

ADMINISTRATIVE PANEL DECISION

Yellowscan v. Yang Wenjun
Case No. D2022-0553

1. The Parties

The Complainant is Yellowscan, France, represented by Nameshield, France.

The Respondent is Yang Wenjun, China, self-represented.

2. The Domain Name and Registrar

The disputed domain name <yellowscan.com> is registered with SNAPNAMES 30, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 18, 2022. On February 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 24, 2022, 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. In response to a notification by the Center that the Complaint was administratively deficient, the Complainant filed an amended Complaint on February 24, 2022.

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 of the Complaint, and the proceeding commenced on February 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 16, 2022. On March 3 and March 7, 2022, the Center received email communications from the Respondent in Chinese in which the Respondent agreed to settle the dispute. The Center sent an email communication to the Parties regarding possible settlement on March 7, 2022. On March 8, 2022, the Center received several email communications from the Parties, and the Complainant confirmed that it wished to continue the proceeding. On March 17, 2022, the Center informed the Parties that it would proceed with panel appointment.

On March 18, 2022, the Center received several email communications in Chinese from the Respondent,

replying to the Complainant's contentions, advising that the Respondent cannot understand English, and requesting the Center to communicate with the Respondent in Chinese.

On March 18, 2022, the Center notified the Respondent that (i) as the language of the Registration Agreement is English, the language of the proceeding is English and, accordingly, all communications in this proceeding would be in English; and (ii) the Center would bring the Respondent's email communications to the Panel's attention, once appointed; and that it would be at the discretion of the Panel whether to consider the Respondent's request.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on March 21, 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

A. Complainant

The Complainant is a company incorporated in France and a leading designer and manufacturer of unmanned aerial vehicles or drones, under the trade mark YELLOWSCAN (the "Trade Mark").

The Complainant is the owner of numerous registrations for the Trade Mark worldwide, including International registration No. 1337233, with a registration date of November 25, 2016; and French registration No. 3986486, with a registration date of February 27, 2013.

The Complainant owns several domain names incorporating its Trade Mark, such as <yellowscan.fr> registered on January 16, 2013, and <yellowscan.cn> registered on December 3, 2019.

B. Respondent

The Respondent is an individual resident in China.

C. The Disputed Domain Name

The disputed domain name was registered on October 27, 2021.

D. Website at the Disputed Domain Name

The disputed domain name was previously resolved to a Chinese and English language website, offering the disputed domain name for sale for a price of CNY150,000 (the "Website").

As at the date of this Decision, the disputed domain name is no longer being used.

5. Parties' Contentions

A. Complainant

The Complainant contended that the disputed domain name is identical to the Trade Mark, the Respondent has no rights or legitimate interests in respect of the disputed domain name, and the disputed domain name has been registered and is being used in bad faith.

B. Respondent

The Respondent did not file a formal response.

The Respondent first agreed to settle the dispute, and indicated that: a) he legally acquired the disputed domain name through an agency; b) he intended to use the disputed domain name for an agricultural project; c) if the Complainant wanted the disputed domain name, it would need to pay a reasonable price for transfer of the disputed domain name.

In response, the Complainant offered EUR 500 to cover the Respondent's registration costs for the disputed domain name. The Respondent then requested EUR 20,000 to transfer the disputed domain name, contending that he had legally acquired the disputed domain name at a very high cost. The Respondent included a screen shot which appeared to show that the disputed domain name had been purchased at auction for a price of USD 1,506.

The Respondent further contended that:

- (i) he has no intention of maliciously harming the interests of others;
- (ii) because of the short registration time of the disputed domain name, he was not able to transfer it from the Registrar's platform to a Chinese registrar and it was inadvertently offered for sale; and
- (iii) in the future, he would use the disputed domain name in respect of projects in China.

After the Response due date, the Respondent indicated to the Center that he does not understand English. Therefore, he did not really know the deadline for filing a Response and he did not completely understand the proceeding. In addition, there was always a delay for him to receive the email communications.

The Respondent further contended that:

- (i) he agreed that the disputed domain name is identical to the Trade Mark;
- (ii) he has rights or legitimate interests in the disputed domain name because the disputed domain name is composed of two generic English words "yellow" and "scan"; and offering the disputed domain name for sale is a legitimate use;
- (iii) he did not register and use the disputed domain name in bad faith because the Complainant is an overseas company and is not known in China. He did not know the Complainant at the time of registering the disputed domain name.
- (iv) he did not know the Trade Mark when offering the disputed domain name for sale, and the Website did not show any information about the Trade Mark;
- (v) he offered the disputed domain name for sale for a price of EUR 20,000 because the registration costs of the disputed domain name were high; and
- (vi) the Complaint was filed in bad faith.

6. Discussion and Findings

6.1 Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is English. 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. However, paragraph 11(a) of the Rules allows the panel to determine the language

of the proceeding having regard to all the circumstances. In particular, 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.

This proceeding is unusual, in that it was not until after the filing of the Response, and after the deadline for filing of the Response, that the Respondent requested the Center to communicate in Chinese. Accordingly, the Complainant has not been provided with the opportunity to file any submissions with respect to the Respondent's language request.

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.

