

ADMINISTRATIVE PANEL DECISION

Faze Clan Inc. v. 黄立东 (lidong), 竹海國際貿易有限公司 (huanglidong)
Case No. D2023-2041

1. The Parties

The Complainant is Faze Clan Inc., United States of America (“United States”), represented by BrandIT GmbH, Switzerland.

The Respondent is 黄立东 (lidong), 竹海國際貿易有限公司 (huanglidong), Hong Kong, China.

2. The Domain Name and Registrar

The disputed domain name <fazeclanmerch.com> (the “Domain Name”) is registered with Xin Net Technology Corporation (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on May 8, 2023. On May 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On May 18, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Unknown/Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 19, 2023, 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 in English on May 22, 2023. The Complainant filed a second amended Complaint in English on May 25, 2023.

On May 19, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On May 22, 2023, the Complainant submitted a 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 amended Complaints 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 English

and Chinese of the Complaint, and the proceedings commenced on May 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 15, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 16, 2023.

The Center appointed Karen Fong as the sole panelist in this matter on June 28, 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

Established in the United States in 2010, the Complainant operates Faze Clan, which is an e-sports and entertainment organization of professional gamers and online creators. It has a global fan base of 510 million across all social platforms. The Complainant has expanded into merchandising and has become very popular with the general public as a fashion brand. It has collaborated with many different partner brands including Champion, Manchester City FC, Kappa and Nike. On June 10, 2021, Faze Clan was the first e-sports team featured on the cover of Sports Illustrated.

The Complainant has a portfolio of trade mark registrations including for the trade mark FAZE CLAN under International Registration No. 1450932 registered on January 16, 2019 (the "Trade Mark").

The Domain Name was registered by the Respondent on February 27, 2023. The Domain Name resolves to a website, which bears the Trade Mark and the Complainant's logo, and offers for sale merchandise that bears the Trade Mark at discounted prices and purports to be the Complainant's products (the "Website").

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to the Trade Mark, that the Respondent has no rights or legitimate interests with respect to the Domain Name, and that the Domain Name has been registered and is being used in bad faith. The Complainant requests transfer of the Domain Name to the Complainant.

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. Language of the Proceeding

The Rules, paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement, 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. According to the information received from the Registrar, the language of the Registration Agreement for the Domain Name is Chinese.

The Complainant submits that the language of the proceeding should be English for the following reasons:

- (a) the Domain Name incorporates common English terms “clan” and “merch” which shows that the Respondent understands English;
- (b) the Website is in English;
- (c) the Respondent’s company’s international name has English terms (the Panel observes that the Respondent’s company name in the Registrar’s verification email is in Chinese, however, the company name indicates that the Respondent’s company does international trading);
- (d) requiring the Complainant to translate and communicate in Chinese would be unduly burdensome and increases costs.

In exercising its discretion to use a language other than that of the Registration Agreement, 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 the Complainant’s submission regarding the language of the proceeding. The Respondent has not challenged the Complainant’s language request and in fact has failed to file a response in either Chinese or English. The Panel is also mindful of the need to ensure the proceeding is conducted in a timely and cost effective manner. In this case, the Complainant may be unduly disadvantaged by having to conduct the proceeding in Chinese. The Panel notes that all of the communications from the Center to the Parties were transmitted in both Chinese and English. In all the circumstances, the Panel determines that English be the language of the proceeding.

C. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has established that it has rights to the Trade Mark.

The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the trade mark and the domain name to determine whether the domain name is confusingly similar to the trade mark. The test involves a side-by-side comparison of the domain name and the textual components of the relevant trade mark to assess whether the mark is recognizable within the domain name.

In this case, the Domain Name contains the Complainant’s Trade Mark in its entirety with the addition of the term “merch” which is short for “merchandise”. The addition of the term does not prevent a finding of confusing similarity between the Complainant’s Trade Mark and the Domain Name. For the purposes of assessing identity or confusing similarity under paragraph 4(a)(i) of the Policy, it is permissible for the Panel to ignore the generic Top-Level Domain which in this case is “.com”. It is viewed as a standard registration requirement (section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#))).

