

ADMINISTRATIVE PANEL DECISION

Venus Fashion, Inc. v. 王冬 (wang dong)

Case No. D2024-0247

1. The Parties

The Complainant is Venus Fashion, Inc., United States of America ("United States" or "US"), represented by Akerman LLP, United States.

The Respondent is 王冬 (wang dong), China.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on January 19, 2024. On January 22, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 23, 2024, 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 (Alibaba Cloud Computing Ltd. d/b/a HiChina) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 23, 2024, 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 January 25, 2024.

On January 23, 2024, the Center informed the Parties in Chinese and English, that the language of the Registration Agreement for the disputed domain name is Chinese. On the same day, the Complainant confirmed its request English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant's submission.

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 Chinese and English of the Complaint, and the proceedings commenced on January 30, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 19, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 23, 2024.

The Center appointed Douglas Clark as the sole panelist in this matter on February 27, 2024. 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 United States based swimwear company with which sells VENUS branded clothing. It sells its products at the site "www.venus.com".

The Complainant is the owner of the VENUS trade mark which is used by the Complainant in connection with clothing and the sales of clothing. The Complainant owns several trade mark registrations for VENUS in the United States, including the following: VENUS registered from April 30, 1996 under no. 1971354 in Class 25 for clothing and other items and VENUS registered from December 5, 2006 under no. 3178851 in Class 35 for the internet sale of clothing.

The disputed domain name was registered on April 11, 2023. At the date of the Complaint, the disputed domain name resolved to a website in English showing the Complainant's mark and offering clothing products for sale in US Dollars by reference to photographs taken from the Complainant's website. A representative of the Complainant ordered products from the website, but never received any products despite the payment being processed.

The Respondent is an individual based in China.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name. The Complainant contends that:

(a) the disputed domain name is confusingly similar to its trade mark. The disputed domain name wholly incorporates the Complainant's VENUS trade mark. Addition of the term "sale" and the generic Top-Level Domain ("gTLD") ".com" in the disputed domain name does not eliminate the confusing similarity between the disputed domain name and the trade mark;

(b) the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not affiliated with the Complainant in any way and the Complainant has never granted any authorisation or license to use the Complainant's trade mark. The Respondent has not made a bona fide offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name. In fact the use made by the disputed domain name to purport to sell products which copy the Complainant's products is not good faith; and

(c) the disputed domain name was registered and is being used in bad faith. Based on the use of the disputed domain name and a website that looks like the Complainant's website, the Respondent registered and is using the disputed domain name to attract Internet users for commercial gain, creating a likelihood of confusion with the Complainant's trade mark.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

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.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, namely:

(i) the website at "www.venusale.com" is entirely in English, there is ample evidence showing that the Respondent can understand the English language of the Complaint;

(ii) the language/script of the disputed domain name is entirely in English and the same as that of the Complainant's marks; and

(iii) the Complainant, with no knowledge of the Chinese language to translate its Complaint to another language when the infringement occurs entirely in English is unfair and would create unwarranted delay.

The Respondent did not make any submissions with respect to the language of the 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 (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

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.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trade mark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of another term here, "sale", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel notes that the Complainant did not rely on any registered trade marks in China where the Respondent is located. The ownership of a trade mark is generally considered to be a threshold standing issue. The location of the trade mark, its date of registration (or first use) and the goods and/or services for which it is registered, are all irrelevant for the purpose of finding rights in a trade mark under the first element of the UDRP. These factors may however bear on a panel's further substantive determination under the second and third elements. [WIPO Overview 3.0](#) section 1.1.2.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

The Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegal activity, here the purported sale of goods without actually delivering the products ordered, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The disputed domain name was registered after the Complainant has registered the VENUS trade mark and the use of the Complainant's VENUS trade mark cannot be a coincidence. The VENUS trade mark is used by the Complainant to conduct its business and the presence of the Complainant's VENUS trade mark on the website the disputed domain name resolves to shows that the Respondent is aware of the Complainant and the products the Complainant is selling. The Panel is satisfied that the Respondent was aware of the Complainant and its VENUS trade mark when he or she registered the disputed domain name.

The disputed domain name directs Internet users to an online retail website purportedly offering the Complainant's products for sale. The Respondent has registered the disputed domain name to attract Internet users to the website for commercial gain in accordance with paragraph 4(b)(iv) of the Policy. For the above reasons, the Panel finds that the disputed domain name was registered and is being used in bad faith.

Moreover, panels have held that the use of a domain name for illegal activity, here the purported sale of goods without actually delivering the goods, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

The Panel finds the third element of the Policy has been established.

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 <venussale.com> be transferred to the Complainant.

/Douglas Clark/

Douglas Clark

Sole Panelist

Date: March 14, 2023