



Asian Domain Name Dispute Resolution Centre
hong kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2201609
Complainant:	LSPACE AMERICA, LLC
Respondent:	Yingjiu Wu
Disputed Domain Name(s):	<lspaceonlineout.com>

1. The Parties and Contested Domain Name

The Complainant is LSPACE AMERICA, LLC, of 557 Wald Street, Irvine CA 92618, United States of America (“United States”), represented by China Sinda Intellectual Property Service Ltd, China.

The Respondent is Yingjiu Wu, of Block M, Xinchaohe Street, Shenbei, Kunming City, Yunnan Province 582012, China.

The domain name at issue is <lspaceonlineout.com> registered by the Respondent with Name.com, Inc., of notices@name.com (the “Registrar”).

2. Procedural History

The Complainant filed the Complaint with the Hong Kong Office of Asian Domain Name Dispute Resolution Centre on 28 March 2022 in accordance with the Uniform Policy for Domain Name Dispute Resolution approved by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on 24 October 1999 (the “Policy”), the Rules for Uniform Domain Name Dispute Resolution Policy approved by the ICANN Board of Directors on 28 September 2013 (the “Rules”) and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy effective from 31 July 2015 (the “Supplemental Rules”). On 29 March 2022, the Hong Kong Office acknowledged receipt of the Complaint and sent an email to the Registrar requesting verification of information regarding the domain name at issue. On 1 April 2022, the Registrar sent a confirmation email disclosing registrant and contact information for the disputed domain name that differed from the named respondent and contact information in the Complaint. On 4 April 2022, the Center sent an email to the Complainant providing the registrant and contact information disclosed by the Registrar and requiring the Complainant to update the information regarding the Respondent in the Complaint. On 6 April 2022, the Complainant filed an amended Complaint.

The Hong Kong Office confirmed that the Complaint, as amended, was in administrative compliance with the Policy and the Rules. On 7 April 2022, the Hong Kong Office sent the Respondent a written notice of the Complaint, informing it that it was required to submit a Response within 20 days from 7 April 2022 (that is, on or before 27 April 2022). The Hong Kong Office did not receive a Response from the Respondent regarding the Complaint. Accordingly, on 28 April 2022, the Hong Kong Office notified the Respondent's default.

On 29 April 2022, the Hong Kong Office appointed Matthew Kennedy as the sole Panelist in this dispute, who confirmed that he was available to act independently and impartially between the Parties in this matter. On the same day, the Hong Kong Office transferred the case file to the Panel.

3. Factual background

The Complainant is a swimwear, beachwear and accessories company. It holds multiple trademark registrations, including the following:

- United States trademark registrations numbers 4,618,396; 4,751,718; and 4,964,860, all for L SPACE (combination of word and device), registered on 7 October 2014, 9 June 2015, and 24 May 2016, respectively, specifying goods in classes 18, 25 and 14, respectively;
- Chinese trademark registration number 6764209 for L SPACE (combination of word and device), registered on 21 January 2011, specifying goods in class 25; and
- Chinese trademark registrations numbers 22248589, 27261165 and 49528284, all for L SPACE (combination of word and device) (“the L☆SPACE Mark”), registered on 28 March 2018, 21 May 2019 and 7 May 2021, respectively, and specifying goods in classes 25, 25 and 24, respectively.

The above trademark registrations (collectively, the “L SPACE Marks”) remain current. The Complainant also uses the domain name <lspac.com>, registered on 10 December 2002, in connection with a website that is an online store offering the Complainant's products for sale, including women's swimwear and bikinis.

The Respondent is an individual resident in China.

The disputed domain name was registered on 21 December 2021. It resolves to a website in English that is an online store offering the Complainant's women's swimwear and bikinis for sale. The website prominently displays the Complainant's L☆SPACE Mark and images of the Complainant's products. Prices are displayed in dollars.

The Registrar confirmed that the language of the Registration Agreement for the disputed domain name is English.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

- i. The disputed domain name is confusingly similar to the Complainant's L SPACE Marks. The words "online" and "out" can be interpreted as "online outlet store".
- ii. The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has not been permitted or otherwise licensed by the Complainant to register the disputed domain name. The disputed domain name is used to direct to a business website but such use is not in connection with a *bona fide* offering of goods or services.
- iii. The disputed domain name was registered and is being used in bad faith. It resolves to a website that primarily sells the same or a similar type of goods as those covered by the Complainant's trademark registrations. The website displays the Complainant's L SPACE Mark and reproduces the Complainant's product images without authorization or licence from the Complainant.

