

ADMINISTRATIVE PANEL DECISION

Hims, Inc. v. 石磊 (Shi Lei) and 蒋黎 (Ied Johnny)
Case No. D2022-0170

1. The Parties

The Complainant is Hims, Inc., United States of America (“United States”), represented by Jones Day, United States.

The Respondents are 石磊 (Shi Lei), China, and 蒋黎 (Ied Johnny), China.

2. The Domain Names and Registrars

The disputed domain name <fohers.com> is registered with DNSPod, Inc. and the disputed domain name <fohims.com> is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina. DNSPod, Inc. and Alibaba Cloud Computing Ltd. d/b/a HiChina are referred to in Sections 3 to 6 below separately and collectively as the “Registrar”.

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on January 19, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On January 20, 2022, the Registrar transmitted by email to the Center verification responses disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on January 20, 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 amendment to the Complaint in English on January 26, 2022.

On January 20, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On January 26, 2022, the Complainant confirmed its request that English be the language of the proceeding. The Respondents did not comment on the language of the proceeding.

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 Respondents of the Complaint, and the proceedings commenced on February 2, 2022. Delivery of the written notification was not accepted at either of the Respondents' contact addresses. In accordance with the Rules, paragraph 5, the due date for Response was February 22, 2022. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on February 23, 2022.

The Center appointed Matthew Kennedy as the sole panelist in this matter on February 28, 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

The Complainant is a provider of men's and women's wellness and personal care products and treatments, including hair loss and hair care treatments. It owns multiple trademark registrations in multiple jurisdictions, including the following:

- United States trademark registration numbers 5,752,035; 5,752,036; and 5,752,037, all for HIMS, all applied for on August 8, 2017, all registered on May 14, 2019, with claims of first use in commerce on November 1, 2017, specifying goods and services in classes 3, 5, and 35, respectively;
- United Kingdom trademark registration number 00003341418 for HIMS, registered on December 14, 2018, specifying goods and services in classes 3, 5, and 35; and
- United States trademark registrations numbers 6,080,827; 6,080,828; and 6,080,829, all for HERS, all applied for on August 29, 2018, all registered on June 16, 2020, with claims of first use in commerce on October 31, 2018, specifying goods and services in classes 3, 5, and 35, respectively.

The above trademark registrations remain current. The Complainant has also registered multiple domain names incorporating the elements "forhims" or "forhers", including the domain names <forhims.com> (created on August 19, 2017) and <forhers.com> (created on March 10, 2016) that it uses in connection with websites where it sells its products and offers information on its treatments for men and for women, respectively. The Complainant has promoted its products and treatments widely, including online, and they have received considerable media attention.

The Respondents are named as two individuals.

The disputed domain name <fohims.com> was registered on November 4, 2017. It resolves to a landing page displaying Pay-Per-Click ("PPC") links. One of the PPC links is labelled "hair loss" and links to websites for men's hair restoration services provided by competitors of the Complainant. Other PPC links on the landing page relate to software, audio equipment and other products.

The disputed domain name <fohers.com> was registered on December 5, 2020. According to the evidence on record, it formerly resolved to a landing page displaying PPC links. One of the PPC links was labelled "hers" and linked to the Complainant's own website, as well as sites for hair care products provided by competitors of the Complainant. Other links related to various types of online classes. At the time of this decision, the disputed domain name <fohers.com> no longer resolves to any active website; rather, it is passively held.

5. Parties' Contentions

A. Complainant

The disputed domain names are confusingly similar to the Complainants' HIMS and HERS marks.

The Respondents have no rights or legitimate interests in respect of the disputed domain names. The Respondents are not licensees of, or otherwise affiliated with, the Complainant and the Complainant has never authorized, otherwise condoned, or consented to the Respondents' registration of the disputed domain names. The Respondents are not commonly known by the disputed domain names. The disputed domain names provide links to competitors' websites and are functioning as PPC websites. The Respondents have registered and are using the disputed domain names to capitalize on Internet users' misspelling of the Complainant's domain names <forhims.com> and <forhers.com>.

The disputed domain names were registered and are being used in bad faith. The Respondents clearly knew of the Complainant's HIMS mark and HERS mark at the time they registered and used the disputed domain names, as evidenced by the verbatim duplication of the literal elements of the marks in the disputed domain names and their near identity with the Complainant's own domain names <forhims.com> and <forhers.com>. The Respondents are trading on the value of the Complainant's HIMS mark and HERS mark by typosquatting. The Respondents' use of the disputed domain names is commercial and for profit by functioning as PPC webpages and providing links to competitors' websites.

