION 2024-04-28

Publish the Decision

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