Decision for dispute CAC-UDRP-106657

Case number	CAC-UDRP-106657
Time of filing	2024-07-16 09:45:02
Domain names	gapfactoryincjobs.store, gapjob.store, gapfactoryjob.store, gapfactoryjobs.store, gapincjob.store, gapincjobs.store, gapjobs.store

Case administrator

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

Complainant

Organization	The Gap, Inc.
Organization	GAP (APPAREL), LLC

Complainant representative

Organization	Convey srl

Respondents

Name	gadres asawe
Name	Michael Shelling
Name	makampo huma
Name	gremin Young
Name	creg cox
Name	Ron Shachar
Name	Michael Shachar

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 names.

IDENTIFICATION OF RIGHTS

The Complainants seek to rely on the following registered trademarks:

Mark	Owner	Territory	Registration No.	Application Date	Registration Date	Classes
GAP	Gap (ITM) Inc.	European Union	000027110	April 1, 1996	October 1, 1999	18, 25, 35
GAP	Gap (ITM) Inc.	European Union	011331345	November 8, 2012	April 15, 2013	39, 41, 42, 45
GAP	Gap (ITM) Inc.	Malaysia	91004506	August 8, 1991	August 8, 1991	18
GAP	Gap (ITM) Inc.	Malaysia	94004725	June 10, 1994	June 10, 1994	3
GAP	Gap (Apparel), LLC	US	74239382	January 22, 1992	January 12, 1993	25, 35
GAP	Gap (Apparel), LLC	US	88707374	November 26, 2019	December 07, 2021	35

Further, the Complainants operate GAP related business using the domain names <gapinc.com> registered since 1998, and <gap.com>, registered since 1993.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

Key aspects of the Complainants' contentions are summarized below.

Complainants' Background

The Gap, Inc., founded in 1969 by Donald and Doris F. Fisher, is headquartered in San Francisco, California. By 1976, the company had grown to 25 stores and went public with an initial stock offering of 1.2 million shares at $18 per share. The Gap, Inc. operates four primary divisions: Gap, Banana Republic, Old Navy, and Athleta. It is the largest specialty retailer in the United States and ranks third globally in total locations, behind Inditex Group and H&M. As of early 2023, The Gap, Inc. employed approximately 95,000 people.

Gap (ITM) Inc. and Gap (Apparel), LLC own numerous GAP formative trademarks worldwide for many years, and are part of the The Gap, Inc. group.

Over the years, The Gap Inc. has heavily invested in protecting and promoting its brands. Notable moments include Michael J. Fox wearing the Gap Pocket-T in Back to the Future in 1985, supermodels featuring Gap clothing on the cover of Vogue's 100th-anniversary issue in 1992, Sharon Stone wearing a GAP mock turtleneck at the 1996 Academy Awards, and Madonna and Missy Elliot promoting Gap's Fall collection in 2003. Over decades, the Complainants have built substantial goodwill and prestige for its GAP trademark as demonstrated by the GAP Instagram page with 3.1 million followers and some 48,301,071 mentions.

Registration of the disputed domain names

According to the registrar verifications included with the Complaint, the disputed domain names were registered on the following dates:

gapfactoryincjobs.store	2024-04-10
gapjob.store	2024-03-05
gapfactoryjob.store	2024-04-08
gapfactoryjobs.store	2024-04-07
gapincjob.store	2024-04-03
gapincjobs.store	2024-03-24
gapjobs.store	2024-03-04

Phishing Emails

On April 21, 2024, an email originating from info@gapjob.store was sent, purporting to be from a Gap Inc Human Resources Manager and including the following text excerpt:

“I saw your profile on indeed.com and I was impressed by your experience.

Here at Gap Inc, we are always looking to grow our teams with talented people and achieve great things together.

I think that your expertise in Graphics Design would help us in the project we’re working on. I’d love to tell you more about the opening position and learn a few things about you as well…”

On April 23, 2024, an email originating from info@gapfactoryjobs.store was sent, purporting to be from a different Gap Inc Human Resources manager to the April 21 email mentioned above and including the following text excerpt:

“Thank you for your response to the Remote graphic designer role at Gap Inc.

I would like to invite you for an instant text based interview via Skype, the interview will last approximately 30 minutes in total…”

Notably, both afore-mentioned emails include in the email signature the following details about the Complainants’ global headquarters, “Gap Inc, Human Resources Manager, 2 Folsom St, San Francisco, CA, 94105”.