B. Respondents

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

6. Discussion and Findings

6.1 Procedural Issues

A. Consolidation: Multiple Domain Name Registrants

The amended Complaint initiates disputes in relation to two nominally different domain name registrants. The Complainant alleges that the websites associated with the disputed domain names are under common control. The Complainant requests consolidation of the disputes against the two domain name registrants pursuant to paragraph 10(e) of the Rules. The domain name registrants did not comment on the Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder. However, the Panel does not consider that paragraph 3(c) was intended to enable a single person or entity to put a complainant to the unnecessary time, expense and effort of initiating multiple proceedings against technically different domain name registrants, particularly when each registration raises the same issues. In addressing the Complainant's request, the Panel will consider: (i) whether the disputed domain names or associated webpages are subject to common control; and (ii) whether the consolidation would be fair and equitable to all Parties. See *Speedo Holdings B.V. v. Programmer, Miss Kathy Beckerson, John Smitt, Matthew Simmons*, WIPO Case No. [D2010-0281](#) and WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2.

As regards common control, the Panel notes that the disputed domain names were registered years apart, the Registrar of one disputed domain name has recently changed and the other disputed domain name is now passively held. On the other hand, the disputed domain names both reproduce domain names used by the Complainant but with the same specific spelling mistake (a missing "r" in the word "for"), and they were both formerly registered with the same Registrar. Both disputed domain names have resolved to landing

pages displaying PPC links in the same format, which changed for both sometime between August 12, 2021 and September 8, 2021, even while the formats of the landing pages continued to be the same as each other. In these circumstances, the Panel considers it more likely than not that the disputed domain names or associated webpages are subject to common control.

As regards fairness and equity, the Panel sees no reason why consolidation of these disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as “the Respondent”) in a single proceeding.

B. Language of the Proceeding

Paragraph 11(a) of the Rules provides that “unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding”. The Registrar confirmed that the Registration Agreements for the disputed domain names are in Chinese.

The Complainant requests that the language of the proceeding be English. Its main arguments are that the disputed domain names are in Latin characters; the associated landing pages are or were in English; and translation of the Complaint into Chinese would result in additional expenses for the Complainant and cause unnecessary delay of the proceeding.

Paragraph 10(b) and (c) of the Rules require the Panel to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding take place with due expedition. Prior UDRP panels have decided that the choice of language of the proceeding should not create an undue burden for the parties. See, for example, *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#); *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. Ltd.*, WIPO Case No. [D2008-0293](#).

The Panel observes that in this proceeding the Complaint and the amendment to the Complaint were filed in English. Despite the Center having sent an email regarding the language of the proceeding and the written notification of the Complaint in both Chinese and English, the Respondent did not comment on the issue of the language of the proceeding or express any interest in otherwise participating in this proceeding; in fact, delivery of the written notice was not accepted at the Respondent’s contact addresses. Therefore, the Panel considers that requiring the Complainant to translate the Complaint into Chinese would create an undue burden and delay, whereas accepting it in English without translation will not cause unfairness to either Party.

Having considered all the circumstances above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English. The Panel would have accepted a Response in Chinese, but none was filed.

6.2 Substantive Issues

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following elements with respect to each disputed domain name:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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.

A. Identical or Confusingly Similar

Based on the evidence presented, the Panel finds that the Complainant had rights in both the HIMS trademark and the HERS trademark at the time of filing of the Complaint.

The disputed domain name <fohims.com> wholly incorporates the HIMS mark, preceded by the letters “fo”. Given that the HIMS mark remains clearly recognizable in this disputed domain name, the addition of these letters does not prevent a finding of confusing similarity with the Complainant’s mark. Similarly, the disputed domain name <fohers.com> wholly incorporates the HERS mark, preceded by the letters “fo”. Given that the HERS mark remains clearly recognizable in this disputed domain name, the addition of these letters does not prevent a finding of confusing similarity with the Complainant’s mark. See [WIPO Overview 3.0](#), section 1.8.

The disputed domain names also include a generic Top-Level Domain (“gTLD”) suffix (“.com”). As a mere technical requirement of registration, this element is generally disregarded in the comparison between a domain name and a trademark for the purposes of the first element of paragraph 4(a) of the Policy. See [WIPO Overview 3.0](#), section 1.11.

Therefore, the Panel finds that the disputed domain names are each confusingly similar to a trademark in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the Panel, shall demonstrate that the Respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- (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 trademark 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 trademark or service mark at issue.

As regards the first and third circumstances set out above, the disputed domain names both resolve or formerly resolved to landing pages displaying PPC links, including links to websites for competitors of the Complainant and, in the case of <fohers.com>, for the Complainant itself. This use is for the commercial gain of the Respondent, if he is paid to direct traffic to the linked websites, or for the commercial gain of the operators of those linked websites, or both. The Complainant submits that it has never authorized, condoned, or consented to the Respondent’s registration of the disputed domain names. At the time of this decision, the disputed domain name <fohers.com> is passively held. In the Panel’s view, this evidence constitutes a *prima facie* case that the disputed domain names are not being used in connection with a *bona fide* offering of goods or services and that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain names.

