

## **ADMINISTRATIVE PANEL DECISION**

**Stefani Germanotta and Ate My Heart Inc. v. Rola Dowens**  
Case No. D2013-1506

### **1. The Parties**

The Complainants are Stefani Germanotta and Ate My Heart Inc. of New York, United States of America, represented by Pryor Cashman LLP, United States of America.

The Respondent is Rola Dowens of Xiamen, Fujian, China.

### **2. The Domain Name and Registrar**

The disputed domain name <ladygagadress.com> (the “Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 27, 2013. On August 28, 2013, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 28, 2013 the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. In response to a notification by the Center that the Complaint was administratively deficient, the Complainant filed an amendment to the Complaint on August 30, 2013.

The Center verified that the Complaint together with the amendment to the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on September 3, 2013. In accordance with the Rules, paragraph 5(a), the due date for Response was September 23, 2013. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 25, 2013.

The Center appointed Karen Fong, Sally M. Abel and Jacob (Changjie) Chen as panelists in this matter on October 9, 2013. The Panel finds that it was properly constituted. Each member of the Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to

ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

The Complainant Stefani Germanotta, popularly known as Lady Gaga ("Lady Gaga") is an internationally renowned recording artist and performer. Ate My Heart Inc. is her company through which she owns the LADY GAGA trade marks. They will be referred to individually and jointly as the "Complainant". Lady Gaga achieved world wide fame and celebrity with the launch of her debut album in 2008. Over the past five years, her albums are certified Diamond and Multi-Platinum around the world. She has won many prestigious awards including multiple Grammy Awards, the music industry's most prestigious award. In just five years, Lady Gaga has sold more than 24 million albums and over 125 million singles worldwide. Besides her fame as an artist, she is also recognized as a fashion icon. Her unique fashion style has led to her being awarded the Fashion Icon Award by the Council of Fashion Designers of America. Her fame as both an artist and fashion icon has spread all over the world including the China where the Respondent is based.

The Complainant has trade mark registrations for LADY GAGA in the United States of America as well as China. The LADY GAGA trade mark is used in connection with goods and services including clothing. The LADY GAGA range of clothing is sold in China through an authorised licensee.

The Respondent registered the Domain Name on July 9, 2012. The Domain Name is connected a website ('the Website') which purports to be a Lady Gaga fan site and shopping site. The home page says "Welcome to Lady gaga Fan site & Lady gaga shop for fans." The Website features many photos of Lady Gaga. Some of the clothing items listed on the Website are offered for sale by reference to the LADY GAGA trade mark for example "Lady Gaga (037057) 2011 Style A-line Strapless Hand-Made Flower Sleeveless Short / Mini Organza Purple Cocktail Dress / Homecoming." The Website also offers clothing for sale in connection with other famous individuals like Beyonce, Catherine-Zeta Jones, Jennifer Lopez amongst others. There is a link on the home page to Christian Louboutin, a prestigious well known brand for shoes. The shoes are likely to be counterfeit as the prices are significantly lower than the genuine shoes. Cease and desist letters were sent by the Complainant's legal representatives to the Respondent on December 4, 2012 and May 13, 2013.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that the Domain Name is identical or confusingly similar to the LADY GAGA trade mark, the Respondent has no rights or legitimate interests with respect to the Domain Name and that the Domain Name was registered and is being used in bad faith. The Complainant requests transfer of the Domain Name.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

##### **A. General**

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the Domain Name, the Complainant must prove each of the following, namely that:

- (i) The Domain Name is identical or confusingly similar to a trade mark 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 Domain Name was registered and is being used in bad faith.

### **B. Identical or Confusingly Similar**

The Panel is satisfied that the Complainant has established that it has rights to the trade mark LADY GAGA. It is also satisfied that the LADY GAGA trade mark is a well known mark.

The threshold test for confusingly similarity involves the comparison between the trade mark and the domain name itself to determine likelihood of Internet user confusion. The trade mark would generally be recognizable within the domain name. In this case the Complainant's registered trade mark LADY GAGA is the dominant portion of the Domain Name. The addition of the word "dress" does nothing to minimise the risk of confusion. For the purposes of assessing identity and confusing similarity under paragraph 4(a)(i) of the Policy it is permissible for the Panel to ignore the generic domain suffix ".com". The Panel finds that the Domain Name is identical or confusingly similar to a trade mark in which the Complainant has rights.

### **C. Rights or Legitimate Interests**

The Complainant contends that the Respondent has never been an authorised representative or agent of the Complainant. It also contends that to the best of its information and belief, the Respondent is not commonly known as Lady Gaga. The website to which resolves the Domain Name offers for sale branded goods which have no connection to the LADY GAGA brand. Many of the products appear to be counterfeit as they are sold at significantly lower prices than the genuine products. Further although the Website states that it is a fan site, it is clearly an online commercial store.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not responded and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the Domain Name.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

### **D. Registered and Used in Bad Faith**

To succeed under the Policy, a Complainant must show that the Domain Name has been registered and used in bad faith. The Panel is satisfied that the Complainant has made out a *prima facie* case pursuant to Section 4(b)(iv) of the Policy.

The Complainant has not granted a license or consent to the Respondent to use the LADY GAGA brand or her images. The Website purports to be a fan site and offers for sale dresses by reference to the LADY GAGA trade mark when it has no authority or license to do so. The website to which resolves the Domain Name also offers for sale other branded products which have no connection with the Complainant or the LADY GAGA brand. The above shows a clear intention on the part of the Respondent to attract for commercial gain by confusing and misleading Internet users into believing that the Respondent's website and the products sold on it were authorised or endorsed by the Complainant.

In this Panel's assessment, the above is clearly bad faith under paragraph 4(b)(iv) of the Policy and the Panel concludes that the Respondent's registration and use of the Domain Name are in bad faith.

**7. 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 Name <ladygagadress.com> be transferred to the Complainant.

**Karen Fong**  
Presiding Panelist

**Sally M. Abel**  
Panelist

**Jacob (Changjie) Chen**  
Panelist  
Date: October 25, 2013