Decision for dispute CAC-UDRP-106738

Case number	CAC-UDRP-106738
Time of filing	2024-07-31 08:59:58
Domain names	voguetop.com

Case administrator

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

Complainant

Organization	Advance Magazine Publishers Inc.

Complainant representative

Organization	Stobbs IP

Respondent

Organization	

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

The Complainant owns over 1,000 trade mark registrations for the mark VOGUE in connection with magazines and online publications and distribution of information worldwide. These include registrations covering the United States, United Kingdom, Europe as well as China (the latter being the registration location of the Respondent).

FACTUAL BACKGROUND

The Complainant, Advance Magazine Publishers Inc., is one of the world's most successful magazine publishers. Through its unincorporated division - The Condé Nast Publications Inc. (hereinafter Condé Nast), the Complainant publishes well known magazines such as Vogue, Glamour, The New Yorker, Self, Vanity Fair and GQ. Condé Nast's magazines have an established internet presence and the company operates, with its affiliates, several popular websites that incorporate content from many of its magazines.

The U.S. edition of Vogue has been reported to reach over 11 million monthly readers in print and 13 million unique users on the digital site. The domain name <vogue.com> has been used by the Complainant for the purposes of an official website from as early as the year 2000.

In addition to the US and UK editions, Vogue is published through the Complainant's subsidiaries or through local licensees in

various countries. These include India, France, Germany, Spain, Brazil, Italy, Greece, Portugal, Russia, Korea, Taiwan, Thailand, Japan, Australia, Latin America, Turkey and China.

The disputed domain name <voguetop.com> has a date of registration by the Respondent of May 21, 2008.

The Complainant alleges that disputed domain names infringed its rights in accordance with relevant UDRP policies and rules.

PARTIES CONTENTIONS

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

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 Complainant requests that the language of this administrative proceeding be English pursuant to UDRP Rule 10(b): “In all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case.” The language of the Registration Agreement of the disputed domain name is Chinese.

Paragraph 10 of the UDRP Rules vests a Panel with authority to conduct the proceedings in a manner it considers 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. UDRP panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios were summarized into WIPO Jurisprudential Overview 3.0, 4.5.1. In this particular instance, the Complainant tried to request change of languages of proceedings in light of Chinese language Registration Agreement by showing that 1) the disputed domain name is in English, showing that the Respondent has certain level of English knowledge; 2) the translation of the Complaint would unfairly disadvantage and burden the Complainant and delay the proceedings and adjudication of this matter.

In light of the scenarios and equity, the Panel is of the view that conducting the proceeding in English is unlikely to heavily burden the Respondent, and it is likely that the Respondent can understand the English language based on a preponderance of evidence test. Without further objection from the Respondent on the issue (the Respondent was notified about the ongoing proceedings in Chinese language), the Panel will proceed to issue the decision in English.

PRINCIPAL REASONS FOR THE DECISION

The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant, Advance Magazine Publishers Inc., is one of the world’s most successful magazine publishers. Through its unincorporated division - The Condé Nast Publications Inc. (hereinafter Condé Nast), the Complainant publishes well known magazines such as Vogue, Glamour, The New Yorker, Self, Vanity Fair and GQ. In the US, UK, Europe, China and other markets, VOGUE is recognized as the world’s leading voice in fashion and style. The Complainant owns over 1,000 trade mark registrations for the mark VOGUE in connection with magazines and online publications and distribution of information worldwide.

The disputed domain name “voguetop.com” wholly incorporates the registered mark “VOGUE”. The addition of the term “top”, which probably shows the prominence of the brand’s online presence, does not negate the connection between the disputed domain name and the Complainant’s brand. Previous UDRP panels have consistently stated in this regard that “minor alterations cannot prevent a finding of confusing similarity between the trademark and the domain name” (See LinkedIn Corporation v. Daphne Reynolds, WIPO Case No. D2015-1679). gTLDs such as “.com” are commonly viewed as a standard registration requirement, and as such they are disregarded under the first element confusing similarity test (WIPO Overview 3.0, section 1.11).

The Panel therefore concludes that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

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

Although the Respondent did not file an administratively compliant (or any) response, the Complainant is still required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant in the present case has not licensed or authorized the Respondent to register or use its trademark or the disputed domain name. There is no evidence that the Respondent is known by the disputed domain name or owns any corresponding registered trademarks. The organization of the Respondent, “”, or its address, also has no connection with “VOGUE” or “voguetop”. The Complainants did not grant any license or authorization to the Respondent to register or use the disputed domain name, nor the use of the Complainants’ trademark on pages of the disputed websites.

On the basis of preponderance of evidence, and in the absence of any evidence to the contrary or any administratively compliant response being put forward by the Respondent, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy.

The disputed domain name has been registered and is being used in bad faith.

The use and registration of the disputed domain name by the Respondent has been done in bad faith.

First of all, the registration of the disputed domain name by the Respondent was done in bad faith. UDRP panels have consistently held that the mere registration of a domain name that is confusingly similar to a famous trademark by an unaffiliated entity can by itself create a presumption of bad faith. The “VOGUE” brand and its registered mark enjoys a high level of distinctiveness and has developed a wide reputation. With the reputation of the “VOGUE” trademark, the presumption arises that the disputed domain name was registered with the intention to attract Internet users by creating a likelihood of confusion with the well-known “VOGUE” trademark.

At the time of the domain registration in 2008, VOGUE was already a globally recognized brand, particularly in the fashion industry. Given the brand's international presence and its well-known trademark in multiple jurisdictions, it is reasonable to argue that any registrant registering a domain with the word "VOGUE" would have been aware of its strong association with the famous magazine and its global operations.

Secondly, the use of the disputed domain name was in bad faith. The Complainant bases its argument mainly on paragraph 4(b) (iv) of the Policy, “by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.” Such facts, if found by the panel, shall be evidence of the registration and use of a domain name in bad faith.

Even though the disputed domain was registered back in 2008, which was 16 years ago, bad faith registration can be substantiated by looking at how the domain was used (or not used) over the years. The disputed domain name hosts a website at which references the Complainant’s mark as part of advertising and promoting its own services, which could have constituted infringement of the Complainant’s trademark.In this case, it does not seem that Respondent has legitimate uses of the disputed domain name in addition to creating a likelihood of confusion with the Complainant’s trademark to generate more traffic (and thus revenues) for itself. The website displays “fashion” news from various sources, and does not seem to offer any coherent theme related to the disputed domain name “voguetop”. It seems that the disputed domain name was used to redirect traffic to the Respondent’s businesses that is unrelated to the Complainant’s famous VOGUE brand. This would demonstrate the Respondent’s bad faith intent to disrupt the operations of the legitimate Vogue brand and/or tarnish its reputation.This use is unfair and intentional. Therefore, the facts satisfy the requirements of paragraph 4(b)(iii) and 4b(iv) of the Policy.

Moreover, a cease and desist letter was sent to the Respondent on 22 May 2024 and the Respondent never responded. Prior panels have also held that a failure to respond to a cease and desist letter can be evidence of bad faith (see e.g., HSBC Finance Corporation v. Clear Blue Sky Inc. and Domain Manager, WIPO Case No. D2007-0062).

Therefore, in the absence of any evidence to the contrary (or any administratively compliant response) being put forward by the Respondent, the Panel determines that the disputed domain name was registered and is being used in bad faith within the meaning of 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. **voguetop.com**: Transferred

PANELLISTS

Name	**Carrie Shang**

DATE OF PANEL DECISION 2024-09-10

Publish the Decision