

## **ADMINISTRATIVE PANEL DECISION**

Winnebago Industries, Inc. v. Whois Privacy Protection Service by  
onamae.com / rujing wei, weirujing  
Case No. D2022-2082

### **1. The Parties**

The Complainant is Winnebago Industries, Inc., United States of America (“US”), represented by Faegre Drinker Biddle & Reath, US.

The Respondent is Whois Privacy Protection Service by onamae.com, Japan / rujing wei, weirujing, China.

### **2. The Domain Name and Registrar**

The disputed domain name <winnebagosucks.com> is registered with GMO Internet, Inc. d/b/a Discount-Domain.com and Onamae.com (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on June 8, 2022. On June 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 10, 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 June 10, 2022, the Center transmitted an email communication to the Parties in English and Japanese regarding the language of the proceeding. On June 17, 2022, the Complainant submitted a 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 Japanese of the Complaint, and the proceedings commenced on June 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 7, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 8, 2022.

The Center appointed Keiji Kondo as the sole panelist in this matter on July 22, 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 manufacturer of outdoor lifestyle products primarily focused on leisure travel and outdoor activities. The Complainant's products enable consumers to travel, live, work, and play, making consumers feel at home outdoors.

The Complainant owns a trademark WINNEBAGO, which consumers have come to associate with recreational vehicles, and it has trademark registrations for its trademark. The Complainant's trademark is registered in various classes, including Class 12 for motor homes; recreational vehicles, namely, campers, truck campers, motor homes, travel trailers, fifth wheel trailers, towable trailers and toy hauler travel trailers; recreational vehicles, namely, class b vans; motor homes; Class 25 for clothing, namely, caps, visors, hats, sweaters, jackets shirts, vests, sweatshirts, aprons; Class 41 for online electronic newsletters delivered by e-mail in the field of travel and recreational vehicle lifestyles; and Class 42 for creating an online community for travel and recreational vehicle enthusiast.

The Complainant, for example, owns US trademark registration No. 1,908,349 for WINNEBAGO, according to which the Complainant first used its trademark in April 1959. The Complainant's trademark registration was registered on August 1, 1995, based on an application filed on June 27, 1994.

The disputed domain name was registered on December 18, 2021. The disputed domain name resolves to a website displaying pornographic content and what appears to be sponsored links.

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

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

The Complainant has a substantial Internet presence. The Complainant owns the domain names <winnebago.com> and <winnebagoind.com>. Since at least 1996, the Complainant has operated an Internet website located at <winnebagoind.com>, informing the public about its outdoor lifestyle products (including recreational vehicles), unparalleled customer care, experience-driven innovation, and family of brands.

The Complainant's trademark WINNEBAGO comes from the name of a river flowing through Forest City Iowa where Complainant's company was born. Although the word "Winnebago" has the dictionary definition "a Siouan people in eastern Wisconsin south of Green Bay", the Complainant has not used and does not use the word "Winnebago" in connection with this meaning.

Since its founding in the 1960s, the Complainant has established itself as the undisputed leading manufacturer of outdoor lifestyle products primarily focused on leisure travel and outdoor activities (including recreational vehicles), and consumers have come to associate the Complainant's trademark almost exclusively with recreational vehicles; the brand is iconic and well-known, including without limitation throughout US and in the Asia Pacific region.

The disputed domain name and the Complainant's trademark need not be identical to be confusing, and the only difference between the disputed domain name and the Complainant's trademark is the addition of the term "sucks". In view of the Complainant's websites associated with the domain names <winnebago.com> and <winnebagoind.com>, and given that the Complainant registered its <winnebagoind.com> in 1996 - over 20 years before the Respondent registered the disputed domain name, and that the Complainant has been using the Complainant's trademark as a source identifier for its goods and brand for over 60 years, the disputed domain name is confusingly similar with the Complainant's trademark.