Although the Respondent has, belatedly, asserted that he cannot communicate in English, the Panel notes that the Respondent has nonetheless been able to file his Response, albeit in Chinese. The Panel further notes that the disputed domain name previously resolved to a website including English words.

The Panel is conversant in both Chinese and English. The Panel is also mindful of the need to ensure the proceeding is conducted in a timely and cost effective manner.

In all the circumstances, the Panel determines that English should be the language of the proceeding, and it will render this Decision in English; however, it will accept the filing of the Response in Chinese.

6.2 Supplemental Filings

Panels have sole discretion, under paragraphs 10 and 12 of the Rules, whether to accept an unsolicited supplemental filing from either party, bearing in mind the need for procedural efficiency, and the obligation to treat each party with equality and ensure that each party has a fair opportunity to present its case. The party submitting its filing would normally need to show its relevance to the case and explain why it was unable to provide that information in the complaint or response (for example, owing to some exceptional circumstance).

Paragraph 12 of the Rules expressly provides that it is for the panel to request, in its sole discretion, any further statements or documents from the parties it may deem necessary to decide the case. Unsolicited supplemental filings are generally discouraged, unless specifically requested by the panel (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.6).

It is not usual practice, absent special circumstances and a satisfactory explanation from the respondent, for UDRP panels to allow supplemental responses to be filed. In this case, two days after the Response due date, the Respondent indicated to the Center that he does not understand English; and, therefore, he did not really know the deadline for filing a Response and he did not completely understand the proceeding; and, in addition, there was always a delay for him to receive email communications.

Considering the above, and for the sake of completeness of this proceeding, the Panel exceptionally determines that it will admit the Respondent's supplemental Response.

6.3 Substantive Elements of the Policy

The Complainant must prove each of the three elements in paragraph 4(a) of the Policy in order to prevail.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has rights in the Trade Mark acquired through use and registration.

Disregarding the generic Top-Level Domain (“gTLD”) “.com”, the disputed domain name is identical to the Trade Mark.

The Panel therefore finds that the disputed domain name is identical to the Trade Mark.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a disputed domain name:

- (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 trade mark 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 trade mark or service mark at issue.

The Complainant has not authorised, licensed, or permitted the Respondent to register or use the disputed domain name or to use the Trade Mark. The Panel finds on the record that there is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and the burden is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that he has acquired any trade mark rights in respect of the disputed domain name. The Respondent contends that he intends to use the disputed domain name for an agricultural project and the disputed domain name will be used to register companies and trade marks in China, but without any further explanation or supporting evidence. To the contrary, the disputed domain name was previously offered for sale via the Website, and also in negotiations between the Parties; and it is presently not being used for an active website.

Accordingly, there has been no evidence adduced to show that the disputed domain name has been used in connection with a *bona fide* offering of goods or services; or that the Respondent has been commonly known by the disputed domain name; or that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

In addition, the Panel notes the nature of the disputed domain name (being identical to the Trade Mark), which carries a high risk of implied association (see [WIPO Overview 3.0](#), section 2.5.1).

The Panel finds that the Respondent has failed to produce any relevant evidence to rebut the Complainant’s *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Panel therefore finds that the Respondent lacks rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

The Complainant is a leading designer and manufacturer of unmanned aerial vehicles or drones used for *inter alia* archaeology, environmental research, and forestry. The Complainant’s Trade Mark was registered prior to the registration of the disputed domain name. The Complainant’s domain name <yellowscan.cn> was also registered prior to the registration of the disputed domain name, and resolves to its official website in Chinese.

The Respondent contends that he did not know the Complainant and its Trade Mark at the time of registering the disputed domain name, and the Respondent registered it due to its value because it is composed of two generic English words “yellow” and “scan”. However, the Panel notes that “yellowscan” *per se* is not a dictionary word.

The Respondent further contends that he intends to use the disputed domain name for an agricultural project, and the disputed domain name will be used to register companies and trade marks in China. However, the Respondent did not provide any further explanation why he had chosen “yellowscan” as the name for his agricultural project and what this project is about. Instead, the Respondent has consistently offered the disputed domain name for sale for prices significantly higher than the out-of-pocket expenses associated with the disputed domain name (the Respondent appears to have implied that the disputed domain name was auctioned for a price of USD 1,506 (approximately CNY 9,800) by providing a screen shot in his email communication of March 8, 2022) – both via the Website and in his email communications with the Complainant. The Respondent’s assertion that the disputed domain name was inadvertently offered for sale via the Website (for a price of CNY 150,000) does not sit well with the Respondent’s subsequent offer, in email communications with the Complainant, to sell the disputed domain name for EUR 20,000. In any event, it is well established that, for the purposes of the Policy, registrants are responsible for the content of websites to which their domain names are resolved, even if such content is hosted by the domain name registrar.

For all the foregoing reasons, the Panel concludes on the balance of probabilities that the disputed domain name has been registered and is being used in bad faith, under paragraph 4(b)(i) of the Policy.

D. Reserve Domain Name Hijacking

The Panel finds that the Complainant has successfully established three elements under paragraph 4(a) of the Policy. Therefore, the Complainant has not brought the Complaint in bad faith.

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 <yellowscan.com> be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Dated: April 4, 2022