

ADMINISTRATIVE PANEL DECISION

L. Perrigo Company and Perrigo Pharma International DAC v. 杨智超
(Zhichao Yang)
Case No. D2022-1722

1. The Parties

The Complainants are L. Perrigo Company, United States of America (“United States”), and Perrigo Pharma International DAC, Ireland, internally represented.

The Respondent is 杨智超 (Zhichao Yang), China.

2. The Domain Name and Registrar

The disputed domain name <prigo.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 12, 2022. On May 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 13, 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 Complainants on May 13, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint in English on May 18, 2022.

On May 13, 2022, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainants confirmed their request that English be the language of the proceeding on May 16, 2022. The Respondent did not comment on the language of the proceeding.

The Center verified that the Complaint and 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 proceeding commenced on May 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 8, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 9, 2022.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on June 15, 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. Complainants

The Complainant L. Perrigo Company is a company headquartered in the State of Michigan in the United States. The Complainant Perrigo Pharma International DAC is a company headquartered in Dublin, Ireland. The Complainants are sister companies and part of the Perrigo group of companies, an international pharmaceutical group founded in the State of Michigan in the United States in 1887, and operating under the trade mark PERRIGO (the "Trade Mark").

Depending on the countries, the Trade Mark is owned either by the Complainant L. Perrigo Company or Perrigo Pharma International DAC. For example, the Complainant Perrigo Pharma International DAC owns *inter alia* United States registration No. 1,773,993, registered on June 1, 1993, and Chinese registration No. 834253, registered on April 27, 1996.

The Complainants promote its products at "www.perrigo.com".

B. Respondent

The Respondent is apparently an individual resident in China.

C. The Disputed Domain Name

The disputed domain name was registered on December 17, 2021.

D. Use of the Disputed Domain Name

The disputed domain name is resolved to an English language parking page with sponsored links relating to pharmaceutical products and pharmaceutical companies, including links containing the Complainants' Trade Mark.

5. Parties' Contentions

A. Complainants

The Complainants contend 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 Complainants' 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, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

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 burden being placed on the Parties and undue delay to the proceeding (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

The Complainants have requested that the language of the proceeding be English for the following reasons:

- (i) the disputed domain name consists of Latin text;
- (ii) the Complainants are based in English speaking countries;
- (iii) the Website is an English language website;
- (iv) according to the results of a Reverse Whois search, the Respondent has registered more than a thousand domain names consisting of misspellings of well-known brands;
- (v) the Respondent has been the respondent in 111 prior domain name proceedings, in which the Respondent also did not take any active part; and
- (vi) proceeding in a language other than English would cause unnecessary delay and additional expense.

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.

The Panel notes that the disputed domain name resolves to a website with sponsored links in English; 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 Complainants 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 Complainants have 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 by omitting the letter “e” in the Trade Mark (see [WIPO Overview 3.0](#), 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 Complainants have 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 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 been resolved to a parking page with sponsored links relating to pharmaceutical products and pharmaceutical companies, including links containing the Trade Mark.

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 Complainants’ *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 Complainants have satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Given the notoriety of the Complainants and of their prior registrations for the Trade Mark in particular in the pharmaceutical field; the distinctiveness of the Trade Mark; and the manner of the Respondent’s use of the disputed domain name referred to above; the Panel finds, in all the circumstances, that the requisite element of bad faith has been made out pursuant to paragraph 4(b)(iv) of the Policy.

The evidence suggests that the Respondent has targeted the Complainants in registering and using the disputed domain name; and that there cannot be any actual or contemplated good faith use of the disputed domain name by the Respondent.

The Panel also notes that the disputed domain name is almost identical to the Complainants' domain name <perrigo.com>, and the Respondent has been the respondent in over 100 domain name proceedings.

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 <prigo.com> be transferred to the Complainant Perrigo Pharma International DAC.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Dated: June 29, 2022