

ADMINISTRATIVE PANEL DECISION

oGorgeous Inc. v. Jeongyong Cho
Case No. D2024-3462

1. The Parties

The Complainant is oGorgeous Inc., United States of America (“United States”), represented by Studio Legal LLP, United States.

The Respondent is Jeongyong Cho, Republic of Korea.

2. The Domain Name and Registrar

The disputed domain name <popflex.com> is registered with Megazone Corp., dba HOSTING.KR (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on August 24, 2024. On August 26, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 28, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

On August 28, 2024, the Center informed the parties in Korean and English, that the language of the registration agreement for the disputed domain name is Korean. On August 29, 2024, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

The Center verified that 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 September 9, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 29, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 30, 2024.

The Center appointed Kathryn Lee as the sole panelist in this matter on October 2, 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 Texas corporation and the owner of the registered trademark POPFLEX (United States Trademark Registration Number 5074395, filed with the United States Patent and Trademark Office (“USPTO”) on July 9, 2015, and registered on November 1, 2016. The USPTO records display the date of first use in commerce for the mark as January 14, 2016. The Complaint does not describe the Complainant’s business, but based on the Panel’s online searches, as part of a panel’s general powers articulated in paragraphs 10 and 12 of the Rules, the Complainant appears to be a company selling workout clothing for women at the domain name <popflexactive.com>.

The Respondent appears to be an individual with an address in the Republic of Korea.

The disputed domain name was registered on February 22, 2016, and resolves to a website with pay-per-click (“PPC”) links.

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.

Notably, the Complainant contends that the disputed domain name incorporates the Complainant’s trademark POPFLEX in its entirety and is therefore identical to the Complainant’s trademark.

The Complainant also contends that the Respondent has no rights or legitimate interests in the disputed domain name and confirms that it has not authorized or licensed rights to the Respondent in any respect. The Complainant also contends that the Respondent has not made use of the disputed domain name other than for displaying PPC links since the disputed domain name was registered in 2016 and that the links “Womens Clothing Line”, “Fitness Pilates Workout” and “Clothing Line” all directly relate to the goods for which the Complainant’s POPFLEX mark is used, and therefore, the Respondent is seeking to capitalize on the reputation and goodwill of the Complainant’s mark. The Complainant also contends that the disputed domain name advertises that the disputed domain name is for sale with the “Buy this domain” and the domain “may be for sale by its owner!” notices, and that this shows that there is no use in connection with a bona fide offering of goods or services. The Complainant also contends that the disputed domain name carries a high risk of implied affiliation with the Complainant’s trademark since it consists entirely of the Complainant’s POPFLEX mark.

Finally, the Complainant contends that the disputed domain name was registered and used in bad faith. The Complainant contends that the Respondent registered the disputed domain name to unfairly capitalize on the Complainant’s nascent trademark rights and that the Respondent’s offer for sale of the disputed domain name and display of PPC links represent use in bad faith.

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 Korean. 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, including the fact that the contents of the website linked to the disputed domain name is in English and the fact that the statements included on the website such as “popflex.com – This website is for sale!” is in English.

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). Here, as the Complainant noted, the website at the disputed domain name displays statements in English, suggesting that the Respondent is able to communicate in English. Also, the Panel can take into consideration prior cases involving the Respondent in a particular language, and here, the Panel notes that there are seven prior UDRP decisions involving the Respondent's name from the Republic of Korea. One of them had a registrar with the registration agreement in English, which suggests that the Respondent is capable of communicating in English. Of the other six cases which all had registrars with registration agreements in Korean, the complainant submitted the complaint in Korean in one case, and in the five remaining cases, the panels rendered decisions in English, deciding that the Respondent has sufficient knowledge of English and is able to understand the decision in English. Lastly, the Panel would have considered a Response in Korean, but no Response was submitted.

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 trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trademark 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 identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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.

Having reviewed the available record, 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.

Also, here, the Respondent used the disputed domain name to display PPC links to terms such as “Women’s Clothing Line”, “Fitness Pilates Workout”, and “Clothing Line” which are directly related to the goods of the Complainant and compete with or capitalize on the reputation and goodwill of the Complainant’s mark or otherwise mislead Internet users. [WIPO Overview 3.0](#), section 2.9.

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.

Normally, panels will not find bad faith on the part of the respondent where the registration of the domain name took place before the complainant acquired its trademark rights, but they have in certain limited circumstances where the facts establish that the respondent’s intent in registering the domain name was to unfairly capitalize on the complainant’s nascent trademark rights, for instance, registration of the domain name following the complainant’s filing of the trademark application, shortly before or after announcement of a corporate merger, or further to significant media attention. [WIPO Overview 3.0](#), section 3.8.2.

Here, the disputed domain name was registered on February 22, 2016, and the Complainant’s trademark application was filed on July 9, 2015. Further, though no evidence was submitted on the manner or extent of the Complainant’s use of the mark before its registration, the USPTO records display the date of first use in commerce of the POPFLEX mark as January 14, 2016. Therefore, there was an opportunity for the Respondent to learn of the Complainant and its mark prior to the registration of the disputed domain name. And as the Respondent did not submit any response to provide any alternate explanation on why or how he came to register the disputed domain name, the Panel concludes that there was registration of the disputed domain name in bad faith.

As for use of the dispute domain name, it is linked to a parking page displaying PPC links to fashion goods that are related to the goods of the Complainant, which means that the Respondent created a likelihood of confusion and likely benefited commercially from the confusion of Internet users that visited the site by mistake as per paragraph 4(b)(iv) of the Policy.

Lastly, the Panel takes note of the various prior UDRP decisions rendered against the Respondent that indicate a pattern of bad faith conduct on part of the Respondent as described under paragraph 4(b)(ii) of the Policy, e.g., *Laboratoire Nutergia v. Jeongyong Cho*, WIPO Case No. [D2007-1582](#); *CCA Industries, Inc. v. Jeongyong Cho*, WIPO Case No. [D2017-0769](#).

The Panel finds that the Complainant has established the third element 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 <popflex.com> be transferred to the Complainant.

/Kathryn Lee/

Kathryn Lee

Sole Panelist

Date: October 16, 2024