

ADMINISTRATIVE PANEL DECISION

IICOMBINED Co., Ltd. v. dachuan, da chuan
Case No. D2023-3326

1. The Parties

The Complainant is IICOMBINED Co., Ltd., Republic of Korea, represented by Marq Vision Inc., Republic of Korea.

The Respondent is Dachuan, da chuan, United States of America.

2. The Domain Name and Registrar

The disputed domain name <gentlemonster-onsale.com> is registered with NameSilo, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 2, 2023. On August 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 3, 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, PrivacyGuardian.org llc"), and contact information in the Complaint. The Center sent an email communication to the Complainant on August 4, 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 amendment to the Complaint on August 11, 2023. On August 12, 2023, the Center received an informal email communication from a third party.

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 of the Complaint, and the proceedings commenced on August 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 4, 2023. The Respondent did not submit any formal response. On September 18, 2023, the Center notified the Parties that it would proceed to panel appointment.

The Center appointed Daniel Peña as the sole panelist in this matter on September 18, 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 designs, manufactures and sells sunglasses and optical glasses.

The Complainant is the owner of the trademark GENTLE MONSTER in the United States, Republic of Korea and worldwide:

- United States Trademark Registration No. 5348159 GENTLE MONSTER in International class 35,
- International Trademark Registration No. 1124449 GENTLE MONSTER (LOGO) in International class 9, and
- Korean Trademark Registration No. 1236856 GENTLE MONSTER in International class 9.

The Complainant is the registrant of the domain name <gentlemonster.com>.

The disputed domain name was registered on June 14, 2023, and displayed official logos of the Complainant and similar content from the Complainant's website as if it is an official website.

5. Parties' Contentions

A. Complainant

The Complainant has been using the trademark GENTLE MONSTER in association with the sale of sunglasses and optical glasses from as early as 2011.

The disputed domain name identically reproduces the Complainant's GENTLE MONSTER trademark in its entirety.

The addition of the terms "on sale" with a "-" to the registered trademark GENTLE MONSTER does not diminish the confusing similarity to the Complainant's trademark rights.

The Respondent uses the disputed domain name without Complainant's authorization to sell allegedly counterfeit GENTLE MONSTER products.

The terms "on sale" only add to the disputed domain name the meaning of selling GENTLE MONSTER branded goods from the corresponding website.

The Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Respondent is not commonly known by the disputed domain name and has not acquired trademark or service mark rights.

The disputed domain name is used to host a website copying the Complainant's official website by using trademarks and copyright protected materials without authorization. This is clearly an act of impersonation as if they are the official distributor of the Complainant's products.

The Respondent is assumed to have registered many other sub-domain names other than the disputed domain name.

The Respondent has been made aware of its bad faith use of the disputed domain name.

B. Respondent

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

An informal communication from a third party was received by the Center on August 12, 2023. However, this communication only states that the website will be promptly shut down and they are conducting an internal review to identify and address the root causes. The Center, having acknowledged the said communication, did not receive any further submissions as to the identification of this third party.

6. Discussion and Findings

To succeed, the complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (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. Considering these requirements, the Panel rules as follows.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The Complainant has provided evidence of its rights in the trademarks GENTLE MONSTER on the basis of its multiple trademark registrations including its International trademark registrations, and those in the United States and Republic of Korea. A trademark registration provides a clear indication that the rights in the trademark belong to the Complainant. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2.1.

It has also been established by prior UDRP panels that incorporating a trademark in its entirety into a domain name can be sufficient to establish that the domain name is confusingly similar to a trademark. Such findings were confirmed, for example, within [WIPO Overview 3.0](#), section 1.7. The Respondent's incorporation of the Complainant's GENTLE MONSTER trademark in its entirety in the disputed domain name is evidence that the disputed domain name is confusingly similar to the Complainant's mark. Mere addition of the terms "on sale" and a hyphen does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's GENTLE MONSTER mark because the Complainant's GENTLE MONSTER mark remains clearly recognizable in the disputed domain name. As noted in [WIPO Overview 3.0](#), section 1.8, "[w]here the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element."

