

ADMINISTRATIVE PANEL DECISION

Sullair, LLC v. Lian Sheng Han

Case No. D2022-2235

1. The Parties

The Complainant is Sullair, LLC, United States of America (“United States”), represented by Fieldfisher LLP, United Kingdom (“UK”).

The Respondent is Lian Sheng Han, China.

2. The Domain Name and Registrar

The disputed domain name <cnsullair.com> (the “Disputed Domain Name”) is registered with Gname.com Pte. Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 20, 2022. On June 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On June 24, 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 June 29, 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 amendment to the Complaint on June 29, 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 proceedings commenced on July 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 24, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 26, 2022.

The Center appointed Gabriela Kennedy as the sole panelist in this matter on August 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

The Complainant was founded in 1965 and is a major manufacturer of portable and stationary rotary screw air compressors under and by reference to the SULLAIR brand. The Complainant is currently a Hitachi Group Company with offices in Chicago and ISO 9001 certified manufacturing facilities in the United States and China.

The Complainant is the owner of a number of trademark registrations for the SULLAIR mark in different countries and classes including, *inter alia*, China Trademark Registration Numbers 759366 and 5337873 registered on August 7, 1995 and July 21, 2009 respectively, UK Trademark Registration Number UK00001036561 registered on October 11, 1974, and US Trademark Registration Numbers 1071297, 1718757 and 2370241 registered on August 16, 1977, September 22, 1992 and July 25, 2000 respectively (the "Complainant's Trademark"). The Complainant's Trademark is also represented in the domain name that resolves to the Complainant's website, "www.sullair.com". The Complainant has thus obtained an exclusive right to the Complainant's Trademark through extensive use.

The Disputed Domain Name was registered on October 28, 2011. The Disputed Domain Name previously displayed a webpage presenting sexually explicit and pornographic content, but currently resolves to an inaccessible webpage.

5. Parties' Contentions

A. Complainant

The Complainant's primary contentions can be summarized as follows:

- (a) The Disputed Domain Name is identical or confusingly similar to the Complainant's Trademark. The Complainant's Trademark is reproduced in its entirety in the Disputed Domain Name. The only element which differentiates the Disputed Domain Name from the Complainant's Trademark is the addition of the prefix "cn" to read <cn.sullair.com>.
- (b) The Respondent does not have any rights or legitimate interests in the Disputed Domain Name. Any use by the Respondent of the Disputed Domain Name would not be in connection with a *bona fide* offering of goods or services.
- (c) The Respondent's registration of the Disputed Domain Name which is confusingly similar to the Complainant's Trademark is in itself an act of bad faith by someone with no connection to the Complainant's business. The Disputed Domain Name also resolved to a pornographic website, generating online traffic by creating an impression of an association between the Disputed Domain Name and the Complainant's Trademark. Therefore, given these factors, the Respondent has registered and is using the Disputed Domain Name in bad faith.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following 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 by the Respondent in bad faith.

A. Identical or Confusingly Similar

The Panel accepts that the Complainant has rights in the Complainant's Trademark, based on its various trademark registrations listed above in Section 4.

It is well established that in making an enquiry as to whether a trademark is identical or confusingly similar to a domain name, the generic Top-Level Domain ("gTLD") extension, ".com" in this case, may be disregarded. See Section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Disputed Domain Name incorporates the Complainant's Trademark in its entirety with the addition of the prefix "cn", which is a commonly used country abbreviation for China. UDRP panels have consistently found that the addition of other terms to a mark (whether descriptive, geographical, pejorative, meaningless, or otherwise) will not alter the fact that the domain name at issue is confusingly similar to the mark in question. See Section 1.8 of the [WIPO Overview 3.0](#).

The Panel therefore finds that the mere addition of the prefix "cn" does not prevent a finding of confusing similarity between the Disputed Domain Name and the Complainant's Trademark.

As such, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's Trademark, and accordingly, paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Once a complainant establishes a *prima facie* case in respect of the lack of rights or legitimate interests of a respondent in a disputed domain name, the respondent then carries the burden of demonstrating that it has rights or legitimate interests in the domain name. Where the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. See Section 2.1 of the [WIPO Overview 3.0](#).