Moreover, there is a general consensus among UDRP panels that “[a] domain name consisting of a trademark and a negative or pejorative term (such as <[trademark]sucks.com>...) is considered confusingly similar to the complainant’s trademark for the purpose of satisfying standing under the first element.” (Section 1.13 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). Here, the Respondent incorporates the entirety of the Complainant’s trademark with the term “sucks” in the disputed domain name. The dominant term is WINNEBAGO, and the term “sucks” does not distinguish it from the Complainant’s trademark.

In sum, the disputed domain name is confusingly similar to the Complainant’s trademark.

The Respondent has no rights or legitimate interests in the disputed domain name.

The Respondent is not and has never been a licensee of the Complainant. Instead, the disputed domain name was registered by an unauthorized person and/or entity, Rujing Wei (weirujing).

The Respondent has never made any 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. In accordance with the propositions set forth in *Oki Data Americas, Inc v. ASD, Inc.*, WIPO Case No. [D2001-0903](#), and followed in many subsequent cases, this principle of legitimate interests shown through use maybe invoked under the Policy if: (i) the Respondent is actually offering the goods or services at issue; (ii) the Respondent uses the website to sell only the trademarked goods or services; and (iii) the website accurately discloses the Respondent’s relationship (or otherwise) with the trademark owner. None of these factors are present here.

The Respondent is not offering the goods and services of the Complainant, but it is instead using the disputed domain name for commercial gain.

The Respondent is not selling the Complainant’s recreational vehicles or other products through the website located at the disputed domain name, but rather, the Respondent directs the Internet user to a website displaying pornographic content and what appears to be sponsored links. By linking consumers to these additional sites, the Respondent is likely recognizing a financial gain.

The Respondent’s website likely provides it with click-through revenues by including numerous pornographic links on the Respondent’s website. The Respondent likely receives a payment each time a visitor to its website associated with the disputed domain name clicks on a link. Therefore, in view of the content of the Respondent’s website, the Respondent is likely attempting to capitalize on the valuable reputation and goodwill of the Complainant’s trademark.

Additionally, there is no evidence that the Respondent has, as a business or other organization, been commonly known by the disputed domain name, and the disputed domain name is not the Respondent’s legal name.

Finally, the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. Instead, the Respondent is using the disputed domain name to mislead Internet users searching for the Complainant’s brand and products to drive traffic to the Respondent’s pornographic website.

In view of the foregoing, the Respondent has no right or legitimate interests in the disputed domain name.

The evidence submitted by the Complainant demonstrates that the Respondent’s registration and use of the disputed domain name was and is in bad faith.

First, registration of a confusingly similar domain name with knowledge of another’s trademark is, by itself, evidence of bad faith. The well-known nature of a mark “creates a *prima facie* presumption that the respondent has registered the domain name...to be used in some way to attract for commercial gain users to the website by creating a likelihood of confusion with complainant’s mark.” (*Arthur Guinness Son & Co.*

(*Dublin Ltd. v. Steel Vertigogo*, WIPO Case No. [D2001-0020](#)). Here, because the Complainant has been using its trademark since 1959 and has extensively marketed and advertised its recreational vehicle products and brand using the Complainant's trademark since then, it is reasonable to infer that the Complainant's trademark is well-known, and therefore it is highly likely that the Respondent knew of Complainant's trademark at the time of registering the confusingly similar disputed domain name (which wholly incorporate the Complainant's trademark). The Complainant is therefore entitled to a *prima facie* presumption that the Respondent registered the disputed domain name to attract Internet users to the Respondent's websites for commercial gain by creating confusion with the Complainant's trademark.

Second, the Respondent is using the disputed domain name, which incorporates the Complainant's trademark, to host a website from which the Respondent likely derives a financial benefit by providing click-through traffic to numerous pornographic websites. According to paragraph 4(b)(iv) of the Policy, evidence of bad faith registration and use is shown when registration of a domain name occurs in order to utilize another's well-known trademark by attracting Internet users to a website for commercial gain.

The Respondent's selection and use of the disputed domain name, which wholly incorporates the Complainant's trademark, to host, link to, and/or redirect to pornographic material suggests opportunistic bad faith.