Furthermore, the addition of the generic Top-Level Domain "gTLD" ".com" is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the trademark in which the Complainant has rights, meaning that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

In accordance with paragraph 4(a)(ii) of the Policy, the Complainant must prove that the Respondent has no rights or legitimate interests in the disputed domain name. The Panel observes that there is no relationship, disclosed to the Panel or otherwise apparent from the record, between the Respondent and the Complainant.

The Panel also finds that there is no indication that the Respondent is commonly known by the disputed domain name because the Respondent's name is "Dachuan, da chuan" which has no connection with the GENTLE MONSTER trademark. The Complainant claims that the Respondent has no connection or affiliation with the Complainant and has not received any license or consent, express or implied, to use the Complainant's trademarks in a domain name or in any other manner. Furthermore, the disputed domain name directs to a commercial website that allegedly offers counterfeited goods, exacerbating the Internet user confusion as to the website's affiliation to the Complainant. Such use for deliberately attracting Internet users to its website in the mistaken belief that it is a website of the Complainant, or otherwise linked to or authorized by the Complainant supports a finding that the Respondent lacks rights to or legitimate interests in the disputed domain name.

The Respondent did not submit a Response or attempt to demonstrate any rights or legitimate interests in the disputed domain name, and the Panel draws adverse inferences from this failure, where appropriate, in accordance with the Rules, paragraph 14(b). The Panel finds the Respondent has no rights or legitimate interests in respect of the disputed domain name and that paragraph 4(a)(ii) of the Policy is satisfied. The Panel concludes that the Respondent deliberately chose to include the Complainant's GENTLE MONSTER trademark in the disputed domain name, in order to achieve commercial gain by misleading third parties, and that such use cannot be considered as a legitimate noncommercial or fair use. The Panel further finds that the disputed domain name carries a risk of implied affiliation with the Complainant. The addition of the terms "on sale", meaning selling at discounted price in English, misleads the consumers about the relationship with fair and commercial activities of the Complainant which does not support a finding of any rights or legitimate interests. See [WIPO Overview 3.0](#), section 2.5.1.

Given the above, the Panel finds that the Complainant has made out an un rebutted *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name and finds that the Complainant has satisfied the requirement under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration and use of a disputed domain name in bad faith: (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant (the owner of the trademark or service mark) or to a competitor of that complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name; (ii) the respondent has 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 the respondent has engaged in a pattern of such conduct; (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on its website or location.

In this case, the Complainant submits that at the date of registration of the disputed domain name the Respondent knew or should have known of the Complainant's mark GENTLE MONSTER considering the global renown of the Complainant's prior mark and the website content targeting the Complainant's logos and products. The Panel takes note of the construction of the disputed domain name, which combines the GENTLE MONSTER mark with a hyphen and the term "on sale" that is descriptive of the Complainant's

goods, as well as the fact that the disputed domain name directs to a website that contains the Complainant's logo, copyrighted material and allegedly offers the Complainant's counterfeited goods. The Panel is satisfied that by directing the disputed domain name to a commercial website with the Complainant's logo and content as well as offering counterfeit goods, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or of the products on its website. See [WIPO Overview 3.0](#), section 3.1.4. Under paragraph 4(b)(iv) of the Policy, this circumstance shall be evidence of the registration and use of a domain name in bad faith.

The Complainant points out that the Respondent is hiding its identity behind a WhoIs privacy wall. It is well established that this, too, can be a further indicator of bad faith in certain circumstances. Having considered the Complainant's submissions and in the absence of a Response, the Panel finds that the disputed domain name was registered and used by the Respondent in bad faith within 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 disputed domain name <gentlemonster-onsale.com> be transferred to the Complainant.

/Daniel Peña/

Daniel Peña

Sole Panelist

Date: October 2, 2023