

ADMINISTRATIVE PANEL DECISION

Academias Cia Athletica Ltda. v. Yu Liu, wangluochuanmei
Case No. D2023-1045

1. The Parties

Complainant is Academias Cia Athletica Ltda., Brazil, represented by Dannemann Siemsen, Brazil.

Respondent is Yu Liu, wangluochuanmei, China.

2. The Domain Name and Registrar

The disputed domain name <ciaathletica.com> (the “Domain Name”) is registered with MAFF Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on March 8, 2023. On March 9, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On March 10, 2023, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details.

On March 10, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On March 13, 2023, Complainant submitted its request that English be the language of the proceeding. Respondent did not comment on the language of the proceeding.

The Center verified that 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 Respondent in Chinese and English of the Complaint, and the proceedings commenced on March 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 5, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on April 6, 2023.

The Center appointed Kimberley Chen Nobles as the sole panelist in this matter on April 13, 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

Complainant, Academias Cia Athletica Ltda, a Brazilian company founded in 1985, operates gyms in Brazil and South America. It currently has over 35,000 members, more than 2,000 employees and serves over 200 companies through various affiliations. As noted by Complainant, the terms “Academias” mean “gyms” and the “Ltda” is an abbreviation of “limited liability company”. Complainant owns and operates <ciaathletica.com.br>, which was registered since 1996.

Complainant is generally and widely known in its industry as “CIA ATHLETICA”.

Complainant owns several registered trademarks for the COMPANHIA ATHLETICA and its variations (hereinafter, the CIA ATHLETICA trademarks), including:

- Brazilian registered trademark number 818785071 for COMPANHIA ATHLETICA wordmark, registered on June 30, 1998;
- Brazilian registered trademark number 903537028 for CIA ATHLETICA MANAUS wordmark, registered on September 20, 2016;
- Brazilian registered trademark number 830151737 for COMPANHIA ATHLETICA word and design mark, registered on February 8, 2011.

Also as noted by Complainant, the term “cia” is an abbreviation of the term “companhia” which means “company” in Portuguese.

The Domain Name was registered on May 10, 2021, and at the time of filing of the Complaint, reverted to a website providing adult or pornographic content and online gambling games. At the time of the Decision, the Domain Name resolves to an inactive web page.

5. Parties’ Contentions

A. Complainant

Complainant contends that (i) the Domain Name is identical or confusingly similar to Complainant's trademarks; (ii) Respondent has no rights or legitimate interests in the Domain Name; and (iii) Respondent registered and is using the Domain Name in bad faith.

In particular, Complainant contends that it has trademark registrations for CIA ATHLETICA and that Respondent registered and is using the Domain Name with the intention to confuse Internet users looking for *bona fide* and well-known CIA ATHLETICA products and services.

Complainant notes that it has no affiliation with Respondent, nor authorized Respondent to register or use a domain name, which includes Complainant's trademarks, and that Respondent has no rights or legitimate interests in the registration and use of the Domain Name. Rather, Complainant contends that Respondent has acted in bad faith in acquiring and setting up the Domain Name, when Respondent clearly knew of Complainant's rights.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

6.1. Preliminary Procedural Issue – Language of the Proceeding

The Rules, in paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement between the respondent and the registrar in relation to the disputed domain name, the language of the 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.

Complainant submitted its Complaint in English. In its Complaint and email dated March 13, 2023, Complainant requested that the language of the proceeding be English. According to the information received from the Registrar, the language of the Registration Agreement for the Domain Name is Chinese.

Complainant contends that Complainant is a Brazilian company while Respondent is a Chinese company with English being the only common language between the parties, and the time and costs required for translation of the Complaint would unfairly burden Complainant and delay the proceedings and adjudication of this matter. Complainant also contends that the Domain Name is registered in Latin characters instead of Chinese script and wholly incorporates the terms “cia atletica” which refer to Complainant’s CIA ATHLETICA MANAUS and COMPANHIA ATHLETICA trademarks. Complainant thus requests that for the above reasons, that the proceedings be conducted in English.

In exercising its discretion to use a language other than that of the Registration Agreement for the Domain Name, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both Parties, taking into account all relevant circumstances of the case, including matters such as the Parties’ ability to understand and use the proposed language, time, and costs.

The Panel accepts Complainant’s submissions regarding the language of the proceeding. The Panel notes that the Center notified the Parties in Chinese and English of the language of the proceeding as well as notified Respondent in Chinese and English of the Complaint. Respondent chose not to comment on the language of the proceeding nor did Respondent choose to file a Response.

The Panel is also mindful of the need to ensure that the proceeding is conducted in a timely and cost effective manner. Complainant may be unduly disadvantaged by having to translate the Complaint into Chinese and to conduct the proceeding in Chinese.

Having considered all the circumstances of this case, the Panel determines that English be the language of the proceeding.

6.2. Substantive Issues

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) 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.

Section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) states that failure to respond to the complainant’s contentions would not by itself mean that the complainant is deemed to have prevailed; a respondent’s default is not necessarily an admission that the complainant’s claims are true.