As regards the second circumstance, the Respondent’s name is listed in the Registrar’s Whois database as “石磊 (Shi Lei)” and “蒋黎 (leed johnny)”, not the disputed domain name. There is no evidence on the record that the Respondent has been commonly known by the disputed domain names.

In summary, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain names. The Respondent failed to rebut that case because he did not respond to the Complaint.

Therefore, based on the record of this proceeding, the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that certain circumstances, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The fourth circumstance is as follows:

“(iv) by using the [disputed] domain name, [the Respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent’s] 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 [the Respondent’s] web site or location.”

With respect to registration, the Panel observes that the disputed domain name <fohers.com> was registered in 2020, after the Complainant obtained registrations of its HERS trademark. This disputed domain name wholly incorporates the Complainant’s HERS trademark and is identical to the Complainant’s domain name <forhers.com> but for the omission of the letter “r”, which is an obvious spelling error. The operational element of the disputed domain name “fohers” appears to have no meaning and its registration appears to have no other purpose than to attract Internet users who mistype the Complainant’s domain name <forhers.com> in a browser. The Respondent provides no alternative explanation for his choice of this disputed domain name. Therefore, the Panel finds it likely that the Respondent was aware of the Complainant’s trademark rights in HERS and registered the disputed domain name <fohers.com> in bad faith.

The Panel observes that the disputed domain name <fohims.com> was registered before the Complainant’s registered rights accrued in the HIMS trademark. Although the Complainant filed United States trademark applications for HIMS on August 8, 2017, those trademark applications were still pending at the time of registration of the disputed domain name <fohims.com> on November 4, 2017. According to the evidence on record, the Complainant’s HIMS trademark was not registered until December 14, 2018, after the registration of this disputed domain name.

The Panel recalls that, where a respondent registers a domain name before the complainant’s trademark rights accrue (as in the present case as regards <fohims.com>), panels will not normally find bad faith on the part of the respondent. See [WIPO Overview 3.0](#), section 3.8.1. However, there is an exception to that general proposition in certain limited circumstances where the facts of the case establish that the respondent’s intent in registering the disputed domain name was to capitalize unfairly on the complainant’s nascent trademark rights. See [WIPO Overview 3.0](#), section 3.8.2 and, for example, *Madrid 2012, S.A. v. Scott Martin-MadridMan Websites*, WIPO Case No. [D2003-0598](#); and *Stoneygate 48 Limited and Wayne Mark Rooney v. Huw Marshall*, WIPO Case No. [D2006-0916](#).

The Panel considers that the circumstances regarding the registration of the disputed domain name <fohims.com> fall within the above exception. This disputed domain name wholly incorporates the Complainant’s HIMS trademark and is identical to the Complainant’s domain name <forhims.com> but for the omission of the letter “r”, which is an obvious spelling error. The operational element of this disputed domain name appears to have no meaning and its registration appears to have no other purpose than to attract Internet users who mistype the Complainant’s domain name <forhims.com> in a browser. The Respondent registered the disputed domain name after the Complainant filed its trademark application for HIMS and after the Complainant registered its <forhims.com> domain name. The Panel finds it likely that the Respondent was aware of the Complainant’s potential trademark rights in HIMS and registered the disputed domain

name in anticipation of those rights with the aim of taking unfair advantage of the reputation that would attach to that trademark as the Complainant used it. The Respondent provides no alternative explanation for his choice of this disputed domain name. Therefore, the Panel considers that the Respondent registered the disputed domain name <fohims.com> in bad faith.

With respect to use, the disputed domain names resolve or formerly resolved to landing pages displaying PPC links, including one that resolves to websites for competitors of the Complainant and, in the case of <fohers.com>, for the Complainant itself. This use is for the commercial gain of the Respondent, if he is paid to direct traffic to the linked websites, or for the commercial gain of the operators of those linked websites, or both. Given the findings in Section 6.2B *supra*, the Panel considers that, by using the disputed domain names, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his websites or other online locations, by creating a likelihood of confusion with the complainant's marks as to the source, sponsorship, affiliation, or endorsement of his websites or locations or of a product or service on his websites or locations within the terms of paragraph 4(b)(iv) of the Policy.

The Panel takes note that the use of the disputed domain name <fohers.com> has changed and that it is now passively held. This change in use does not alter the Panel's conclusion.

Accordingly, the Panel finds that the disputed domain names have been registered and are being used in bad faith. The Complainant has satisfied the third element in 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 names <fohers.com> and <fohims.com> be transferred to the Complainant.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: March 14, 2022