



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1300548
Complainant:	No Ordinary Designer Label Limited
Respondent:	hua wang
Disputed Domain Names:	<tedbakeroutletuk.com>, <tedbakeroutletuk.net>, <tedbakeroutletuk.org> and <tedbakerukoutlet.com>.

1. The Parties and Contested Domain Names

The Complainant is No Ordinary Designer Label Limited, trading as Ted Baker, of The Ugly Brown Building, 6a St Pancras Way, London NW1 0TB, United Kingdom.

The Respondent is hua wang, of tian he qu guang li lu #128, guang zhou, guang dong 510620, China.

The domain names at issue are <tedbakeroutletuk.com>, <tedbakeroutletuk.net>, <tedbakeroutletuk.org> and <tedbakerukoutlet.com> (“the Domain Names”), registered by the Respondent with GoDaddy.com, LLC, of 14455 North Hayden Road, Suite 219, Scottsdale, Arizona 85260, United States of America.

2. Procedural History

The Complaint in relation to the domain names <tedbakeroutletuk.com>, <tedbakeroutletuk.net> and <tedbakeroutletuk.org> was filed with the Hong Kong office of the Asian Domain Name Dispute Resolution Centre (“the Centre”) on September 26, 2013.

On 26 September 2013, the Centre transmitted by email to the Registrar a request for registrar verification in connection with those domain names. On 27 September 2013, the Registrar transmitted by email to the Centre its verification response confirming that the Respondent is the registrant and providing the contact details.

In accordance with the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), paragraphs 2(a) and 4(a), the Centre formally notified the Respondent of the Complaint, and the proceedings commenced on 2 October 2013. In accordance with the Rules, paragraph 5(a), the due date for Response was 22 October 2013.

No Response was filed and the Centre notified the parties of the Respondent’s default on 25 October 2013.

On 28 October, 2013, the Complainant filed a Supplementary Complaint seeking to add the domain name <tedbakerukoutlet.com> to these proceedings.

The Centre appointed Alan L. Limbury as the sole panelist in this matter on 31 October, 2013. The Panel finds that it was properly constituted. The Panel has informed the Centre of his impartiality and independence, to ensure compliance with the Rules, paragraph 7.

By Administrative Panel Order No. 1 dated 14 November, 2013, the Panel noted:

- (i) that since the Supplementary Complaint was filed after the due date for a Response, it was a matter for the Panel to decide, in its sole discretion, whether or not to receive the Supplementary Complaint. See Article 4.8 of the WIPO Overview 2.0;
- (ii) that provided the Supplementary Complaint was found by the Centre to be administratively compliant, the Panel was prepared to determine this Complaint on the basis that it concerns all four of the domain names listed above.

Accordingly the Panel ordered:

1. that the procedure be recommenced by the Centre in order to allow the Respondent an opportunity to respond to the Supplementary Complaint; and
2. that the time by which, absent exceptional circumstances, the Panel shall forward its decision to the Centre shall be extended by 14 days following the filing of any Response or the due date for the Response, whichever be earlier.

On 15 November 2013, the Centre notified the parties of the Panel Order and forwarded to the Respondent a copy of the Supplementary Complaint. The due date for the Respondent to submit a Response to the Supplementary Complaint was 5 December 2013.

No Response was submitted to the Supplementary Complaint and on 6 December 2013 the Centre notified the parties of the Respondent's default.

On 5 December 2013, the Centre transmitted by email to the Registrar a request for registrar verification in connection with the domain name <tedbakerukoutlet.com> and on 6 December 2013, the Registrar transmitted by email to the Centre its verification response confirming that the Respondent is the registrant and providing the contact details.

The Centre verified that the Complaint and the Supplementary Complaint satisfied the formal requirements of the ICANN Uniform Domain Name Dispute Resolution Policy (the "Policy"), the Rules and the Centre's Supplementary Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplementary Rules").

The language of the proceeding is English, being the language of the Registration Agreements.