B. Respondent

The Respondent did not respond to the Complainant's contentions.

5. Findings

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- i. The Respondent's 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 domain name; and
- iii. The Respondent's domain name has been registered and is being used in bad faith.

The burden of proof of each of the above three elements is borne by the Complainant. The Respondent's default does not automatically result in a decision in favour of the Complainant.

A) Identical / Confusingly Similar

Based on the evidence submitted, the Panel finds that the Complainant has rights in the L SPACE Marks.

The Panel will assess identity or confusing similarity on the basis of a comparison between the alphanumeric characters in the disputed domain name and the textual elements of the Complainant's L SPACE Marks. Although the L SPACE Marks include figurative elements, these are not reflected in the disputed domain name and may be disregarded for the purposes of this comparison.

The disputed domain name wholly incorporates the textual elements of the L SPACE Marks, *i.e.*, the letter “l” and the word “space”, as its initial element.

The disputed domain name also includes the dictionary words “online” and “out”. Given that the textual elements of the L SPACE Marks remain clearly recognizable within the disputed domain name, the addition of these other words does not prevent a finding of confusing similarity for the purposes of the first element of paragraph 4(a) of the Policy. See *HK-2101578 <relx-online.com & others>*.

The only other element in the disputed domain name is a generic Top-Level Domain (“gTLD”) suffix (“.com”). As a standard requirement of domain name registration, this element may be disregarded in the comparison between the disputed domain name and the Complainant’s mark for the purposes of the first element of paragraph 4(a) of the Policy.

Therefore, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy.

B) Rights and Legitimate Interests

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the Panel, shall demonstrate that a respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- (i) before any notice to [the respondent] 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; or
- (ii) [the respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] 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 [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

As regards the first and third circumstances set out above, the disputed domain name resolves to a website that is an online store. The disputed domain name wholly incorporates the textual elements of the Complainant’s L SPACE Marks, followed by the words “online” and “out”. The website to which it resolves prominently displays the Complainant’s L☆SPACE Mark and images of the Complainant’s bikinis and swimwear, offering them for sale. The Complainant submits that it has not permitted or otherwise licensed the Respondent to register the disputed domain name. Regardless of whether the products offered for sale on the Respondent’s website are genuine or counterfeit, the website does not accurately disclose the Respondent’s lack of relationship with the Complainant. On the contrary, the website gives the false impression that it is somehow affiliated with, or endorsed by, the Complainant. Accordingly, the Panel does not consider this offering of goods or services to be *bona fide*. See *WIPO Case No. D2001-0903 <okidataparts.com>*. Given that the website is an online store, the Panel does not consider that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name either.

As regards the second circumstance set above, the Respondent's name is listed in the Registrar's WhoIs database as "Yingjiu Wu", not the disputed domain name. Nothing in the record indicates that the Respondent has been commonly known by the disputed domain name.

In summary, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent failed to rebut that *prima facie* case because he did not respond to the Complainant's contentions.

Therefore, based on the record of this proceeding, the Panel finds that the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

C) Bad Faith

Paragraph 4(b) of the Policy provides that certain circumstances, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The fourth circumstance is as follows:

"(iv) by using the [disputed] domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] 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 [the respondent's] web site or location or of a product or service on [the respondent's] web site or location."

The disputed domain name was registered in 2021, after the registration of the Complainant's L SPACE Marks, including in China where the Respondent is resident. The disputed domain name wholly incorporates the textual elements of the L SPACE Marks, followed by two other words. The website to which the disputed domain name resolves prominently displays the Complainant's L☆SPACE Mark, including its figurative elements, together with images of the Complainant's products. In view of these circumstances, the Panel finds that the Respondent knew of the Complainant and its L SPACE Marks and targeted them when he registered the disputed domain name. See *HK-1901251 <ikea-id.com>*.

The Respondent uses the disputed domain name in connection with a website that is falsely presented as a website somehow affiliated with, or endorsed by, the Complainant, offering for sale what purport to be the Complainant's products. Given these facts and the findings in Section 5B above, the Panel finds that the disputed domain name operates by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of the website or the products offered for sale on it. This use of the disputed domain name is intentional and for commercial gain as contemplated by paragraph 4(b)(iv) of the Policy.

Therefore, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant has satisfied the third element in paragraph 4(a) of the Policy.

6. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <lspaceonlineout.com> be transferred to

the Complainant.

A handwritten signature in black ink, appearing to read 'M Kennedy', written over a horizontal line.

Matthew Kennedy
Panelist

Dated: 4 May 2022