The Panel accepts that the Complainant has not authorized the Respondent to use the Complainant's Trademark, and there is no relationship between the Complainant and the Respondent which would otherwise entitle the Respondent to use the Complainant's Trademark. Accordingly, the Panel is of the view that a *prima facie* case has been established by the Complainant and it is for the Respondent to show rights or legitimate interests in the Disputed Domain Name.

The Respondent did not submit a Response. The fact that the Respondent did not submit a formal Response does not automatically result in a decision in favor of the Complainant. However, the Respondent's failure to file a Response may result in the Panel drawing appropriate inferences from such default. The Panel may also accept all reasonable and supported allegations and inferences flowing from the Complainant as true (see *Entertainment Shopping AG v. Nischal Soni, Sonik Technologies*, WIPO Case No. [D2009-1437](#); and *Charles Jourdan Holding AG v. AAIM*, WIPO Case No. [D2000-0403](#)).

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish rights or legitimate interests in the Disputed Domain Name by demonstrating any of the following:

(i) before any notice to him 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 was in connection with a *bona fide* offering of goods or services;

(ii) the Respondent has been commonly known by the Disputed Domain Name, even if he has acquired no trademark 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 trademark or service mark at issue.

There is no evidence to suggest that the Respondent's use of, or demonstrable preparations to use the Disputed Domain Name or a name corresponding to the Disputed Domain Name was in connection with a *bona fide* offering of goods or services. The Panel agrees with the Complainant that the Respondent's use of the Disputed Domain Name cannot be regarded as legitimate noncommercial or fair use, noting in particular that the Complainant's Trademark would not likely be adopted by the Respondent other than for the purpose of attracting online traffic to its webpage or otherwise taking advantage of the goodwill of the Complainant's Trademark. In this regard, the Panel also notes the nature of the Disputed Domain Name, being almost identical to the Complainant's Trademark, carries a high risk of implied affiliation. See Section 2.5.1 of the [WIPO Overview 3.0](#).

In addition, no evidence has been provided to prove that the Respondent has trademark rights corresponding to the Disputed Domain Name, or that the Respondent has become known by the Disputed Domain Name.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name and the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

UDRP panels have consistently found that the mere registration of a domain name that is confusingly similar to a widely-known trademark by an unaffiliated entity (particularly domain names which incorporate a mark plus a descriptive term) can already by itself create a presumption of bad faith. See Section 3.1.4 of the [WIPO Overview 3.0](#).

After reviewing the supporting evidence submitted by the Complainant, the Panel agrees with the Complainant that the Complainant's Trademark appears to be fairly well-known. A quick Internet search conducted by the Panel shows that the top search results returned for the keyword "sullair" are the Complainant's websites and third party websites providing information relating to the Complainant's air compressor business. Therefore, taking this into consideration together with the fact that the Disputed Domain Name incorporates the Complainant's Trademark in its entirety with the addition of the descriptive letters "cn", the Respondent must have been aware of the Complainant and the rights in the Complainant's Trademark when registering the Disputed Domain Name.

In addition, the Panel finds that the following factors further support a finding that the Disputed Domain Name was registered and is being used by the Respondent in bad faith:

(i) The Respondent failed to respond to the Complainant's contentions and has provided no evidence of any actual or contemplated good faith use by it of the Disputed Domain Name; and

(ii) It is difficult to conceive of any plausible use of the Disputed Domain Name that would amount to good faith use, given that the Disputed Domain Name contains the Complainant's well-known trademark in its

entirety (with the addition of the descriptive letters “cn”). The Disputed Domain Name previously resolved to a webpage presenting sexually explicit and pornographic content which tarnishes the Complainant’s Trademark and evidences the Respondent’s bad faith (see *FENDI S.r.l. v. Wubo, Wubo*, WIPO Case No. [D2021-2019](#)). The Respondent has not demonstrated any attempt to make legitimate use of the Disputed Domain Name and the website to which it resolves, which evidences a lack of rights or legitimate interests in the Disputed Domain Name, as confirmed by past panels (see *Washington Mutual, Inc., v. Ashley Khong*, WIPO Case No. [D2005-0740](#)).

In the circumstances, the Panel finds that the Respondent registered and has been using the Disputed Domain Name in bad faith, and paragraph 4(a)(iii) of the Policy has been satisfied.

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, <cnsullair.com>, be transferred to the Complainant.

/Gabriela Kennedy/

Gabriela Kennedy

Sole Panelist

Date: August 29, 2022