

WIPO Arbitration and Mediation Center

ADMINISTRATIVE PANEL DECISION

Case No. DNL2018-0047

Date 8 October 2018

1. The Parties

The Complainant is Roraj Trade LLC of Los Angeles, California, United States of America, represented by Arnold + Siedsma, the Netherlands.

The Respondent is Privacy Protection Service INC d/b/a PrivacyProtect.org of Mumbai, India / Cathusia Orna of Amsterdam, the Netherlands.

2. The Domain Name and Registrar

The disputed domain name <fentybeautyshop.nl> (the Domain Name”) is registered with SIDN through PDR Ltd. d/b/a PublicDomainRegistry.com.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 21, 2018. On August 21, 2018, the Center transmitted by email to SIDN a request for registrar verification in connection with the disputed domain name. On August 22, 2018, SIDN transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on August 27, 2018, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on August 28, 2018. The Center verified that the Complaint together with the Amended Complaint satisfied the formal requirements of the Dispute Resolution Regulations for .nl Domain Names (the “Regulations”).

In accordance with the Regulations, articles 5.1 and 16.4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on August 29, 2018. In accordance with the Regulations, article 7.1, the due date for Response was September 18, 2018. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 19, 2018.

The Center appointed Wolter Wefers Bettink as the panelist in this matter on September 24, 2018. The Panel finds that it was properly constituted. The Panelist has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required to ensure compliance with the Regulations, article 9.2.

4. Factual Background

Robyn Rihanna Fenty is a world famous music artist, better known as Rihanna. She has sold over 230 million records worldwide. Forbes Magazine ranked her in 2012 among the most powerful celebrities and Time magazine included her on its annual list of the most influential people in 2012.

Ms. Fenty is owner of the Complainant, a company which markets beauty products and cosmetics under the trade marks FENTY and FENTY BEAUTY through a licensed manufacturer and distributor named Fenty Beauty LLC. The FENTY products were first launched in September 2017 in stores and online, available in over 150 countries.

The Complainant owns the following trade marks (the "Trade Marks"):

- European Union registration no.15065031 FENTY BEAUTY, registered on May 24, 2016;
- European Union registration no.16493504 FENTY, registered on July 13, 2017;

The Domain Name was registered on May 22, 2018.

5. Parties' Contentions

A. Complainant

According to the Complainant, the Domain Name is identical or confusingly similar to the Trade Marks as it consists merely of the trade mark FENTY BEAUTY with the addition of the descriptive term "shop" which refers to the purpose of the website, namely selling FENTY BEAUTY branded products.

The Complainant submits that the Respondent has no rights or legitimate interest in the Domain Name, as the Respondent has no authorization from the Complainant to use or register the Trade Marks and there is no connection between the parties, while the Respondent is not commonly known by the Domain Name. In addition, the Complainant points out that the Domain Name was registered more than eight months after the worldwide launch of the Complainant's cosmetics product line under the trade mark FENTY BEAUTY in September 2017. The Complainant contends that use of the trade mark FENTY BEAUTY together with the descriptive term "shop" in the Domain Name will lead the public to believe that Complainant's products can be bought in the online shop on the website, thus redirecting Internet traffic away from the Complainant.

In addition, the Complainant submits that the Domain Name has been registered or is being used in bad faith as the website to which the Domain Name resolves is a "lookalike" website which features a prominent display of the Complainant's stylized "Fenty Beauty by Rihanna" logo, photographs of the Complainant's FENTY BEAUTY products, including the correct and a copyright notice that reads "Copyright © 2018 Fenty Beauty Nederland". According to the Complainant, the website is used to sell counterfeit products. In addition, the Complainant states, the Respondent appears to have copied, inter alia, the "privacy policy" and "terms of use" from the Complainant's website with minor changes and clear spelling mistakes. In addition, underneath the privacy statement is a reference to an email address that is owned by the Complainant.

Furthermore, the Complainant submits that by using the lookalike website the Respondent pretends to sell the Complainant's products, thus trying to attract Internet users believing that they are visiting the Complainant's website. The use of, inter alia, the

identical logo on the site, other design elements that are highly similar and the copied product information creates a likelihood of confusion with the Trade Marks as to the source of the website and the products offered on the website to which the Domain Name resolves.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has shown that it has registered rights in the Trade Marks.

The Domain Name is confusingly similar to the Trade Marks as it incorporates both the mark FENTY and the mark FENTY BEAUTY in its entirety (see also WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 1.7).¹

The addition of the descriptive word "shop" to the trade mark FENTY BEAUTY does not alter this similarity, as FENTY BEAUTY is the dominant part of the Domain Name (see also WIPO Overview 3.0, section 1.8). The country code Top-Level Domain ("ccTLD") ".nl" is typically disregarded under the confusing similarity test, since it is a technical registration requirement (see WIPO Overview 3.0, section 1.2).

Therefore, the Panel finds that the Domain name is confusingly similar to the Trade Marks in which the Complainant has rights.

B. Rights or Legitimate Interests

The Complainant has to make out at least a prima facie case that the Respondent does not have rights to or legitimate interests in the Domain Name (WIPO Overview 3.0, section 2.1). Based on the evidence and the undisputed submissions of the Complainant, the Panel concludes that the Respondent has not received the Complainant's consent to use the Trade Marks as part of the Domain Name, is not commonly known by the Domain Name, has no connection or affiliation with the Complainant and has not acquired trade mark rights in the Domain Name.

The Respondent's use of the Domain Name which resolves to a an online shop selling products under the "Fenty Beauty by Rihanna" logo and is similar to the Complainant's website under its domain name <fentybeauty.com>, does not amount to a bona fide offering of goods or services, nor to a legitimate noncommercial or fair use.

In view of the above, the Panel concludes that the Complainant has established that the Respondent has no rights to or legitimate interests in the Domain Name.

C. Registered or Used in Bad Faith

In accordance with article 3.1 of the Regulations, the Complainant has to show that the Domain Name was registered and has been used in bad faith.

Based on the information and the evidence provided by the Complainant, the Panel finds that at the time of registration of the Domain Name the Respondent was in bad faith as it

was or should have been aware of the Complainant and the Trade Marks. On the basis of the evidence provided, the Panel concludes that the Complainant was specifically targeted by the Respondent. In particular, such knowledge and intent is derived from the following facts: (i) the Respondent's registration of the Domain Name occurred well after the registration of the Trade Marks and the worldwide launch of the Complainant's cosmetics product line under the trade mark FENTY BEAUTY; (ii) the Trade Marks may be deemed well known throughout the world, including in the Netherlands, through their association with the artist Rihanna; (iii) the element "Fenty" of which the Trade Marks consist (in whole or in relevant part), is incorporated in its entirety in the Domain Name, and does not appear to be a name of which a registrant is likely to spontaneously or accidentally think of.

In addition, the use of the "Fenty Beauty by Rihanna" logo, photographs of the Complainant's "Fenty Beauty" products on the website to which the Domain Name resolves and the copying of the "privacy policy" and the "terms of use" from the Complainant's website under the domain name <fentybeauty.com> with minor changes and clear spelling mistakes, constitutes bad faith as the Respondent thereby seeks to benefit from the repute of the Trade Marks and from confusion with the Trade Marks among Internet users searching for information in relation to products under the Trade Marks.

The Panel concludes that the Domain Name has been registered and is being used in bad faith.

7. Decision

For all the foregoing reasons, in accordance with articles 1 and 14 of the Regulations, the Panel orders that the domain name <fentybeautyshop.nl> be transferred to the Complainant.

Wolter Wefers Bettink

Panelist