

ADMINISTRATIVE PANEL DECISION

Equifax Inc. v. Daiyu Shao
Case No. D2022-0913

1. The Parties

The Complainant is Equifax Inc., United States of America (“United States”), represented by The GigaLaw Firm, Douglas M. Isenberg, Attorney at Law, LLC, United States.

The Respondent is Daiyu Shao, China.

2. The Domain Name and Registrar

The disputed domain name <equifax.com> is registered with DomainName Driveway, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on March 15, 2022. On March 16, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 17, 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.

On March 17, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On March 21, 2022, the Complainant submitted its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 in English and Chinese of the Complaint, and the proceeding commenced on March 25, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 14, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 19, 2022.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on April 27, 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 the State of Georgia in the United States, listed on the New York Stock Exchange, and a member of Standard & Poor's (S&P) 500 Index.

The Complainant is a leading global provider of information solutions and human resources business process outsourcing services for businesses, governments, and consumers, under the trade mark EQUIFAX (the "Trade Mark"), with operations or investments in 24 countries in North America, Central and South America, Europe, and the Asia Pacific, and approximately 11,000 employees worldwide.

The Complainant is the owner of numerous registrations for the Trade Mark in jurisdictions worldwide, including United States registration No. 1,027,544, with a registration date of December 16, 1975; and Chinese registration No. 2015983, with a registration date of October 7, 2002.

B. Respondent

The Respondent is apparently an individual resident in China.

C. The Disputed Domain Name

The disputed domain name was registered on May 11, 2021.

D. Use of the Disputed Domain Name

The disputed domain name has previously been resolved to a Chinese language website with pornographic and gambling related content and hyperlinks (the "Website"). As at the date of this Decision, it is no longer resolved to an active website.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar 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 reply to the Complainant's contentions.

6. Discussion and Findings

6.1. 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.

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.

The Complainant has requested that the language of the proceeding be English, for the following reasons:

- (i) the disputed domain name consists of a typographical variation of the English language Trade Mark;
- (ii) the Website contains some text in English, including an English language disclaimer in the Website footer; and
- (iii) it would be unfair and create unwarranted delay for the Complainant to translate the Complaint into another language.

The Respondent did not file a response and did not file 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.

Although there is insufficient evidence before the Panel to support a conclusion that the Respondent is conversant in English, the Panel notes that the Respondent has not taken any part in this proceeding, and the relevant case related communications were sent in both English and Chinese. 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 therefore finds it is not foreseeable that the Respondent would be prejudiced, should English be adopted as the language of the proceeding.

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.

6.2. 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.

The disputed domain name consists of a common, obvious, or intentional misspelling of the Trade Mark (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, section 1.9).

The Panel therefore finds that the disputed domain name is confusingly similar 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 it has acquired any trade mark rights in respect of the disputed domain name or that the disputed domain name has been used in connection with a *bona fide* offering of goods or services. To the contrary, the disputed domain name has previously been used, for commercial gain, in respect of the Website, which contained pornographic and gambling related content and hyperlinks; and it is presently no longer resolved to any active website.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain name; and there has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

The Panel finds that the Respondent has failed to produce any 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 and that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Given the notoriety of the Complainant and of its Trade Mark in respect of the wide range of services provided by the Complainant under the Trade Mark; the distinctiveness of the Trade Mark; the fact the Trade Mark has no meaning in the Chinese language; the fact the disputed domain name is almost identical to the Trade Mark; the Respondent's prior use of the disputed domain name, for commercial gain, in respect of the Website; and the Respondent's act of taking down the Website at some time following the filing of the Complaint, the Panel finds, in all the circumstances, that the requisite element of bad faith has been made out. The Panel considers it is inconceivable the Respondent was not aware of the Complainant's Trade Mark at the time it registered the disputed domain name. Furthermore, the Respondent's present non-use or passive holding of the disputed domain name would not prevent a finding of bad faith under the Policy.

For all the foregoing reasons, the Panel concludes that the disputed domain name has been registered and is being used 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 <equiofax.com> be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Dated: May 10, 2022