3. Factual background (undisputed facts)

The Complainant operates over 200 clothing and accessories stores worldwide under the name Ted Baker and is the proprietor of the trademark TED BAKER registered, *inter alia*, on

December 1, 1997 in China, No. 684563 in Class 25 and elsewhere. It opened its first store under the name Ted Baker in mainland China in 2012 and now has 6 stores there.

The Respondent registered the Domain Names as follows: <tedbakeroutletuk.com> on 21 May 2013, <tedbakeroutletuk.net> on 27 August 2013, <tedbakeroutletuk.org> on 4 September, 2013 and <tedbakerukoutlet.com> on 23 October 2013. The Domain Names resolve to websites offering for sale purported TED BAKER products and containing links to www.ralphlaurenplaza.com which offers purported Ralph Lauren, Tommy Hilfiger, Lacoste, Juicy Couture, Michael Kors, Christian Louboutin, and Tory Burch products.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

- i. the Domain Names are confusingly similar to the TED BAKER mark in which the Complainant has rights;
- ii. the holder of the Domain Names has no rights or legitimate interests in respect of the Domain Names. There is no proof to suggest the possibility of any circumstances of the type specified in paragraph 4(c) of the Policy, or of any other circumstances giving rise to a right to or legitimate interest of the Respondent in the Domain Names. The Respondent's use of the Domain Names is not a *bona fide* use pursuant to paragraph 4(c) of the Policy, and there is no indication that the Respondent has been commonly known by the Domain Names;
- iii. the Domain Names have been registered or [sic] are being used in bad faith. The Complainant's mark TED BAKER is being prominently displayed on the websites as well as on purported TED BAKER products being offered for sale. The Respondent was clearly aware of the Complainant and its mark TED BAKER. In the absence of contrary evidence from the Respondent, the mark is not one that traders could legitimately adopt other than for the purpose of creating an impression of an association with the Complainant.

No plausible explanation exists as to why the Respondent selected the mark TED BAKER as part of the Domain Names other than to exploit the goodwill of the Complainant and its trademark. The Domain Names are used by the Respondent to drive Internet users to online shops offering purported TED BAKER products. Consumers seeking genuine TED BAKER products on the Internet are likely to be attracted to the Domain Names incorporating the Complainant's mark TED BAKER and may most likely be confused into believing that these websites are owned or managed by the Complainant and/or the Respondent is affiliated with or authorized to offer TED BAKER products, which contradicts the fact.

The websites associated with the Domain Names contain a link redirecting Internet visitors to www.ralphlaurenplaza.com which offers purported Ralph Lauren, Tommy Hilfiger, Lacoste, Juicy Couture, Michael Kors, Christian Louboutin, and Tory Burch products. The Respondent has also registered at least two Ralph Lauren domain names. The Complainant finds it quite unlikely that the Respondent has been authorized by Ralph Lauren to register domain names and by all the above brands to sell their products. The Complainant finds it reasonable to conclude that the Respondent has the pattern of conduct of registering others' trademarks as domain names and using them to offer counterfeits. This conclusion is supported by US court documents found online, where patricia20030908@gmail.com, an e-

mail account of the Respondent, is listed as a contact of the defendants accused by ABERCROMBIE & FITCH TRADING CO of selling ABERCROMBIE counterfeits. Bad faith may be inferred if the Respondent is using the Domain Names to offer TED BAKER counterfeits in the current case.

B. Respondent

There was no Response to the Complaint nor to the Supplementary Complaint.

5. Findings

The Policy provides, at Paragraph 4(a), that each of three findings must be made in order for the Complainant to prevail:

- i. the Respondent's Domain Names must be identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- ii. the Respondent has no rights or legitimate interests in respect of the Domain Names; and
- iii. the Respondent's Domain Names have been registered and are being used in bad faith.

A Respondent is not obliged to participate in a proceeding under the Policy but if it fails to do so, asserted facts may be taken as true and reasonable inferences may be drawn from the information provided by the Complainant. See *Reuters Limited v. Global Net 2000, Inc*, WIPO Case No. D2000-0441.