Cease and Desist Letter

When the Complainants became aware of the Respondent’s registration and use of the disputed domain names, they instructed their representative to send the Respondent a cease-and-desist letter to notify him of the infringement of the Complainants’ trademark rights, requesting the immediate cease of any use and the transfer of the disputed domain names. Accordingly, a cease and desist letter was sent on June 28, 2024, to the e-mail indicated in the Whois of the disputed domain names. Following the cease-and-desist letter, the e-mail account addresses related to the disputed domain names were deactivated, but the disputed domain names were not transferred to the Complainants.

Consolidation Request

The Complainants contend that the disputed domain names should be consolidated into a single complaint because they are subject to common control for the following reasons: 1) use of the GAP trademark accompanied by other generic/descriptive terms:

“job”, “inc” and “factory“, meaning that they are referring to the same business of the Complainants 2) same registrar and hosting provider based in the United States., namely, NAMECHEAP INC. 3) the disputed domain names were registered during March and April of 2024.

First UDRP Element - disputed domain name is Confusingly Similar to the Complainant’s Trademark

The Complainants assert that the disputed domain names are confusingly similar to its trademark GAP by incorporating the entire trademark GAP, along with generic commercial terms such as “job”, “factory” and “inc”. The combination of GAP with generic but related terms could suggest improperly to consumers that the disputed domain names and corresponding web sites might be directly controlled or authorized by the Complainants.

Further, the Complainants contend that the addition of the gTLD “.store” is merely instrumental to use in the Internet and does not affect the confusing similarity of the disputed domain names to the Complainants’ trademarks.

Second UDRP Element – The Respondent has no Rights or Legitimate Interests in the disputed domain names

The Complainants assert that the Respondent is not a licensee, authorized agent, or related in any way to the Complainant, nor is authorized in any way to use the Complainants’ trademarks or to register or use the disputed domain names.

The Complainants also claim that the Respondent is not commonly known by the disputed domain names as an individual, business, or other organization and their family names do not correspond to GAP or the disputed domain names.

The Complainants contend there is no evidence of demonstrable preparations to use nor actual use of the disputed domain names in connection with a bona fide offering of goods or services. Rather, the Respondent has unlawfully used the disputed domain names to impersonate an employee of the Complainants’ human resources team, by sending fraudulent e-mails from the addresses info@gapjob.store and info@gapfactoryincjobs.store. The Respondent has attempted to obtain sensitive information from individuals interested in applying for jobs at the Complainants' company. According to the Complainants, this deceptive conduct aims to exploit the GAP trademark reputation, disrupt its business, and illegitimately trade on its fame for commercial gain, while misleading the public into believing there is a relationship or affiliation with the Complainants.

Further, the Complainants assert the Respondent has concealed their identity in the WHOIS records.

The Complainants also contend that the Respondent’s wilful conduct demonstrates the Respondent did not intend to use the disputed domain names in connection with any legitimate purpose.

Third UDRP Element – The disputed domain names were Registered and are Being Used in Bad Faith

The Complainants assert that their GAP trademarks enjoy worldwide reputation since many years, including the US where the Respondent is located. Considering the advertising and sales under the Complainants’ trademarks, the Complainants claim the Respondent could not have ignored the existence of the Complainants’ trademarks, at time of the registration of the disputed domain names, with which they are confusingly similar.

According to the Complainants, the disputed domain names currently resolve to inactive websites.

The Complainants state that the Respondent has used the disputed domain names and appropriated the GAP trademarks to impersonate an employee of the Complainants, as part of a phishing scheme involving the sending of fraudulent e-mails to obtain sensitive information and documents from recipients. The Complainants claim such use of the disputed domain names constitutes improper impersonation of the Complainants for commercial gain, with such conduct considered bad faith under the Policy.

The Complainants conclude that the facts and evidence of the case demonstrate that the disputed domain names were both registered and used in bad faith.

The above summarized facts and arguments asserted by the Complainants are not contested by the Respondent because no Response was filed.

PARTIES CONTENTIONS

The Complainants contend that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

The Complainants’ contentions are summarized above.

No administratively compliant Response has been filed.

RIGHTS

The Complainants have, 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 Complainants have rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainants have, 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 Complainants have, 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

PRELIMINARY ISSUES

LANGUAGE OF PROCEEDING

According to Rule 11 in the Rules for Uniform Domain Name Dispute Resolution Policy, (the "Rules") "...the language of the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding."

According to the information on the case file, the Registrar confirmed that the Respondent is the current registrant of the disputed domain names, and that the language of the registration agreements is English.

