

ADMINISTRATIVE PANEL DECISION

Skrewball Spirits, LLC v. 杨智超 (Zhi Chao Yang)

Case No. D2023-1565

1. The Parties

The Complainant is Skrewball Spirits, LLC, United States of America (“United States”), represented by SafeNames Ltd., United Kingdom.

The Respondent is 杨智超 (Zhi Chao Yang), China.

2. The Domain Name and Registrar

The disputed domain name <skrewballwiskey.com> is registered with Cloud Yuqu LLC (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on April 11, 2023. On April 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 12, 2023, 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 (Redacted For Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 13, 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 April 13, 2023.

On April 13, 2023, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant confirmed its request that English be the language of the proceeding on April 13, 2023. 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 proceedings commenced on April 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 9, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 10, 2023.

The Center appointed Rachel Tan as the sole panelist in this matter on May 31, 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 San Diego, United States based company launched in July 2018. It sells peanut butter flavored whiskey under the trade mark SKREWBALL nationally and internationally. Over 16 million cases of whiskey were sold in 2020 and over 500,000 9-litre cases were sold in 2022.

The Complainant is the owner of a range of trade mark registrations for the SKREWBALL and SKREWBALL SPIRITS marks, including United States Trade Mark Registration No. 5687912 for SKREWBALL SPIRITS, registered on February 26, 2019, in class 33; United States Trade Mark Registration No. 5838602 for SKREWBALL, registered on August 20, 2019, in class 33; European Union Trade Mark Registration No. 018155101 for SKREWBALL, registered on September 16, 2020, in classes 21, 25 and 33; and International Trade Mark Registration No. 1421750 for SKREWBALL SPIRITS, registered on July 13, 2018, designating, *inter alia*, China, in class 33.

The Complainant's official site is "www.skrewballwhiskey.com" and it also owns other domain name registrations that comprise of the SKREWBALL mark such as <skrewballwhiskey.ca>, <skrewballwhiskey.eu> and <skrewballwhiskey.net>.

The Respondent is 杨智超 (Zhi Chao Yang), China.

The disputed domain name was registered on October 5, 2022. It resolves to an active pay-per-click ("PPC") webpage that lists out multiple third-party links related to different advertisements covering contents such as "Screwball Whisky", "Skrewball Peanut Butter Whiskey" and "Skrewball Whiskey". According to the evidence provided by the Complainant, the disputed domain name is also listed for sale for USD 3,950 on an online platform.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to the Complainant's SKREWBALL mark. The addition of the misspelt word "wiskey" is not sufficient to prevent a finding of confusing similarity. On the contrary, the addition of the misspelt word "wiskey" adds to the confusion, as the Complainant's primary offering is a peanut butter whiskey. Further, the generic top-level domain ("gTLD") ".com" should be disregarded as it is a standard registration requirement.

The Complainant further alleges the Respondent lacks a right and a legitimate interest in the disputed domain name. There is no evidence that the Respondent holds any unregistered right to the terms "skrewball" and "skrewball wiskey". The Respondent has not received any license from the Complainant to use a domain name that features the SKREWBALL mark. There is no *bona fide* offering of goods or services attached to the disputed domain name as the Respondent is currently hosting PPC links on the disputed domain name (that is mainly redirecting users to competing websites) and advertising the disputed domain name for sale on a popular domain aftermarket website. Further, the Respondent is not known, nor has it ever been known as "skrewball".

The Complainant finally asserts that the Respondent both registered and is using the disputed domain name in bad faith. Given that the Respondent advertises the disputed domain name for sale way in excess of its registration costs on a popular domain aftermarket website, the Complainant contends that the Respondent primarily registered the disputed domain name with the view of selling it back to the Complainant or its

competitors for a sum in excess of the Respondent's out-of-pocket costs. In addition, the use of PPC links by the Respondent on the disputed domain name constitutes a clear attempt to generate a commercial gain, particularly by misleading online users with the disputed domain name and subsequently redirecting these online users to third-party websites, some of which are in direct competition with the Complainant's offerings. Moreover, the Respondent was involved in more than 50 domain disputes, all of which (except one) were found against the Respondent.

B. Respondent

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

6. Discussion and Findings

6.1 Language of the Proceeding

Initially, the Panel must address the language of the proceeding. Paragraph 11(a) of the Rules provides that the language of the administrative proceeding shall be the language of the registration agreement unless otherwise agreed by the parties, subject to the authority of the panel to determine otherwise, having regard to the circumstances of the administrative proceeding. The panel may choose to write a decision in either language, or request translation of either party's submissions.

In this case, the Registrar has confirmed to the Center that the language of the Registration Agreement as used by the registrant for the disputed domain name is Chinese. However, the Complainant has requested that English be adopted as the language of the proceeding for the reasons summarized below:

(a) there is evidence of the Respondent's ability to understand English. In particular, the content to which the disputed domain name directs, as well as the associated landing pages, are wholly in the English language. The disputed domain name is also composed of Latin characters and is listed for sale on a popular domain aftermarket site, which can be only seen and set up in the English language. Further, the Respondent was involved in over 50 domain disputes, most of which were held in English; and

(b) the commission of a translator would add considerable costs to the Complainant and will cause a delay in the commencement of proceedings.

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.

The Panel has considered the above circumstances, and finds that English shall be the language of this proceeding. The reasons are set out below:

(a) the Complainant is a company based in San Diego, United States. Requiring the Complainant to submit the Complaint in Chinese would lead to delay and cause the Complainant to incur translation expenses;

(b) the Respondent's choice of Roman letters for the disputed domain name and the content of the resolved website in English indicate that the Respondent is familiar with the English language;

(c) even if the Respondent does not possess a sufficient command of English to understand the Complaint, there were ample opportunities for the Respondent to raise an objection. The Center notified the Parties in English and Chinese of the Complainant's request for English to be the language of the proceeding, but the Respondent did not protest against this request;

(d) the Respondent has failed to participate in the proceeding even though the Center sent the notification in English and Chinese of the Complaint; and

(e) the Complaint has been submitted in English. No foreseeable procedural benefit may be served by requiring Chinese to be used. On the other hand, the proceeding may proceed expeditiously in English.

