

ADMINISTRATIVE PANEL DECISION

Deciem Beauty Group Inc. v. 李策平 (li ce ping)
Case No. D2022-4423

1. The Parties

The Complainant is Deciem Beauty Group Inc., Canada, represented by Gowling WLG (Canada) LLP, Canada.

The Respondent is 李策平 (li ce ping), China.

2. The Domain Name and Registrar

The disputed domain name <theordinaryskincareproducts.com> is registered with Alibaba Cloud Computing (Beijing) Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on November 18, 2022. On November 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 22, 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 November 24, 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 amendment to the Complaint in English on November 30, 2022.

On November 24, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On November 30, 2022, the Complainant submitted its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on December 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 26, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 29, 2022.

The Center appointed Douglas Clark as the sole panelist in this matter on January 19, 2023. 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 is a skin care and beauty company launched in 2013. It operates its business through its brands including The Ordinary, Hylamide, and Niod. The Complainant's products are sold in many countries around the world and operates its website at "www.theordinary.com".

The Complainant is the owner of over 200 trade mark registrations for THE ORDINARY worldwide, including the following:

<u>Trade Mark</u>	<u>Registration Number</u>	<u>Registration Date</u>	<u>Jurisdiction</u>
THE ORDINARY	015761182	December 8, 2016	European Union
THE ORDINARY	016891781	October 16, 2017	European Union
THE ORDINARY	1794388	April 10, 2017	Australia
THE ORDINARY	5203537	May 16, 2017	United States of America
THE ORDINARY	5911550	November 19, 2019	United States of America
THE ORDINARY	5925558	February 24, 2017	Japan
THE ORDINARY	1719834	February 13, 2017	Mexico
THE ORDINARY	40201614489V	September 5, 2016	Singapore
THE ORDINARY	260223	June 4, 2017	United Arab Emirates
THE ORDINARY	1/117383	February 28, 2017	Bahrain
THE ORDINARY	4012709890000	July 21, 2017	Republic of Korea
THE ORDINARY	304948507	June 4, 2019	Hong Kong, China
THE ORDINARY	21258391	November 14, 2017	China
THE ORDINARY	TMA1014737	February 7, 2019	Canada

The disputed domain name was registered on July 22, 2020. At the date of this Complaint, the disputed domain name resolved to a website offering the skincare products including those of the Complainant. The Complainant states that this website includes reproductions of copyright works of the Complainant.

The Respondent is an individual based in China. The email address of the Respondent is associated with a number of domain names that reproduce the trade marks of others.

5. Parties' Contentions

A. Complainant

The Complainant contends that:

(a) the disputed domain name is confusingly similar to its trade mark THE ORDINARY. The disputed domain name incorporates the whole of the Complainant's THE ORDINARY trade mark followed by the words

“skincare” and “products”. The use of the generic Top-Level Domain (“gTLD”) “.com” in the disputed domain name is typically irrelevant to the consideration of confusing similarity;

(b) the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not affiliated with the Complainant in any way and the Respondent has never been granted any authorization or license to use the Complainant’s trade mark. The Respondent is not commonly known by the disputed domain name, and has not made a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name. The sale of competitors’ products is not a *bona fide* offering of goods or services; and

(c) the disputed domain name was registered and is being used in bad faith. The Respondent registered the disputed domain name with knowledge of the THE ORDINARY mark. By using the disputed domain name, the Respondent intentionally attempted to attract for commercial gain Internet users to the Respondent’s website by creating a likelihood of confusion with the Complainant’s mark. The Respondent is engaged in a pattern of registering domain names to which it is not entitled.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Issues – Language of the Proceeding

According to paragraph 11(a) of the Rules, 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.

In this case, the language of the Registration Agreement for the disputed domain name is Chinese. There is no agreement between the Complainant and the Respondent regarding the language of the proceeding. The Respondent did not respond as to the language of the proceeding. The Complainant has filed its Complaint in English and has requested that English be the language of the proceeding under the following grounds:

- the disputed domain name is in English;
- the Respondent’s website under the disputed domain name is in English; and
- translation of the Complaint and continuation of the proceeding in Chinese would cause the Complainant to incur extra expenses and lead to a delay in the proceeding.

In accordance with paragraph 11(a) of the Rules and taking into consideration paragraphs 10(b) and (c) of the Rules, the Panel hereby determines that the language of the proceeding shall be in English after considering the following circumstances:

- the Center has notified the Respondent of the proceeding in both English and Chinese;
- the website under the disputed domain name is in English;
- the Respondent has not commented on the language of the proceeding; and
- an order for the translation of the Complaint will result in significant expenses for the Complainant and a delay in the proceeding.

Further, this Panel decided in *Zappos.com, Inc. v. Zufu aka Huahaotrade*, WIPO Case No. [D2008-1191](#), that a respondent's failure to respond to a preliminary determination by the Center as to the language of the proceeding "should, in general, be a strong factor to allow the Panel to decide to proceed in favour of the language of the Complaint".

6.2. Substantive Issues

The Complainant must satisfy all three elements of paragraph 4(a) of the Policy in order to succeed in its action:

- (i) the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights to;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel finds that the disputed domain name <theordinaryskincareproducts.com> is confusingly similar to the Complainant's trade mark. The disputed domain name reproduces the THE ORDINARY trade mark in its entirety followed by the words "skincare" and "products", which does not prevent a finding of confusing similarity. The gTLD ".com" is generally disregarded when considering the first element. (See section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#))).

The Complainant has therefore satisfied the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

The Complainant asserts that the Respondent has no business with and is in no way affiliated with the Complainant. The Respondent is not authorized nor licensed to use the Complainant's THE ORDINARY trade mark or to apply for registration of the disputed domain name. The disputed domain name resolves to a website offering for sale not only the Complainant's products but also its competitors' products. There is no evidence that the Respondent is commonly known by the name "The Ordinary".

Section 2.1 of the [WIPO Overview 3.0](#) provides:

"While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of 'proving a negative', requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element."

The Panel finds that the Complainant has made out a *prima facie* case that the Respondent lacks rights or legitimate interests, which has not been rebutted by the Respondent. Accordingly, the Respondent has no rights or legitimate interests in regard to the disputed domain name.

The Complainant has therefore satisfied the second element under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Based on the given evidence, the disputed domain name was registered and is being used in bad faith.

Given that the Complainant's skincare products are sold on the website under the disputed domain name, the Panel is satisfied that the Respondent was aware of the Complainant and its THE ORDINARY trade mark when he registered the disputed domain name.

It also appears to the Panel that the Respondent has registered the disputed domain name for commercial gain in accordance with paragraph 4(b)(iv) of the Policy. The disputed domain name directs to a webpage to sell the Complainant's products and other competitors' skincare products.

Finally, it does appear to the Panel that the Respondent has registered domain names that incorporate the trade marks of others, which may be considered further evidence of bad faith.

For the above reasons, the Panel finds that the disputed domain name was registered and is being used in bad faith.

The Complainant has therefore satisfied the third element under paragraph 4(a) of the Policy.

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, <theordinaryskincareproducts.com>, be transferred to the Complainant.

/Douglas Clark/

Douglas Clark

Sole Panelist

Date: February 2, 2023