As neither party has asked to deviate from the English language as per the registration agreements, the Panel finds that this proceeding may be properly conducted in English.

CONSOLIDATION OF MULTIPLE COMPLAINANTS

The Complainants in this matter are collectively The Gap, Inc and Gap (Apparel) LLC (herein referred to as the "Complainants"). The Complainants are not the registered owner of most of the included trademarks upon which its case rests; only two US trademarks included with the Complaint are owned by Gap (Apparel) LLC, while the remainder of the trademarks are registered to the Complainants' affiliate Gap (ITM), Inc. The Complainants assert that Gap (ITM) Inc. and Gap (Apparel), LLC are parts of the group The Gap, Inc. Section 1.4.1 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0") states "While panels have been prepared to infer the existence of authorization to file a UDRP case based on the facts and circumstances described in the complaint, they may expect parties to provide relevant evidence of authorization to file a UDRP complaint." Here, the trademark registrations included with the Complaint show that – in addition to all having the GAP trademark in their respective entity name - Gap (ITM) Inc. and Gap (Apparel) LLC are located at the same San Francisco address as The Gap, Inc. The is nothing to suggest any impropriety or lack of authority in relation to the Complainants relying on trademarks owned by Gap (ITM) Inc, and moreover, two of the trademarks relied upon are owned by Gap (Apparel) LLC which is one of the Complainants. Prior Panels have accepted consolidation requests related to the instant Complainants. See e.g., WIPO Case No. D2022-3201, The Gap Inc., Gap (Apparel), LLC, Gap (ITM) Inc. v. Shoaib Ahmad, Bestow LLC, Privacy Protected by Withheld for Privacy ehf / ahmad Akram, sports ghar, Ghulam Murtaza ("The Complaint demonstrates that the Complainants are related companies with a common grievance against the Respondents. While the Second Complainant and the Third Complaint are subsidiaries of the First Complainant, all three companies own registered rights in the GAP trademark. Taking into consideration that the Respondent has not rebutted a consolidation of the Complainants, the Panel finds that the Complainants have established a prima facie case that the Complaint can be consolidated based on a common grievance and interest of the Complainants. The Panel is convinced that it is fair and equitable in the circumstances of the case to order the consolidation as requested…"). The same logic applies in the present case. While panels may properly demand specific evidence of authorization to file a UDRP complaint, here the Complainants' assertion as to their right to file this proceeding is considered sufficient in the circumstances.

CONSOLIDATION OF MULTIPLE RESPONDENTS

The Complainants allege that all seven Respondents included in the Complaint are either alter egos of the same actor and/or subject to common control. Thus, Complainants seek to consolidate seven Respondents and seven disputed domain names into a

single proceeding.

Paragraph 10(e) of the UDRP Rules grants the Panel authority to "decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules." Similarly, paragraph 3(c) of the UDRP Rules provides that a complaint "may relate to more than one domain name, provided that the domain names are registered by the same domain-name holder." As stated in section 4.11.2 of the WIPO Overview 3.0, when considering consolidation requests panels should look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency underpins such consideration.

Section 4.1.2 of WIPO Overview 3.0 sets out eleven factors, typically present in some combination, that prior panels have found to warrant consolidation:

i. the registrants' identity(ies) including pseudonyms,
ii. the registrants' contact information including e-mail address(es), postal address(es), or phone number(s), including any pattern of irregularities,
iii. relevant IP addresses, name servers, or webhost(s),
iv. the content or layout of websites corresponding to the disputed domain names,
v. the nature of the marks at issue (e.g., where a registrant targets a specific sector),
vi. any naming patterns in the disputed domain names (e.g., <mark-country> or <mark-goods>),
vii. the relevant language/scripts of the disputed domain names particularly where they are the same as the mark(s) at issue,
viii. any changes by the respondent relating to any of the above items following communications regarding the disputed domain name(s),
ix. any evidence of respondent affiliation with respect to the ability to control the disputed domain name(s),
x. any (prior) pattern of similar respondent behavior, or
xi. other arguments made by the complainant and/or disclosures by the respondent(s).

With consideration to the above factors, and the totality of circumstances of the case, the Panel concludes that consolidation is warranted.

According to the Registrar Verifications in the case file, the names and the addresses of the seven named Respondents are different. However, this difference in registrant details is not wholly dispositive as to whether consolidation should be granted, since registrars are not typically required to verify the identity of registrants.