The disputed domain name in the present case comprises the well-known trademark of the Complainant, and resolves to a Chinese language website with pornographic content; therefore, the Respondent's use of the disputed domain name harms the Complainant's reputation and tarnishes its business and valuable trademark and demonstrates the Respondent's bad faith.

In sum, the Respondent has registered and used the disputed domain name in bad faith under paragraph 4(b) of the Policy.

## **B. Respondent**

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

## **6. Discussion and Findings**

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

The language of the Registration Agreement of the disputed domain name is Japanese. On June 10, 2022, the Center transmitted an email communication to the Parties in English and Japanese regarding the language of the proceeding. On June 17, 2022, the Complainant submitted a request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

Considering the following circumstances, the Panel, exercising its authority to determine the language of the proceeding under paragraph 11(a) of the Rules, has decided English as the language of the proceeding:

- the Complaint was filed in English;
- the Complainant is an entity in US, and represented by a US law firm;
- the Respondent's address is in China
- the Center communicated all relevant aspects of the case to the Respondent in Japanese and English and the Respondent did not comment on the language of the proceeding;
- the Respondent did not reply to the Complainant's contentions, anyway;

- the disputed domain name includes not only ASCII characters comprising the Complainant's trademark, but also "sucks", which is an English slang, indicating that the Respondent has some ability to communicate in English; and
- ordering the translation of the Complaint would only result in extra delay of the proceeding and additional cost for the Complainant.

## **6.2. Substantive Issues**

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

The Complainant owns US Trademark Registration No. 1,908,349 for WINNEBAGO.

The disputed domain name incorporates the Complainant's trademark WINNEBAGO in its entirety, with addition of "sucks".

A domain name consisting of a trademark and a negative or pejorative term is considered confusingly similar to the complainant's trademark for the purpose of satisfying standing under the first element. In section 1.13 of [WIPO Overview 3.0](#), "sucks" is treated as a typical example of such negative or pejorative term.

It is well-established that the generic Top-Level Domain ("gTLD") should typically be disregarded in finding of confusing similarity because it is viewed as a standard registration requirement.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark within the meaning of paragraph 4(a)(i) of the Policy.

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

The disputed domain name resolves to a website displaying pornographic content and what appears to be sponsored links. It is likely (but not dispositive to the case) that the Respondent receives a payment each time a visitor to its website clicks on a link.

The use of the disputed domain name by the Respondent is neither a legitimate noncommercial or fair use under paragraph 4(c)(iii) of the Policy, nor a use in connection with a *bona fide* offering of goods or services under paragraph 4(c)(i) of the Policy.

The Complainant denies that the Respondent has permission/authorization to use the Complainant's trademark in a domain name or in any other manner. The Panel, comparing the business of the Complainant and the contents of the Respondent's website, finds the Complainant's denial plausible.

There is no similarity between the Respondent's name, "rujing wei" or "weirujing" and the disputed domain name. Moreover, the Respondent concealed its identity using a privacy registration service, and such concealment provides strong evidence showing that the Respondent has never been known by the disputed domain name. Therefore, it is inconceivable that the Respondent has been commonly known by the disputed domain name, and the Panel concludes that the Respondent is not commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy.

As mentioned above, the Respondent is not likely to rely on any of the circumstances described in paragraph 4(c). However, as suggested by the Complainant, the term "Winnebago" is not a coined word, but it is likely a geographical name. As to the origin of the term "Winnebago", the Complainant explains that it comes from the name of a river flowing through Forest City, Iowa, where Complainant's company was born. In addition, the Complainant admits that the word "Winnebago" has the dictionary definition "a Siouan people in eastern Wisconsin south of Green Bay".

If “Winnebago” is a geographical name in the public domain, the Respondent, as a member of the public, may have some rights or legitimate interests in the disputed domain name. If the transfer would deprive the public of any legitimate interests in the term “Winnebago”, then, transfer of the disputed domain name could be inappropriate.

Therefore, to confirm that the term “Winnebago” is a geographical name, and to assess the impact of transfer on the public interests, the Panel, on his own initiative, has conducted a search.