A) Identical / Confusingly Similar

The Policy protects personal names that have, through use and publicity, acquired the distinctiveness necessary to become trademarks or service marks: *Julia Fiona Roberts v. Russell Boyd*, WIPO Case No. D2000-0210. Here the Complainant has demonstrated that it has registered trademark rights in the name TED BAKER.

The test of identity or confusing similarity under the Policy is confined to a comparison of each of the Domain Names and the trademark alone: *Wal-Mart Stores, Inc. v. Traffic Yoon*, WIPO Case No. D2006-0812. The top level domains “.com”, “.net” and “.org” are to be disregarded: *Magnum Piering, Inc. v. The Mudjacks and Garwood S. Wilson, Sr.*, WIPO Case No. D2000-1525; *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. D2000-0429.

Confusion in this context, in the sense of bewilderment or failing to distinguish between things, may be regarded as a state of wondering whether there is an association, rather than a state of erroneously believing that there is one. An appropriate formulation might be: “Is it likely that, because of the similarity between the domain name on the one hand and the Complainant's trademark on the other hand, people will wonder whether the domain name is associated in some way with the Complainant?”: *SANOFI-AVENTIS v. Jason Trevenio*, WIPO Case No. D2007-0648.

Disregarding the gTLD suffixes, each of the Domain Names comprises the Complainant's TED BAKER trademark with the added words “outlet” and “uk”, words which do nothing to distinguish the Domain Names from the Complainant's mark and are therefore likely to cause

Internet users to wonder whether there is an association between them. Accordingly the Panel finds each of the Domain Names to be confusingly similar to the Complainant's mark.

The Complainant has established the element.

B) Rights and Legitimate Interests

Paragraph 4(c) of the Policy sets out three illustrative circumstances as examples which, if established, shall demonstrate the Respondent's rights to or legitimate interests in the Domain Names for purposes of paragraph 4(a)(ii) of the Policy, *i.e.*

- (i) before any notice to the Respondent of the dispute, the use by the Respondent of, or demonstrable preparations to use, the Domain Names or names corresponding to the Domain Names 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 Names, 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 Names, without intent for commercial gain to misleadingly divert customers or to tarnish the trademark or service mark at issue.

The Panel finds that the TED BAKER mark is distinctive and well known. The Complainant's assertions are sufficient to constitute a *prima facie* showing of absence of rights or legitimate interests in the Domain Names on the part of the Respondent. The evidentiary burden therefore shifts to the Respondent to show by concrete evidence that it does have rights or legitimate interests in those names: *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. D2000-0624 and the cases there cited. The Respondent has made no attempt to do so.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in any of the Domain Names.

The Complainant has established the element.

C) Bad Faith

Paragraph 4(b) of the Policy sets out four illustrative circumstances, which, though not exclusive, shall be evidence of the registration and use of the domain name in bad faith for purposes of paragraph 4(a)(iii) of the Policy (which requires proof of both bad faith registration and bad faith use), including:

“(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 its website or location.”

The Panel is satisfied from the timing of the registrations of the Domain Names and the content of the Respondent's websites, that the Respondent was well aware of the Complainant's mark when registering each of the Domain Names and has intentionally attempted to attract, for commercial gain, Internet users to its websites by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the

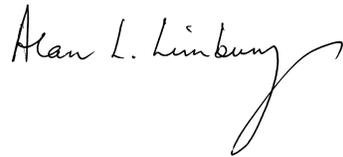
Respondent's websites and of products offered thereon. As mentioned, under paragraph 4(b)(iv) of the Policy, this shall be evidence of both the registration and use of the Domain Names in bad faith for purposes of paragraph 4(a)(iii) of the Policy.

Accordingly the Panel finds that each of the Domain Names was registered and is being used in bad faith.

The Complainant has established the element.

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 Domain Names <tedbakeroutletuk.com>, <tedbakeroutletuk.net>, <tedbakeroutletuk.org> and <tedbakerukoutlet.com> be transferred to the Complainant.



Alan L. Limbury
Panelist

Dated: December 9, 2013