

## ADMINISTRATIVE PANEL DECISION

Oofos, Inc. v. 冯国豪 (feng guo hao)

Case No. D2022-1664

### 1. The Parties

The Complainant is Oofos, Inc., United States of America (“USA”), represented by Sunstein LLP, USA.

The Respondent is 冯国豪 (feng guo hao), China.

### 2. The Domain Name and Registrar

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

### 3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 6, 2022. On May 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 10, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on May 10, 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 amended Complaint in English on May 11, 2022.

On May 10, 2022, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant requested that English be the language of the proceeding on May 11, 2022. The Respondent did not comment on the language of the proceeding.

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 English and Chinese of the Complaint, and the proceedings commenced on May 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 5, 2022. The Respondent did not submit any

response. Accordingly, the Center notified the Respondent's default on June 7, 2022.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on June 16, 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 company headquartered in Braintree, Massachusetts, USA and is active in the footwear industry. The Complainant particularly manufactures and commercializes comfortable recovery footwear. The Complainant states that it is regularly recognized for its achievements in this field, including having been recently awarded the American Podiatric Medical Association Seal of Acceptance for its full line of footwear products.

The Complainant provides evidence that it owns a portfolio of trademark registrations for OOFOS (word marks), for example USA trademark registration 4,140,410, for the word mark OOFOS, registered on May 8, 2012 and USA trademark registration 5,576,699, for the word mark OOFOS, registered on October 2, 2018. The relevant registered trademarks adduced by the Complainant were successfully registered prior to the date of registration of the disputed domain name by the Respondent, which is April 16, 2022.

The Complainant submits evidence that the disputed domain name directed to an active website, which was operated as an e-commerce site, posing as a legitimate OOFOS platform by displaying the Complainant's trademark for OOFOS and offering for sale footwear. However, the Panel notes that on the date of this decision, the disputed domain name directs to an inactive webpage.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant essentially contends that the disputed domain name is confusingly similar to its trademarks for OOFOS, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name was registered and is being used in bad faith.

The Complainant claims that its trademarks are well known among the consumers in the footwear industry. Moreover, the Complainant provides evidence that the disputed domain name was linked to an active website, operated as an e-commerce website. In this context, the Complainant claims that the Respondent was using the disputed domain name to pose as a legitimate OOFOS website, thus intentionally seeking to confuse customers. The Complainant also contends that its OOFOS trademark is highly distinctive, and is not a word that a third party would legitimately choose, unless seeking to create an impression of an association with the Complainant. The Complainant also refers to the timing of the Complainant's registration of its trademark, and to the Respondent's registration of the disputed domain name, as the Respondent registered the disputed domain name on April 16, 2022, which, the Complainant argues, is more than 10 years after the Complainant began using the OOFOS mark in the USA. The Complainant essentially contends that the abovementioned use does not confer any rights or legitimate interests in respect of the disputed domain name and constitutes registration and use in bad faith.

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**

### **6.1. Preliminary Issue: Language of the Proceeding**

Pursuant to paragraph 11(a) of the Rules, 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.

According to the Registrar's verification response, the language of the Registration Agreement for the disputed domain name is Chinese. Nevertheless, the Complainant filed its Complaint and its amended Complaint in English, and requests that English be the language of the proceeding. The Panel notes that the Respondent did not comment on the language of the proceeding and did not submit any arguments on the merits of this proceeding.

In considering this request, the Panel has carefully reviewed all elements of this case, and deems the following elements particularly relevant: the Complainant's request that the language of the proceeding be English; the lack of comment on the language of the proceeding and the lack of response on the merits of this proceeding by the Respondent (the Panel notes that the Respondent was invited by the Center in Chinese and in English and in a timely manner to present his comments and response in either Chinese or English, but chose not to do so); the fact that the disputed domain name is written in Latin letters and not in Chinese characters and that the website linked to the disputed domain name was exclusively in English, from which the Panel deducts that the Respondent is able to understand and communicate in English; and, finally, the fact that Chinese as the language of proceeding could lead to unwarranted delays and additional costs for the Complainant. In view of all these elements, the Panel grants the Complainant's request, and decides that the language of this proceeding shall be English.

### **6.2. Discussion and Findings on the Merits**

The Policy requires the Complainant to prove three elements:

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

Based on the evidence and arguments submitted, the Panel's findings are as follows:

#### **A. Identical or Confusingly Similar**

The Panel finds that the Complainant has provided sufficient evidence that it has valid rights in the mark OOFOS, based on its use and registration of the same as a trademark.

Moreover, as to confusing similarity of the disputed domain name with the Complainant's trademarks, the disputed domain name consists only of the Complainant's OOFOS trademark, to which extra letters "f" and "s" were added. The Panel concludes that such addition of letters constitutes an intentional and obvious misspelling of the Complainant's trademark (this practice is also called "typosquatting"), which moreover preserves the conceptual, aural and visual similarity with the Complainant's OOFOS trademarks. In this regard, the Panel refers to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the "[WIPO Overview 3.0](#)"), section 1.9, which states: "a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element." The Panel also notes that the applicable generic Top-Level Domain ("gTLD") (".com" in this case) is viewed as a standard registration requirement, and may as such be

disregarded by the Panel, see in this regard the [WIPO Overview 3.0](#), section 1.11.1.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks, and finds that the Complainant has satisfied the requirements for the first element under the Policy.