It has been found by the search that “Winnebago” is the name of counties in Illinois, Iowa and Wisconsin. It is also the name of a town in Minnesota, and the name of an Indian Reservation in Nebraska. Wisconsin also has a lake named “Winnebago Lake”. Based on the search results, the Panel assumes that the river referred to by the Complainant flows through not only Forest City but also Winnebago county in Iowa because Forest City is in or adjacent to the county.

Since “Winnebago” is a geographical name, even though the Complainant has trademark rights, the term itself is in the public domain. Actually, the Panel has found a webpage entitled “Winnebago Tribe in Nebraska” at <winnebagotribe.com>.

Nevertheless, the Panel concludes that transfer would not deprive the public of any substantial interests in the term “Winnebago”. As shown by the fact that <winnebagotribe.com> peacefully coexists with the Complainant’s domain names, that is, <winnebago.com> and <winnebagoind.com>, the counties, organizations, or any other entities that have legitimate interests in the name of “Winnebago” would not lose any range of selection of their domain names. For them, transfer of the disputed domain name would have no substantial impact. Even for those who are interested in criticism against entities known by the name of “Winnebago”, transfer of the disputed domain name would have a minimal impact because they would still be free to select any other term than “sucks” to express their intention of criticism; this is purely hypothetical however as the disputed domain name has been used to host pornographic content.

Therefore, the Panel concludes that the benefit to be given to the Complainant by the transfer clearly outweighs the disadvantage to be caused to the public by the transfer. Accordingly, the Panel concludes that the Respondent, even as a member of the public, has no rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy.

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

The Complainant’s US Trademark registrations was registered on August 1, 1995, which predates the registration date of the disputed domain name by more than twenty years. Moreover, the Complainant itself and its trademark are well-known in the market of recreational vehicles.

It is inconceivable that the Respondent was not aware of the Complainant and its trademark at the time of registration of the disputed domain name. The Panel concludes that the Respondent registered and has been using the disputed domain name in bad faith, for the reasons mentioned below.

In registering the disputed domain name, the Respondent added “sucks” to “winnebago”, and, by doing so, the Respondent may have legitimately attempted to make its website appear to provide critical comments on “winnebago”. However, the Respondent’s website has nothing to do with criticism, but displays pornographic content and what appears to be sponsored links.

Obviously, the Respondent registered, and has been using, the disputed domain name in an intentional attempt to attract, for commercial gain, Internet users to the Respondent’s website by creating a likelihood of confusion. The Respondent intended to attract Internet users who are interested in criticism on “Winnebago”.

Although “Winnebago” is a geographical name, it is little known in Asia-Pacific region, including China and Japan, the target area of the Respondent’s website. Therefore, it would be useless to attract people interested in geographical areas or spots known by the name of “Winnebago”.

On the other hand, the Complainant enjoys an increasing presence in Asia-Pacific recreational vehicle market. It is likely that much more people are interested in the Complainant than in the counties, towns, or the like, called “Winnebago” in US. Therefore, the Panel concludes that the Respondent, at the time of registration of the disputed domain name, targeted the Complainant.

The Respondent’s website is not at all a criticism site. Nevertheless, the disputed domain name leads Internet users to a misunderstanding that the Respondent’s website would give criticism on the Complainant’s products, and those who seek negative information about the Complainant would be directed to the Respondent’s website for such information.

The nature of confusion is different from the source, sponsorship, affiliation, or endorsement of the Respondent’s website. Therefore, it does not squarely fit the circumstances described in paragraph 4(b)(iv) of the Policy.

However, the Internet users are led to the Respondent’s website because of the confusion, and it is obvious that the Respondent aims at commercial gain through increase of the number of visitors to the Respondent’s website. Paragraph 4(b) clearly states “particularly but without limitation”. Therefore, even though the confusion relates to negative endorsement of the Complainant’s products by the Respondent, the circumstances are still evidence of the registration and use of the disputed domain name in bad faith.

Accordingly, the Panel finds that the disputed domain name has been registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) 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 name <winnebagosucks.com> be transferred to the Complainant.

*/Keiji Kondo/*

**Keiji Kondo**

Sole Panelist

Date: August 5, 2022