

ADMINISTRATIVE PANEL DECISION

ASOS plc v. 陈砚军 (Chen Yan Jun)

Case No. D2022-2638

1. The Parties

The Complainant is ASOS plc, United Kingdom, represented by Stobbs IP Ltd, United Kingdom.

The Respondent is 陈砚军 (Chen Yan Jun), China.

2. The Domain Name and Registrar

The disputed domain name <missselfridgeasos.com> is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 19, 2022. On July 19, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 21, 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 22, 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 in English on July 25, 2022.

On July 22, 2022, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant requested that English be the language of the proceeding on July 25, 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 in English and Chinese of the Complaint, and the proceeding commenced on July 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 17, 2022. The Respondent did not submit any

response. Accordingly, the Center notified the Respondent's default on August 18, 2022.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on August 24, 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

A. Complainant

The Complainant is a company incorporated in the United Kingdom and listed on the London Stock Exchange, conducting business as an online fashion retailer of both in-house and third party fashion branded products.

The Complainant has operated under the ASOS brand (an acronym of "As Seen on Screen") since 2002, and via its website "www.asos.com" since July 2003.

The Complainant purchased the Miss Selfridge fashion brand – which was launched in the United Kingdom in 1966 - on February 1, 2021.

The Complainant and its subsidiary company, Asos Holdings Limited, are the owners of numerous registrations in jurisdictions worldwide for the trade marks ASOS and MISS SELFRIDGE (the "Trade Mark(s)"), including United Kingdom registration No. UK00002002266 for the MISS SELFRIDGE Trade Mark, with a registration date of February 23, 1996; and United Kingdom registration No. UK00002530115 for the ASOS Trade Mark, with a registration date of December 7, 2012.

The Complainant is also the owner of numerous domain names comprising the Trade Marks, including <missselfridge.com>, registered since May 24, 2002; and <asos.com>, registered since February 27, 2000.

B. Respondent

The Respondent is an individual resident in China.

C. The Disputed Domain Name

The disputed domain name was registered on February 1, 2022.

D. Use of the Disputed Domain Name

The disputed domain name resolves to an English language website apparently offering for sale the Complainant's Miss Selfridge branded fashion products, but also containing links at the bottom of the page to websites apparently offering for sale heavily discounted and replica products of third party brands unrelated to the Complainant (the "Website").

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to the Trade Marks; the Respondent has no rights or legitimate interests in respect of the disputed domain name; and the disputed domain name has been registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Issue: Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the Parties, or unless specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement.

Paragraph 11(a) of the Rules allows the Panel to determine the language of the proceeding having regard to all the circumstances. In particular, it is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding, in order to ensure fairness to the Parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. Language requirements should not lead to undue burdens being placed on the Parties and undue delay to the proceeding (see [WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition \("WIPO Overview 3.0"\)](#), section 4.5.1).

The Complainant has requested that the language of the proceeding be English, for several reasons, including the fact the English language content of the Website demonstrates that the Respondent understands and is competent in English.

The Panel would have accepted a response in Chinese, but the Respondent did not file a response, did not make any submissions as to the language of the proceeding, and did not otherwise contest this proceeding.

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 finds there is sufficient evidence to suggest the likely possibility that the Respondent is conversant in the English language. The Panel notes also that the Respondent has chosen not to contest this proceeding, and that all of the Center's communications with the Parties have been sent in English and Chinese.

The Panel is also mindful of the need to ensure the proceeding is conducted in a timely and cost effective manner.

In all the circumstances, the Panel therefore finds it is not foreseeable that the Respondent would be prejudiced, should English be adopted as the language of the proceeding.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.2. Substantive Elements of the Policy

The Complainant must prove each of the three elements in paragraph 4(a) of the Policy in order to prevail.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has rights in the Trade Marks acquired through use and registration.

The disputed domain name incorporates the entirety of both of the Trade Marks (see [WIPO Overview 3.0](#), section 1.7).

The Panel therefore finds that the disputed domain name is confusingly similar to the Trade Marks.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a disputed domain name:

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

The Complainant has not authorised, licensed, or permitted the Respondent to register or use the disputed domain name or to use the Trade Marks. The Panel finds on the record that there is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and the burden is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that he has acquired any trade mark rights in respect of the disputed domain name or that the disputed domain name has been used in connection with a *bona fide* offering of goods or services.

The Website at first glance appears to be a legitimate Miss Selfridge website owned or operated by, or with the approval, of the Complainant. In addition to the word and logo versions of the Complainant's MISS SELFRIDGE Trade Mark, it consists of images and photographs of fashion products and models the copyright in which is owned by the Complainant. The footer of the Website consists of the following copyright notice which is not authorised by the Complainant, makes reference to the sale of discounted Miss Selfridge products, and contains active links to websites promoting apparently unauthorised replica and discounted goods of unrelated fashion brands:

Copyright © 2022 Miss Selfridge Womens Fashion Clothing Dresses On Sale Up To 70% Off All Rights Reserved. Louis Vuitton Louis Vuitton Bags Britax Ted Baker Vivienne Westwood Bluebella Tabitha Simmons

The Complainant also relies on a Domain Tools profiling search for the Website which concludes that users of the Website are at high risk of phishing and other fraudulent activity.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain name; and there has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

The Panel finds that the Respondent has failed to produce any evidence to rebut the Complainant's *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Panel

therefore finds that the Respondent lacks rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

In light of the Complainant's prior registered Trade Marks and in particular of the evidence of the use of the Website set out in Section 6.2.B. above, the Panel concludes that the disputed domain name has been registered and is being used in bad faith in accordance with paragraph 4(b)(iv) 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 <missselfridgeasos.com> be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Dated: September 1, 2022