## **B. Rights or Legitimate Interests**

On the basis of the evidence and arguments submitted, the Panel accepts that the Complainant makes out a *prima facie* case that the Respondent is not, and has never been, an authorized reseller, service provider, licensee or distributor of the Complainant, is not a good faith provider of goods or services under the disputed domain name and is not making a legitimate noncommercial use or fair use of the disputed domain name. The Panel also notes that the Respondent is not commonly known by the disputed domain name. As such, the Panel finds that the burden of production regarding this element shifts to the Respondent (see [WIPO Overview 3.0](#), section 2.1). However, no evidence or arguments have been submitted by the Respondent in reply.

Further, reviewing the facts of this proceeding, the Panel notes that the disputed domain name previously directed to a webpage which showed a clear intent on the part of the Respondent to obtain unlawful commercial gain from misleading Internet users by using an intentionally misspelled version of the Complainant's OOFOS trademark in the disputed domain name to offer footwear to Internet users. Furthermore, the Panel has also taken into account the Complainant's evidence from which it is clear that the Respondent also prominently displayed the Complainant's correctly spelled OOFOS mark at the top of the website to which the disputed domain name directed, thereby misleading consumers into believing that the Respondent was licensed by, or connected or affiliated with the Complainant or its OOFOS trademarks. The Panel finds that the aforementioned use by the Respondent does not confer any rights or legitimate interests in the disputed domain name on the Respondent.

However, the Panel notes that on the date of this decision, the disputed domain name directs to an inactive webpage. In this regard, the Panel finds that holding a domain name passively, without making any use of it, also does not confer any rights or legitimate interests in the disputed domain name on the Respondent (see in this regard earlier UDRP decisions such as *Bollore SE v. 赵竹飞 (Zhao Zhu Fei)*, WIPO Case No. [D2020-0691](#) and *Vente-Privee.Com and Vente-Privee.com IP S.à.r.l. v. 崔郡 (jun cui)*, WIPO Case No. [D2021-1685](#)).

On the basis of the foregoing elements, the Panel considers that none of the circumstances of rights or legitimate interests envisaged by paragraph 4(c) of the Policy apply, and finds that the Complainant has satisfied the requirements of the second element under the Policy.

## **C. Registered and Used in Bad Faith**

The Panel considers that by registering the disputed domain name, which the Panel sees as an attempt to typosquat a domain name confusingly similar to the Complainant's trademarks, the Respondent deliberately and consciously targeted the Complainant's prior registered trademarks for OOFOS. The Panel deducts from these efforts to deliberately target the Complainant's prior trademarks that the Respondent knew, or at least should have known, of the existence of the Complainant's trademarks at the time of registering the disputed domain name, which indicates that the Respondent acted in bad faith. Such bad faith has been reinforced by the fact that the website at the disputed domain name prominently displayed the Complainant's correctly spelled OOFOS mark. In the Panel's view, these elements clearly indicate bad faith on the part of the Respondent, and the Panel therefore finds that it has been demonstrated that the Respondent registered the disputed domain name in bad faith.

As to use of the disputed domain name in bad faith, the Complainant provides evidence that the disputed domain name directed to an active website, which was operated as an e-commerce site, posing as a legitimate OOFOS platform and offering for sale footwear. Such website prominently displayed the

Complainant's OOFOS mark at the top of the website to which the disputed domain name directed, without the authorization of the Complainant, which created the false impression to Internet users that the Respondent was affiliated with or licensed by the Complainant. The Panel concludes from these facts that the Respondent intentionally attracted Internet users for commercial gain to the disputed domain name, by creating consumer confusion between the disputed domain name and the Complainant's trademarks. This constitutes direct evidence of bad faith under paragraph 4(b)(iv) of the Policy.

However, on the date of this decision, the disputed domain name links to an inactive website. In this regard, the [WIPO Overview 3.0](#), section 3.3 provides: "From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or 'coming soon' page) would not prevent a finding of bad faith under the doctrine of passive holding." The Panel has reviewed all elements of this case, and attributes particular relevance to the following elements: the fact that the disputed domain name is an attempt of typosquatting, whereby the Complainant's trademark for OOFOS remains clearly recognizable in the disputed domain name, the high degree of distinctiveness of the Complainant's trademark and the unlikelihood of any good-faith use to which the disputed domain name might be put by the Respondent. In these circumstances, the Panel considers that the passive holding of the disputed domain name by the Respondent constitutes bad faith.

The Panel therefore finds that it has been demonstrated that the Respondent has used the disputed domain name in bad faith.

Finally, the Respondent has failed to provide any response or evidence to establish its good faith or absence of bad faith. The Panel therefore finds that the Complainant has satisfied the requirements of the third requirement under 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, <ooffoss.com>, be transferred to the Complainant.

/Deanna Wong Wai Man/

**Deanna Wong Wai Man**

Sole Panelist

Date: June 30, 2022