Evidence of common control exists between the seven Respondents as shown by several relevant indicators:

i. The seven domain names all share the registrar NAMECHEAP INC. according to the Complaint and the registrar verification.
ii. All seven disputed domain names include generic words that are related to the GAP brand's business. In all seven disputed domain names, the GAP trademark is included at the beginning of the domains, and all seven disputed domain names include the word "job," with four of them using the plural form "jobs." Three of the seven domain names include the word "factory," and three of the seven domain names include the word "inc."
iii. All seven disputed domain names include the gTLD ".store."
iv. The disputed domain name <gapfactoryincjobs.store> shares the same registrant, administrative, technical, and billing contact e-mail address, with slight variations (jessicalagum28@gmail.com) with <gapfactoryjob.store> (jessicalagume@gmail.com).

    The disputed domain name <gapfactoryjob.store> has nearly identical organization, job title, and country information for the registrant, administrative, technical, and billing contacts (Organization: gaprass, Job Title: Hiring Manager, Country: United States) as <gapfactoryjobs.store> (Organization: garprose, Job Title: Hiring Manager, Country: United States).

    The disputed domain name <gapjob.store> shares the exact same organization, job title, and country details for the registrant, administrative, technical, and billing contacts as <gapincjobs.store> and <gapjobs.store> (Organization: Gap, Job Title: Human Resources, Country: United States).

    The disputed domain name <gapincjobs.store> shares the same last name, street address and city for the registrant, administrative, technical, and billing contacts as <gapjobs.store> (Last Name: Shachar, Street Address: 9197 Rablewood Drive, Apt 724, and City: Coral Springs). Additionally, both share nearly the same e-mail and phone number for the registrant, administrative, technical, and billing contacts, with slight variations in the e-mail (Charlesvuedesk@gmail.com and charlesvuedesk1@outlook.com, respectively) and the phone number, differing only in the last two digits (+1 7868675967 and +1 7868675948, respectively).

    Although the WHOIS contact details for the <gapincjob.store> disputed domain name do not share similarities with the others, this domain name is nearly identical to <gapincjobs.store>, which is connected to the rest.

v. All the registrant, administrative, technical, and billing contacts are based in the USA.

vi. The registration dates for all the disputed domain names were between March and April 2024, indicating a consistent pattern of consecutive registrations, with a difference of 38 days between the first and the last, during which all seven domain names were registered.

gapjobs.store	3/4/2024
gapjob.store	3/5/2024
gapincjobs.store	3/24/2024
gapincjob.store	4/3/2024
gapfactoryjobs.store	4/7/2024
gapfactoryjob.store	4/8/2024
gapfactoryincjobs.store	4/10/2024

The above circumstances, taken together, lead the Panel to conclude that it is more likely that the disputed domain names: <gapfactoryincjobs.store>, <gapjob.store>, <gapfactoryjob.store>, <gapfactoryjobs.store>, <gapincjob.store>, <gapincjobs.store>, and <gapjobs.store> are under common control, and that consolidation of the cases against those seven Respondents would be (i) fair and equitable to all parties and (ii) result in procedural efficiencies. Given such common control, hereinafter the seven Respondents with the respective alter egos “gadres asawe“, “Michael Shelling“, ‘’makampo huma’’, ‘’gremin Young’’, ‘’creg cox’’, ‘’Ron Shachar’’ and ‘’Michael Shachar’’ shall be referred to by the singular term “Respondent”. The term “disputed domain names” shall hereinafter collectively refer to the seven domain names listed in this paragraph.

PRINCIPAL REASONS FOR THE DECISION

THREE ELEMENTS THE COMPLAINANT MUST ESTABLISH UNDER THE POLICY

According to Paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to obtain an order that a disputed domain name should be transferred or cancelled:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

The Panel has examined the evidence available to it and has come to the following conclusions concerning the satisfaction of the three elements of paragraph 4(a) of the Policy in these proceedings:

(A) THE COMPLAINANTS’ RIGHTS AND CONFUSING SIMILARITY OF THE DISPUTED DOMAIN NAMES TO THE COMPLAINANTS’ RIGHTS

Sufficient evidence has been submitted by the Complainants of their trademark rights in the term GAP in numerous classes and territories around the world. Such trademark rights were created and registered long prior to March 4, 2024, March 5, 2024, March 24, 2024, April 3, 2024, April 7, 2024, April 8, 2024, and April 10, 2024, the respective creation dates of the disputed domain names. A nationally or regionally registered trademark confers on its owner sufficient rights to satisfy the requirement of having trademark rights for the purposes of standing to file a UDRP case. Accordingly, the Panel finds that the Complainants possess rights in their GAP trademark such that they have standing under the Policy.

