

ADMINISTRATIVE PANEL DECISION

David John Catchpoole v. qian qian diao

Case No. D2022-4444

1. The Parties

The Complainant is David John Catchpoole, Australia, self-represented.

The Respondent is qian qian diao, China.

2. The Domain Name and Registrar

The disputed domain name <hoptanglish.com> is registered with Gname.com Pte. Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on November 21, 2022. On November 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 23, 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 23, 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 23, 2022.

On November 23, 2022, the Center transmitted another email communication to the Parties in English and Chinese regarding the language of the proceeding. On November 23, 2022, the Complainant submitted his 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 in Chinese and English of the Complaint, and the proceedings commenced on December 5, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 25, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 5, 2023.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on January 16, 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 an individual residing in Australia. The Complainant states that in 2008, he invented the word “Hoptanglish” as the name for his own constructed language (also referred to as a “conlang”). In 2016, the Complainant states that he started using the term “Hoptanglish” as an unregistered trademark, and authored the book “A Dictionary of Hoptanglish: a language knot to mention”, which was published by Zafferona Press, in its first edition (paperback), on December 14, 2016. The Complainant asserts that in 2016 he first registered the disputed domain name and also provides evidence showing that in July 2016 the disputed domain name connected to a website containing information about the Complainant’s Hoptanglish (conlang). The disputed domain name expired in 2021. The Complainant also provides evidence that he has a significant online audience for the Hoptanglish (conlang), including over 30,000 followers on social media platforms such as Twitter.

The disputed domain name was, upon its expiry, registered by the Respondent on September 11, 2021, and is therefore of a later date than the earlier use in trade of the term “Hoptanglish” by the Complainant. The Complainant submits evidence that the disputed domain name directed to a website about Kunming City public transport media advertisement that containing several links to online gambling or lottery services at the bottom of such website. It also appears that the disputed domain name first landed on this webpage and then redirected to a lottery site which required invitation code, user name and password to log in. However, the Panel notes that on the date of this decision, the disputed domain name directs to an inactive webpage.

5. Parties’ Contentions

A. Complainant

The Complainant essentially contends that the disputed domain name is confusingly similar to his unregistered trademark for HOPTANGLISH, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name was registered, and is being used in bad faith.

The Complainant claims that he has used his HOPTANGLISH mark intensively in the course of trade by publishing and offering for sale his book “A Dictionary of Hoptanglish: a language knot to mention” and by his intensive online use of such mark. The Complainant argues that this mark was originally created by him and is a distinctive term exclusively referring to his conlang. The Complainant particularly contends that the Respondent has opportunistically registered the disputed domain name to redirect Internet users to a website offering advertising services and gambling services for commercial gain, thereby tarnishing his trademark, and that the Respondent is in no way connected to or licensed by the Complainant. The Complainant contends that there are no justifications for the use of the Complainant’s trademark in the disputed domain name, and that the Respondent’s abusive use of the disputed domain name does not confer any rights or legitimate interests on it, and constitutes registration and use in bad faith.

The Complainant requests that the disputed domain name be transferred to him.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Issue: Language of the Proceeding

Pursuant to paragraph 11(a) of the Rules, 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 proceeding.

According to the Registrar's verification response, the language of the Registration Agreement for the disputed domain name is Chinese. Nevertheless, the Complainant filed his Complaint in English, and requested that English be the language of the proceeding. The Panel notes that the Respondent did not comment on the language of the proceeding and did not submit any arguments on the merits of this proceeding.

The Panel has carefully considered all elements of this case, and considers the following elements particularly relevant: the Complainant's request that the language of the proceeding be English; the lack of comment on the language of the proceeding and the lack of response on the merits of this proceeding by the Respondent (the Panel notes that the Respondent was invited to present a response and arguments in either English or Chinese but chose not to do so and that all communications sent from the Center to the Respondent were in both Chinese and English); the fact that the disputed domain name contains the Complainant's trademark in its entirety and that the disputed domain name is written in Latin letters and not in Chinese characters; and the fact that Chinese as the language of the proceeding could lead to unwarranted delays and costs for the Complainant.

In view of all these elements, the Panel grants the Complainant's request and decides that the language of the proceeding shall be English.

6.2. Discussion and Findings on the Merits

The Policy requires the Complainant to prove three elements:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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.

Although the Complainant's submissions are rather limited, however, based on the evidence and arguments submitted and considering the lack of a Response, the Panel finds that the Complainant has established three elements as follows:

A. Identical or Confusingly Similar

The Complainant contends that he owns a prior unregistered trademark in the term HOPTANGLISH through his intensive prior use thereof. In this regard, the Panel refers to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.3, which states: "[t]o establish unregistered or common law trademark rights for purposes of the UDRP, the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant's goods and/or services".

The Panel has carefully considered the evidence submitted by the Complainant, which although limited and not elaborated upon in the submissions, does nonetheless show that the Complainant has at least started to use the term HOPTANGLISH in the course of trade at least five years prior to the registration of the disputed

domain name by the Respondent, that the Complainant has published and offers for sale both hard copy and digital versions of the book “A Dictionary of Hoptanglish: a language knot to mention” prominently using the term HOPTANGLISH on a major e-commerce platform, and that the Complainant has also gathered a large online following for his HOPTANGLISH-named conlang of over 30,000 followers on social media platforms such as Twitter.