The Panel finds that the Domain Name is confusingly similar to the Trade Mark in which the Complainant has rights, and that the requirements of paragraph 4(a)(i) of the Policy therefore are fulfilled.

D. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights or legitimate interests in the domain name by demonstrating any of the following:

- (i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name, even if it has acquired no trade mark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers, or to tarnish the trade mark or service mark at issue.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a domain name, it is well established that, as it is put in section 2.1 of the [WIPO Overview 3.0](#), a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. Once such *prima facie* case is made out, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent does come forward with relevant evidence of rights or legitimate interests, the panel weighs all the evidence, with the burden of proof always remaining on the complainant.

The Complainant contends that the Respondent has not been licensed or authorised to use the Trade Mark as a domain name or in any other way. Neither has the Complainant endorsed or sponsored the Respondent or the Website. There is no evidence that the Respondent is commonly known by the Domain Name or owns any trade marks for the Domain Name. The offer for sale of discounted goods, which appear to bear the Trade Mark on the Website, suggests a connection, sponsorship, or endorsement by the Complainant, when this is not the case, and as such cannot be considered legitimate noncommercial use or fair use. Moreover, the lack of any clarifying statement as to the Website's affiliation, or lack thereof, to the Complainant further reinforces the Panel's finding that such use cannot constitute a *bona fide* offering of goods. See section 2.8 of the [WIPO Overview 3.0](#).

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. The requirements of paragraph 4(a)(ii) of the Policy therefore are fulfilled.

E. Registered and Used in Bad Faith

To succeed under the Policy, the Complainant must show that the Domain Name has been registered and is being used in bad faith.

The Panel is satisfied that the Respondent was aware of the Trade Mark when it registered the Domain Name given the reputation of the Trade Mark and the fact that it was registered prior to the registration of the Domain Name. The very incorporation of the Trade Mark in the Domain Name, use of the Complainant's logo and Trade Mark on the Website, the addition of the word "merch" in the Domain Name which describes the products on sale on the Website and the offer for sale of products bearing the Trade Mark on the Website, confirm the Respondent's awareness of the Trade Mark. It is therefore implausible that the Respondent was unaware of the Complainant when it registered the Domain Name.

In the [WIPO Overview 3.0](#), section 3.2.2 states as follows:

“Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant’s mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant’s mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent’s claim not to have been aware of the complainant’s mark.”

The above together with the fact that there is a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent’s choice of the Domain Name are also significant factors to consider. The Panel finds that the Respondent’s registration is in bad faith.

The Panel also finds that the actual use of the Domain Name is in bad faith. The products offered for sale on the Website are likely to be unauthorised and/or counterfeit FAZE CLAN products considering the difference in prices and the fact that there is no relationship between the Parties. The use by a respondent of a domain name which includes a well-known trade mark to resolve to a website which offers and sells possible counterfeit products under that trade mark is evidence of bad faith registration and use. (See *Burberry Limited v. Jonathan Schefren*, WIPO Case No. [D2008-1546](#); and *Prada S.A. v. Domains for Life*, WIPO Case No. [D2004-1019](#)).

The content of the Website is calculated to give the impression that it has been authorized by or connected to the Complainant when this is not the case. The Website was set up to deliberately mislead Internet users that it is connected to, authorised by or affiliated with the Complainant. From the above, the Panel concludes that the Respondent has intentionally attempted to attract, for commercial gain, by misleading Internet users into believing that the Respondent’s Website is and the products sold on it are those of or authorised or endorsed by the Complainant.

The Panel therefore concludes that the Domain Name was registered and has been used in bad faith under paragraph 4(b)(iv) of the Policy, and paragraph 4(a)(iii) 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, <fazeclanmerch.com>, be transferred to the Complainant.

/Karen Fong/

Karen Fong

Sole Panelist

Date: July 12, 2023