Thus, although in this case Respondent has failed to respond to the Complaint, the burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence. See, e.g., *The Knot, Inc. v. In Knot We Trust LTD*, WIPO Case No. [D2006-0340](#).

A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See [WIPO Overview 3.0](#), section 1.2.1. Complainant provided evidence of its rights in the CIA ATHLETICA trademarks, as noted above. Complainant has also submitted evidence which supports that the CIA ATHLETICA trademarks are widely known and a distinctive identifier of Complainant's products and services. Complainant has therefore proven that it has the requisite rights in the CIA ATHLETICA trademarks.

With Complainant's rights in the CIA ATHLETICA trademark established, the remaining question under the first element of the Policy is whether the Domain Name, typically disregarding the Top-Level Domain ("TLD") in which it is registered (in this case, ".com"), is identical or confusingly similar to Complainant's trademark. See, e.g., *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#).

Here, the Domain Name is confusingly similar to Complainant's CIA ATHLETICA MANAUS trademarks. The absence of "manaus" in the CIA ATHLETICA MANAUS trademark does not prevent a finding of confusing similarity between the Domain Name and the CIA ATHLETICA MANAUS trademarks as it is recognizable in the Domain Name.

Thus, the Panel finds that Complainant has satisfied the first element of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make a *prima facie* showing that a respondent possesses no rights or legitimate interests in a disputed domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with relevant evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

From the record in this case, it is evident that Respondent was, and is, aware of Complainant and its CIA ATHLETICA trademarks, and does not have any rights or legitimate interests in the Domain Name. Complainant has confirmed that Respondent is not affiliated with Complainant, or otherwise authorized or licensed to use the CIA ATHLETICA trademarks or to seek registration of any domain name incorporating the trademarks. Respondent is also not known to be associated with the CIA ATHLETICA trademarks and there is no evidence showing that Respondent has been commonly known by the Domain Name.

In addition, Respondent has not used the Domain Name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. Rather, the evidence demonstrates that the Domain Name resolves to a page featuring adult or pornographic, and online gambling games content, which has no connection with the terms "cia atletica". Such use does not constitute a *bona fide* offering of goods or services or a legitimate noncommercial or fair use and cannot under the circumstances confer on Respondent any rights or legitimate interests in the Domain Name. See, e.g., *Intesa Sanpaolo S.p.A. v. Charles Duke / Oneandone Private Registration*, WIPO Case No. [D2013-0875](#).

Accordingly, Complainant has provided evidence supporting its *prima facie* claim that Respondent lacks any rights or legitimate interests in the Domain Name. Respondent has failed to produce countervailing evidence of any rights or legitimate interests in the Domain Name. Thus, the Panel concludes that Respondent does not have any rights or legitimate interests in the Domain Name and Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that Respondent's actions indicate that Respondent registered and is using the Domain Name in bad faith.

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances indicating bad faith registration and use on the part of a domain name registrant, namely:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.”

The Panel finds that Complainant provided ample evidence to show that registration and use of the CIA ATHLETICA trademarks long predate the registration of the Domain Name. Complainant is also well established and known. Indeed, the record shows that Complainant's CIA ATHLETICA trademarks and related products and services are widely known and recognized. Therefore, Respondent was likely aware of the CIA ATHLETICA trademarks when it registered the Domain Name, or knew or should have known that the Domain Name was confusingly similar to Complainant's trademarks. See [WIPO Overview 3.0](#), section 3.2.2; see also *TTT Moneycorp Limited v. Privacy Gods / Privacy Gods Limited*, WIPO Case No. [D2016-1973](#).

The Panel therefore finds that Respondent's awareness of Complainant's trademark rights at the time of registration suggests bad faith. See *CIA ATHLETICA GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite*, WIPO Case No. [D2001-1070](#); *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#).

Further, the Complainant's CIA ATHLETICA trademarks are recognizable in the Domain Name, which suggests Respondent's actual knowledge of Complainant's rights in the CIA ATHLETICA trademarks at the time of registration.

Moreover, Respondent registered and is using the Domain Name to confuse and mislead consumers looking for well-known CIA ATHLETICA products and services of Complainant or authorized partners of Complainant. The use of the CIA ATHLETICA trademarks is intended to capture Internet traffic from Internet users who are looking for Complainant's products and services. Such use of the Domain Name to diverted users to the webpage with adult or pornographic, and online gambling games content could result in causing confusion with Complainant's business and activities. It may confuse Internet users who are looking for Complainant's legitimate website and deceive Internet users into thinking that Respondent is somehow connected to Complainant, which is not the case. Furthermore, the content provided in the website the Domain Name reverted to, may result in tarnishing Complainant's reputation.

Accordingly, the Panel finds that Respondent has registered and is using the Domain Name in bad faith and Complainant succeeds under the third element of 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 Domain Name <ciaathletica.com> be transferred to Complainant.

/Kimberley Chen Nobles/

Kimberley Chen Nobles

Sole Panelist

Date: April 27, 2023