Taking these elements into account, the Panel considers that the Complainant’s use of the term HOPTANGLISH has been public, consistent and relatively longstanding, that the Complainant is actively using it in the course of trade and that it has attracted some consumer recognition. Based on these elements and the Panel’s other observations, the Panel is able to find that the Complainant has shown that it has valid rights in his unregistered mark HOPTANGLISH.

As to whether the disputed domain name is identical or confusingly similar with the Complainant’s mark, the Panel considers that the disputed domain name consists exclusively of the Complainant’s HOPTANGLISH trademark. The Panel notes that the applicable generic Top-Level Domain (“gTLD”) (“[.com](#)” in this case) is viewed as a standard registration requirement, and may as such be disregarded by the Panel, see the [WIPO Overview 3.0](#), section 1.11.1.

Accordingly, the Panel finds that the disputed domain name is identical to the Complainant’s trademark, and that the Complainant has satisfied the requirements of the first element under the Policy.

B. Rights or Legitimate Interests

On the basis of the evidence and arguments submitted, the Panel finds that the Complainant, although limited in the submissions, does nonetheless make out a *prima facie* case that the Respondent is not, and has never been, an authorized reseller, service provider, licensee, or distributor of the Complainant, is not a *bona fide* provider of goods or services under the disputed domain name and is not making a legitimate noncommercial or fair use of the disputed domain name.

The Panel also notes that the Respondent is not commonly known by the disputed domain name. As such, the Panel finds that the burden of production regarding this element shifts to the Respondent (see [WIPO Overview 3.0](#), section 2.1). However, no evidence or arguments have been submitted by the Respondent in reply.

Upon review of the facts and evidence provided by the Complainant, the Panel notes that the disputed domain name formerly directed to a website about Kunming City public transport media advertisement and containing several links to online gambling or lottery services at the bottom of such website. It also appears that the disputed domain name first landed on this webpage and then redirected to a lottery site which required invitation code, user name and password to log in. Such use has showed the intention on the part of the Respondent to take unfair advantage of the Complainant’s trademark to obtain commercial gain.

However, the Panel notes that on the date of this decision, the disputed domain name directs to an inactive webpage. In this regard, the Panel finds that holding a domain name passively, without making any use of it, also does not confer any rights or legitimate interests in the disputed domain name on the Respondent in these circumstances (see in this regard earlier UDRP decisions such as *Bollere SE v. 赵竹飞 (Zhao Zhu Fei)*, WIPO Case No. [D2020-0691](#) and *Vente-Privee.Com and Vente-Privee.com IP S.à.r.l. v. 崔郡 (jun cui)*, WIPO Case No. [D2021-1685](#)).

On the basis of the foregoing, the Panel considers that none of the circumstances of rights or legitimate interests envisaged by paragraph 4(c) of the Policy apply, and that the Complainant has been able to satisfy the requirements of the second element under the Policy.

C. Registered and Used in Bad Faith

The Panel finds that given the intensive and prior public use made of the distinctive and fanciful term HOPTANGLISH by the Complainant, the opportunistic registration of the disputed domain name by the Respondent shortly after its expiry was clearly intended to take unfair advantage of the Complainant's unregistered mark for HOPTANGLISH. Given the distinctiveness and prior intensive use of the Complainant's trademark, the Panel finds that the Respondent's registration of the disputed domain name targeted this trademark, and that the Respondent knew, or at least should have known, of the existence of the Complainant's prior mark. Moreover, even a cursory Internet search at the time of registration of the disputed domain name would have made it clear to the Respondent that the Complainant had already used the mark HOPTANGLISH intensively in the course of trade. In the Panel's view, the preceding elements establish the bad faith of the Respondent in registering the disputed domain name.

As to use of the disputed domain name in bad faith, the Complainant provides evidence that the disputed domain name directed Internet users to a website about Kunming City public transport media advertisement and containing several links to online gambling or lottery services at the bottom of such website. It also appears that the disputed domain name first landed on this webpage and then redirected to a lottery site which required invitation code, user name and password to log in. The Panel accepts that this has showed the intention on the part of the Respondent to obtain commercial gain from using the Complainant's HOPTANGLISH trademark in the disputed domain name, and thereby also tarnished the Complainant's trademark (see also prior UDRP cases accepting tarnishment from use of trademarks to direct Internet users to a website offering gambling services such as *Sodexo v. Li Li*, WIPO Case No. [D2015-1018](#)).

Furthermore, on the date of this decision, the disputed domain name links to an inactive website. In this regard, the [WIPO Overview 3.0](#), section 3.3 provides: "From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or 'coming soon' page) would not prevent a finding of bad faith under the doctrine of passive holding". The Panel has reviewed all elements of this case, and attributes particular relevance to the fact that the disputed domain name is identical to the Complainant's trademark, to the high degree of distinctiveness and intensive prior use of the Complainant's trademark, and finally, the unlikelihood of any good faith use to which the disputed domain name may be put by the Respondent. In these circumstances, the Panel considers that, in this case, the passive holding of the disputed domain name by the Respondent constitutes use of the disputed domain name in bad faith. On the basis of the foregoing elements, the Panel finds that it has been demonstrated that the Respondent has used, and is using the disputed domain name in bad faith.

Finally, and importantly, the Respondent failed to provide any response or evidence to establish its good faith or absence of bad faith. The Panel therefore finds that the Complainant was able to satisfy the requirements of the third element under 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 <hoptanglish.com> be transferred to the Complainant.

/Deanna Wong Wai Man/

Deanna Wong Wai Man

Sole Panelist

Date: January 25, 2023