

## ADMINISTRATIVE PANEL DECISION

Sanity Jewelry, LLC v. 杨智超 (Yang Zhi Chao)

Case No. D2022-2576

### 1. The Parties

The Complainant is Sanity Jewelry, LLC, United States of America, represented by Fuksa Khorshid, LLC, United States of America.

The Respondent is 杨智超 (Yang Zhi Chao), China.

### 2. The Domain Name and Registrar

The disputed domain name <sanityjewelr.com> is registered with eName Technology Co., Ltd. (the "Registrar").

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 14, 2022. On July 15, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 18, 2022, the Registrar 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 July 18, 2022 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 July 21, 2022.

On July 18, 2022, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant confirmed its request that English be the language of the proceeding on July 20, 2022. The Respondent did not comment on the language of the proceeding.

The Center verified that the Complaint together with the amended 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 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on July 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 16, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 19, 2022.

The Center appointed Jonathan Agmon as the sole panelist in this matter on August 25, 2022. The Panel finds that it was properly constituted. 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, Sanity Jewelry, LLC, is a jewelry business based in the United States, specializing in skull jewelry. The Complainant's goods include jewelry, wallet chains, fixed blade knives and folding knives.

The Complainant owns the following registered trademarks in the United States:

- United States Trademark Registration No. 6,475,674 for SANITY JEWELRY, registered on September 7, 2021; and



- United States Trademark Registration No. 6,688,199 for , registered on March 29, 2022.

The Complainant also states that it owns the domain name <sanityjewelry.com>.

The disputed domain name was registered on April 11, 2022 and resolved to an active webpage displaying pay-per-click ("PPC") links to competing third party links.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant argues that the disputed domain name is confusingly similar to the Complainant's registered SANITY JEWELRY mark as the disputed domain name comprises of the Complainant's SANITY JEWELRY mark and the omission of the letter "y" and generic Top-Level Domain ("gTLD") ".com".

The Complainant also argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name as it has not licensed or permitted the Respondent to use any of its trademarks or register the disputed domain name. The Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services and is not making a legitimate noncommercial or fair use of the disputed domain name.

The Complainant further argues that the disputed domain name was registered and is being used in bad faith as the Respondent was well aware of the Complainant and its SANITY JEWELRY mark at the time of registration of the disputed domain name and there is no plausible good faith use to which the disputed domain name can be put to.

##### B. Respondent

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

## 6. Discussion and Findings

### 6.1 Language of the Proceeding

Paragraph 11 of the Rules provides that: “(a) Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.”

The language of the Registration Agreement for the disputed domain name is Chinese.

The Complainant requested that the language of the proceeding be English.

The Respondent did not comment on the language of the proceeding.

The Panel cites the following with approval:

“Thus, the general rule is that the parties may agree on the language of the administrative proceeding. In the absence of this agreement, the language of the Registration Agreement shall dictate the language of the proceeding. However, the Panel has the discretion to decide otherwise having regard to the circumstances of the case. The Panel’s discretion must be exercised judicially in the spirit of fairness and justice to both parties taking into consideration matters such as command of the language, time, and costs. It is important that the language finally decided by the Panel for the proceeding is not prejudicial to either one of the parties in his or her abilities to articulate the arguments for the case.” (See *Groupe Auchan v. xmxzl*, WIPO Case No. [DCC2006-0004](#)).

The Panel finds that in the present case, the following should be taken into consideration upon deciding on the language of the proceeding:

- (i) the Complainant is unable to communicate in Chinese and may be unduly disadvantaged by having to conduct the proceeding in the Chinese language;
- (ii) the disputed domain name consists of Latin characters;
- (iii) the content of the disputed domain name website is in the English language;
- (iv) the disputed domain name contains the Complainant’s English language trademark in conjunction with an English word; and
- (v) the Respondent would not be prejudiced because it has a demonstrated working knowledge of English language.

Upon considering the above, the Panel determines that English be the language of the proceeding.

### 6.2 Substantive Issues

#### A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The Complainant has provided evidence that it owns the SANITY JEWELRY mark.

The disputed domain name comprises the Complainant's SANITY JEWELRY trademark in its entirety with omission of the last letter "y" which does not prevent a finding of confusing similarity. It is further well established that the applicable generic Top-Level-Domain ("gTLD") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test ([WIPO Overview 3.0](#), section 1.11.1).

The Panel also notes the Complainant's argument that the disputed domain name is also confusingly similar as a typosquatted version of its official domain name.

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

## **B. Rights or Legitimate Interests**

Paragraph 4(a)(ii) of the Policy requires the complainant to show that the respondent has no rights or interests in respect of the disputed domain name. Once the complainant establishes a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the disputed domain name ([WIPO Overview 3.0](#), section 2.1).