Further, UDRP panels have held that where the asserted trademark is recognizable within a disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under paragraph 4(a)(i) of the Policy. See, e.g., LEGO Juris A/S v. DBA David Inc/ DomainsByProxy.com, Case No. D2011-1290 (WIPO, September 20, 2011) (“the mere addition of the words ‚Ninjago‘ and ‚Kai‘ is not sufficient to exclude the likelihood of confusion between the disputed domain name and the Complainant’s trademark.”). In the present case, the disputed domain names consist of the GAP trademark reproduced in its entirety with the addition of the generic but related terms ‘’job’’, ‘’jobs’’, ‘’inc’’, and ‘’factory’’.

In assessing confusing similarity, the Panel finds the disputed domain names are confusingly similar to the GAP trademark in which

the Complainants' have rights because they incorporate the entirety of the GAP trademark, and differ from such mark merely by respectively adding the aforementioned generic but related terms. These additions do not prevent a finding of confusing similarity considering the prominence of the distinctive GAP mark within the disputed domain names.

The TLD – in this case .store - may usually be ignored for the purpose of determination of identity or confusing similarity between a domain name and the Complainants' trademarks as it is technical requirement of registration (see paragraph 1.11.1 WIPO Overview 3.0).

Accordingly, the Panel concludes that the Complainants have satisfied the requirement under paragraph 4(a)(i) of the Policy and the disputed domain names are confusingly similar to the Complainants' mark.

(B) THE RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN THE DISPUTED DOMAIN NAMES

The second element of the Policy requires that the Complainants establish that the Respondent has no rights or legitimate interests in the disputed domain names. The generally adopted approach, when considering the second element, is that if a complainant makes out a prima facie case, the burden of proof shifts to the respondent to rebut it; see, for example, WIPO Overview 3.0, section 2.1 ("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."). However, the burden of proof still remains with the complainant to make out its prima facie case on a balance of probabilities. Moreover, the wording of paragraph 4(a)(ii) of the Policy requires a complainant to establish that the respondent has no rights or legitimate interests in the domain name in issue. Simply establishing that the complainant also has rights in the domain name in issue is insufficient.

Paragraph 4(a)(ii) of the Policy contemplates an examination of the available facts to determine whether a respondent has rights or legitimate interest in the domain name. Paragraph 4(c) sets out a list of circumstances through which a respondent may demonstrate that it does have such rights or interests.

The first circumstance, under Paragraph 4(c)(i), is where "before any notice to you of the dispute, your 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". Here, according to the Complaint, the disputed domain names currently are inactive websites. Accordingly, the Panel finds no evidence of a bona fide offering or goods or services or demonstrable preparations to use per Policy 4(c)(i) and the Respondent does not have rights or legitimate interests with respect to the disputed domain names thereunder. The second circumstance, under Paragraph 4(c)(ii), concerns cases where the respondent is commonly known by the domain name. Here, according to the registrar verification, the Respondent names are "gadres asawe", "Michael Shelling", ''makampo huma'', ''gremin Young'', ''creg cox'', ''Ron Shachar'' and ''Michael Shachar'' and have no similarity or connection to the disputed domain names. There is no evidence that the Respondent is commonly known by the disputed domain names. As such, this second circumstance of legitimate rights or interests under the Policy is not applicable to the Respondent.

Regarding the third circumstance, under Paragraph 4(c)(iii) of the Policy, there is no evidence that the Respondent is making a legitimate non-commercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainants' GAP trademark. According to the evidence submitted, the disputed domain names are currently inactive which by itself does not show a bona fide offering of goods and services. The Complainants allege, and provide evidence supporting their allegations, that the Respondent has used two of the email addresses associated with the seven of the disputed domain names (<gapjob.store> and <gapfactoryincjobs.store>) to impersonate an employee of the Complainants. This impersonation formed part of a phishing scheme involving sending fraudulent e-mails inviting people for a job interview. Use of a disputed domain name to pass off as a complainant through impersonation e-mails is not a bona fide offering of goods or services nor a legitimate noncommercial or fair use under the Policy.

Lastly, the Complainants state that the Respondent is not licensed, nor has any relationship with or authority to represent the Complainants in any way.

Accordingly, the Complainants have sufficiently made out their prima-facie case on the second element of the Policy. Thus, the burden of proof is shifted to the Respondent to rebut the Complainants' case. Here, because the Respondent has not participated in these proceedings, there is no such rebuttal to consider, and the Complainants prevail.