Accordingly, the Panel will proceed with issuing this Decision in English.

6.2 Substantive Issues

A. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has adduced evidence to demonstrate its established rights in the SKREWBALL mark.

The Panel notes that the SKREWBALL mark is wholly encompassed within the disputed domain name and the positioning of the SKREWBALL mark makes it instantly recognizable in the disputed domain name. In cases where a domain name incorporates the entirety of a trade mark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing. See section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Further, it is accepted by previous UDRP panels that the addition to the complainant's trade mark of other words or terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element of the Policy. Accordingly, the addition of the misspelt word "wiskey" does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's SKREWBALL mark. See section 1.8 of the [WIPO Overview 3.0](#).

It is permissible for the Panel to ignore the gTLD, in this case ".com". See section 1.11.1 of the [WIPO Overview 3.0](#).

Consequently, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trade mark. Accordingly, the Complainant has satisfied the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

In circumstances where the Complainant possesses rights to the SKREWBALL mark whereas the Respondent seems to have no trade mark rights, and considering the facts and arguments set out above, the Panel is satisfied that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, and the burden of production shifts to the Respondent. See section 2.1 of the [WIPO Overview 3.0](#).

The Respondent has not provided evidence of a legitimate use of the disputed domain name or reasons to justify the choice of a domain name that is confusingly similar to the Complainant's SKREWBALL mark. Further, there is no indication to show that the Respondent is commonly known by the disputed domain name or otherwise has rights or legitimate interests in it. In addition, the Complainant has not granted the Respondent a license or authorization to use the Complainant's SKREWBALL mark or register the disputed domain name. The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name in the terms of paragraph 4(c)(iii) of the Policy since at the time of filing of the Complaint and at the date of this Decision the disputed domain name resolves to a PPC website with links to third-party websites, most of which are directly reference the Complainant's business. Such usage may reasonably be assumed to be commercial in its intent and effect. Prior UDRP panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering of goods or services where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users. See section 2.9 of the [WIPO Overview 3.0](#).

Therefore, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name. Accordingly, the Panel finds that the Complainant has satisfied the second element under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Complainant's SKREWBALL mark has been registered in different jurisdictions. The disputed domain name was registered after the registration of the Complainant's SKREWBALL mark. Through extensive use and advertising, the Complainant's SKREWBALL mark is known throughout the world. Search results using the key word "skrewball" on the Internet search engine direct Internet users to the Complainant and its business, which indicates that an exclusive connection between the SKREWBALL mark and the Complainant has been established. As such, the Respondent either knew or should have known of the Complainant's SKREWBALL mark when registering the disputed domain name, and has exercised "the kind of willful blindness that numerous panels have held support a finding of bad faith". See *eBay Inc. v. Renbu Bai*, WIPO Case No. [D2014-1693](#); and *Barclays Bank PLC v. Andrew Barnes*, WIPO Case No. [D2011-0874](#).

Section 3.1.4 of the [WIPO Overview 3.0](#) states that "[...] mere registration of a domain name that is identical or confusingly similar (particularly domain name comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith". In this case, the disputed domain name is confusingly similar to the widely-known SKREWBALL mark and was registered by the Respondent who has no relationship with the Complainant, which means that a presumption of bad faith can be created.

Section 3.5 of the [WIPO Overview 3.0](#) states that "[p]articularly with respect to 'automatically' generated payper-click links, panels have held that a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name (nor would such links *ipso facto* vest the respondent with rights or legitimate interests)". The Panel notes that the disputed domain name resolves to parked page comprising PPC advertising links that divert Internet users to various content, most of which are related to the Complainant's business. The Panel finds the use of the confusingly similar disputed domain name to lure Internet users to third-party websites is evidence of bad faith. See *Sodexo v. 杨智超 (Zhi Chao Yang)*, WIPO Case No. [D2020-1171](#).

In addition, the disputed domain name is being offered for sale for USD 3,950 on an online platform, which is likely in excess of the normal costs for registering and maintaining a domain name. The absence of circumstances indicating that the Respondent has rights or legitimate interests in the disputed domain name leads the Panel to conclude that the Respondent's intent in registering the disputed domain name was in fact to profit in some fashion from or otherwise exploit the Complainant's mark. In this case, the Panel finds the sale of the disputed domain name as evidence of bad faith registration and use. See section 3.1.1 of the [WIPO Overview 3.0](#).

The Panel also notes that the Respondent appears to be engaged in a pattern of abusive registration having registered multiple domain names comprising third-party trade marks. The Panel finds this case is a continuation of that bad faith pattern. See *Asurion, LLC v. 杨智超 (Zhichao Yang)*, WIPO Case No. [D2021-4231](#). Such constitutes evidence of bad faith registration and use as contemplated under paragraph 4(b)(ii) of the Policy.

The Respondent has kept silent in the face of the Complainant's allegations of bad faith. Taking into account these circumstances, the Panel finds that the Respondent must have known of the Complainant before registering the disputed domain name and, considering the Respondent's lack of rights or legitimate interests, and by registering and using the disputed domain name as discussed above, the Panel is led to conclude that the disputed domain name was registered and is being used in bad faith.

Accordingly, the Panel finds that the Complainant has 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 <skrewballwiskey.com> be transferred to the Complainant.

/Rachel Tan/

Rachel Tan

Sole Panelist

Date: June 13, 2023