In the present case, the Complainant has demonstrated *prima facie* that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant provided evidence that it owns trademark registrations of the SANITY JEWELRY mark before the date that the disputed domain name was registered, and that it is not affiliated with nor has it licensed or otherwise permitted the Respondent to use the Complainant's trademarks (see *LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master*, WIPO Case No. [D2010-0138](#)).

The Complainant also provided evidence that the Respondent is not commonly known by the disputed domain name (see [WIPO Overview 3.0](#), section 2.3). The Complainant also submitted evidence that its registrations and use of the SANITY JEWELRY mark predate the registration of the disputed domain name, and that the disputed domain name is a typosquatted version of the Complainant's own domain name which is further proof that the Respondent has no rights or legitimate interests under the Policy (see *JCDecaux SA v. Pascal Ijeoma, Billcoin Company*, WIPO Case No. [DCO2018-0040](#); *Redbox Automated Retail, LLC d/b/a Redbox v. Milen Radumilo*, WIPO Case No. [D2019-1600](#); *River Light V, L.P., Tory Burch LLC v. Kung Chen Chang, PRIVATE*, WIPO Case No. [D2018-0046](#)).

The Complainant further submitted evidence that the disputed domain name resolves to parking pages with PPC links which past UDRP panels have found is not a *bona fide* offering of goods or services or legitimate noncommercial or fair use of the disputed domain name (see *Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe*, WIPO Case No. [D2007-1695](#)).

The Respondent did not submit a Response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain name sufficient to rebut the Complainant's *prima facie* case. In the particular circumstances of the present case, the Respondent's use of the disputed domain name to host parked pages comprising PPC links which appear to generate click-through commissions does not represent a *bona fide* offering of goods or services.

The Panel is therefore of the view that the Respondent has no rights or legitimate interests in respect of the disputed domain name and accordingly, paragraph 4(a)(ii) of the Policy is satisfied.

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

The complainant must show that the respondent registered and is using the disputed domain name in bad faith (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence that the disputed domain name resolved to parked pages comprising PPC links which appear to generate click-through commissions. The links on the parked pages, namely, "Skull Ring", "Skull Rings for Men" and "Men's Jewelry" appear to be related to the Complainant's jewelry business which specializes in jewelry such as skull rings. Further, the disputed domain name appears to be a typosquatted version of the Complainant's SANITY JEWELRY mark and domain name, which shows that the Respondent was aware of Complainant's business when he registered the disputed domain name.

In this case, the evidence shows that the Complainant's marks were registered prior to the disputed domain name registration. Given the confusing similarity of the disputed domain name which appears to be a typosquatted version of the Complainant's SANITY JEWELRY mark, the content of the website under the disputed domain name (such as the use of Complainant's goods), the Respondent is unlikely to have registered the disputed domain name without sight and knowledge of the Complainant's marks and it is implausible that there is any good faith use to which the (typo) disputed domain name may be put to. It is also the Complainant's evidence that the Respondent could not have registered the disputed domain name without prior knowledge of the Complainant's marks as the Respondent's name has no connection with the Complainant's SANITY JEWELRY marks which were registered prior to the disputed domain name. This is another indication of bad faith on the part of the Respondent (see *Boursorama SA v. Estrade Nicolas*, WIPO Case No. [D2017-1463](#)).

The Complainant also provided evidence that it issued a cease-and-desist letter to the Registrar and Respondent prior to the proceedings however it never received a response. The Respondent did not submit a Response in this proceeding, which is a further indication of the Respondent's bad faith.

In the particular circumstances of the present case and based on the fact that the disputed domain name's website displayed PPC links related to the Complainant's business and goods, including in relation to "Skull Ring", "Skull Rings for Men" and "Men's Jewelry", it is clear to the Panel that the Respondent specifically targeted the Complainant and its marks and registered the disputed domain name to divert Internet traffic and benefit commercially from unsuspecting Internet users seeking out the Complainant.

Based on the evidence presented to the Panel, including the confusing similarities between the disputed domain name and the Complainant's marks, the fact that the disputed domain name was used to host parked pages comprising PPC links to generate click-through commissions, the fact that no Response was submitted by the Respondent in response to the Complaint, the fact that the Respondent did not respond to the Complainant's cease and desist letter sent prior to the proceedings, and the fact that the Respondent has a long history of abusive domain name disputes against third-party trademark owners, the Panel draws the inference that the disputed domain name was registered and is being used 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 disputed domain name <sanityjewelr.com> be transferred to the Complainant.

*/Jonathan Agmon/*

**Jonathan Agmon**

Sole Panelist

Date: September 8, 2022