The Panel therefore concludes that neither the Respondent nor the evidence establishes that the Respondent has any right or legitimate interest in the disputed domain names. The Complainants have therefore also satisfied the requirement under paragraph 4(a)(ii) of the Policy.

(C) BAD FAITH REGISTRATION AND USE OF THE DISPUTED DOMAIN NAMES

The third element requires the Complainants to show that the disputed domain names have been registered and used in bad faith under paragraph 4(a)(iii) of the Policy. See, e.g. Hallmark Licensing, LLC v. EWebMall, Inc., WIPO Case No. D2015-2202 ("The standard of proof under the Policy is often expressed as the "balance of the probabilities" or "preponderance of the evidence" standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true.").

Further, Paragraph 4(b) of the Policy sets out a non-exhaustive list of four circumstances, any one of which may be evidence of the registration and use of a domain name in bad faith. The four specified circumstances are:

(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's 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 site or location.

The Panel finds that the Complainants have shown that the Respondent registered and used the disputed domain names in bad faith under paragraph 4(a)(iii) of the Policy because:

1. There is no evidence that the Respondent is commonly known by the disputed domain names and the Complainants confirm that the Respondent has never been affiliated with nor authorized by the Complainants to use the Complainants' trademark(s) and/or register the disputed domain names. Nor is there any business or other association between the Complainants and the Respondent.
2. The Complainants' GAP trademark is distinctive and enjoys a considerable reputation in its industry as indicated by a long history of high profile advertising and celebrity endorsements and the assertion that The Gap, Inc is the largest specialty retailer in the United States and ranks third globally in total locations. Throughout the years, the Complainants have built substantial goodwill and prestige for their GAP trademark. Because of the well-established status of the Complainants, it is more probable than not that the Respondent either knew, or should have known, that the disputed domain names would be confusingly similar to the Complainants' trademarks and thus they registered the disputed domain names with the Complainants in mind.
3. The evidence of targeting by the Respondent is compelling. The disputed domain names comprise Complainants' distinctive GAP mark, with the addition of the generic but related terms "job", "jobs", "inc", and "factory", apparently meant to represent official websites where the Complainant offers job positions and with which the Complainants can therefore be closely and relevantly associated. According to the Complainants, the disputed domain names do not currently resolve to any active content that could potentially evidence an alternative purpose.
4. The non-active use of the disputed domain names in this case satisfies the doctrine of passive holding as described in WIPO Case No. D2000-0003 Telstra Corporation Limited v. Nuclear Marshmallows considering all of the circumstances of the case because (i) the Complainants' trademark is distinctive and has a strong reputation in its sector, (ii) the Respondent failed to respond to these proceedings and thus has provided no evidence of actual or contemplated good-faith use, (iii) it is impossible to conceive of any plausible actual or contemplated good faith use of the disputed domain names by the Respondent in this case particularly because all of the disputed domain names include the term "job" or "jobs" and considering evidence that two of the disputed domain names were used to send phishing emails impersonating an employee of the Complainants.
5. The Panel finds that at the time the Respondent registered the disputed domain names, namely during a five-week period between March 4, 2024 and April 10, 2024, it can be inferred that the Respondent had actual knowledge of the Complainants' GAP mark. Such inference can be drawn because of the subsequent utilization of the disputed domain names. Evidence included with the complaint shows the Respondent used two of the seven disputed domain names to create e-mail addresses to impersonate an employee of the Complainants, as part of a phishing scheme. This scheme involved sending e-mails purporting to be communications from the Complainants, inviting the recipient for a job interview. Using a disputed domain name to improperly pass off as an employee of a complainant via e-mail is a strong indicator of bad faith under the Policy.
6. As a final point, the Panel may draw a negative inference from the Respondent's failure to reply to the Complainants' cease and desist letter and silence though these proceedings.

In light of the above analysis, the Panel concludes that the Complainants have made out their case that the disputed domain names were registered and are being used in bad faith, and thus has satisfied the requirements under paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **gapfactoryincjobs.store**: Transferred
2. **gapjob.store**: Transferred
3. **gapfactoryjob.store**: Transferred
4. **gapfactoryjobs.store**: Transferred
5. **gapincjob.store**: Transferred
6. **gapincjobs.store**: Transferred
7. **gapjobs.store**: Transferred

PANELLISTS

Name	**Claire Kowarsky**

DATE OF PANEL DECISION 2024-08-18

Publish the Decision