

ADMINISTRATIVE PANEL DECISION

BuDhaGirl, LLC v. Yang Zhi Chao (杨智超)
Case No. D2022-2878

1. The Parties

The Complainant is BuDhaGirl, LLC, United States of America (“United States”), represented by RegitzMauck PLLC, United States.

The Respondent is Yang Zhi Chao (杨智超), China.

2. The Domain Names and Registrar

The disputed domain names <budahgirl.com>, <budhagil.com>, <budhagrl.com>, and <budhairl.com> (the “Domain Names”) are registered with eName Technology Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on August 4, 2022. On August 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On August 8, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on August 9, 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 in English on August 9, 2022.

On August 9, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On August 9, 2022, the Complainant confirmed 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 together with the amendment to 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 proceedings commenced on August 15, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 4, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 5, 2022.

The Center appointed Karen Fong as the sole panelist in this matter on September 21, 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, which is based in the United States, produces and sells a range of bangles under the brand BuDhaGirl. The BUDHAGIRL trade mark is registered in the United States. The earliest trade mark registration submitted in evidence is United States Trade Mark No. 4324229, registered on April 23, 2013 (the "Trade Mark"). The Complainant's official website is found at "www.budhagirl.com".

The Respondent, who is based in China, registered three of the four Domain Names on April 16, 2022 and <budhagirl.com> on June 21, 2022. The Domain Names all resolve to a pay-per-click ("PPC") webpage with link headings such as: "Gold Bangle Bracelets", "Rose Gold Bangle", and "White Gold Bangle". These links resolve to third party competitor websites (the "Websites").

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Names are confusingly similar to the Trade Mark, that the Respondent has no rights or legitimate interests with respect to the Domain Names, and that the Domain Names were registered and are being used in bad faith. The Complainant requests transfer of the Domain Names.

B. Respondent

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

6. Discussion and Findings

A. General

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the Domain Names, the Complainant must prove each of the following, namely that:

- (i) The Domain Names are identical or confusingly similar to trade marks or service marks in which the Complainant has rights; and
- (ii) The Respondent has no rights or legitimate interests in respect of the Domain Names; and
- (iii) The Domain Names were registered and are being used in bad faith.

B. Language of the Proceeding

The Rules, paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement, the language of the 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 information received from the Registrar, the language of the Registration Agreement for the Domain Names is Chinese.

The Complainant submits that the language of the proceeding should be English for the following reasons:

- the Domain Names are in English and the Websites are also in English indicating the Respondent's awareness of the English language;
- the links to competitor websites are also in English; and
- the Respondent is a serial offender.

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 accepts the Complainant's submissions regarding the language of the proceeding. The Respondent has not challenged the Complainant's language request and in fact has failed to file a response. The Panel is also mindful of the need to ensure the proceeding is conducted in a timely and cost effective manner. In this case, the Complainant may be unduly disadvantaged by having to conduct the proceeding in Chinese. The Panel notes that all of the communications from the Center to the Parties were transmitted in both Chinese and English. In all the circumstances, the Panel determines that English be the language of the proceeding.

C. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has established that it has rights to the Trade Mark.

The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the trade mark and the domain name to determine whether the domain name is confusingly similar to the trade mark. The test involves a side-by-side comparison of the domain name and the textual components of the relevant trade mark to assess whether the mark is recognizable within the domain name.

In this case, the Domain Names all consist of misspellings of the Trade Mark. One of them has the "g" missing, the second is missing an "i", the third is missing an "r", and the fourth has changed the positions of the "a" with the "h". Section 1.9 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), states that a domain name which consists of a common, obvious, or intentional misspelling of a trade mark is considered by panels to be confusingly similar to the relevant mark for the purposes of the first element.

In this case, the Trade Mark is clearly recognizable in the Domain Names. For the purposes of assessing identity and confusing similarity under paragraph 4(a)(i) of the Policy, it is permissible for the Panel to ignore the generic Top-Level Domain ("gTLD") which in this case is ".com". It is viewed as a standard registration requirement (section 1.11.1 of the [WIPO Overview 3.0](#)).

The Panel finds that the Domain Names are confusingly similar to a trade mark in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy therefore are fulfilled.

D. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in a domain name by demonstrating any of the following:

- (i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of

goods or services; or

(ii) the respondent has been commonly known by the domain name, even if it has acquired no trade mark or service mark rights; or

(iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers, or to tarnish the trade mark or service mark at issue.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a domain name, it is well established that, as it is put in section 2.1 of the [WIPO Overview 3.0](#) that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests. Once such *prima facie* case is made out, the burden of production shifts to the respondent to come forward with relevant allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent does come forward with evidence of relevant rights or legitimate interests, the panel weighs all the evidence, with the burden of proof always remaining on the complainant.

The Complainant contends that the Respondent is a serial cybersquatter. The Websites redirect Internet users to PPC sites, none of which confer any rights or legitimate interests given the likely revenue the Respondent derives from the misdirection caused by the incorporation of the Trade Mark into the Domain Names.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for a reply from the Respondent. The Respondent has not responded and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the Domain Names.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Names.

E. Registered and Used in Bad Faith

To succeed under the Policy, the Complainant must show that the Domain Names have been registered and are being used in bad faith. It is a double requirement.

The Panel is satisfied that the Respondent must have been aware of the Trade Mark when he registered the Domain Names given that the Trade Mark was registered prior to the Domain Names and the fact that the Trade Mark does not appear to have any meaning other than referencing the Complainant and the Trade Mark. It is implausible that the Respondent was unaware of the Complainant when he registered the Domain Names given that all four Domain Names comprise of misspellings of the Trade Mark.

The [WIPO Overview 3.0](#), section 3.2.2 states as follows:

“Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant’s mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant’s mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent’s claim not to have been aware of the complainant’s mark.”

It is inconceivable that the Domain Names were selected by the Respondent without the Complainant in mind. As outlined under the second element above, the clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent’s choice of the Domain Names is also a significant factor to consider (as stated in section 3.2.1 of the [WIPO Overview 3.0](#)). The Domain Names fall into the category stated above and the Panel finds that the registration is in bad faith.

The Panel also finds that the actual use of the Domain Names are in bad faith. The Websites are PPC sites which have been set up for the commercial benefit of the Respondent. It is highly likely that Internet users when typing the Domain Names into their browser, or finding them through a search engine would have been looking for a site operated by the Complainant rather than the Respondent. The Domain Names are likely to confuse Internet users trying to find the Complainant's website. Such confusion will inevitably result due to the fact that the Domain Names contain the Complainant's distinctive Trade Mark.

The Respondent employs the reputation of the Trade Mark to mislead Internet users into visiting the Domain Names instead of the Complainant's. From the above, the Panel concludes that the Respondent intentionally attempted to attract for commercial gain, by misleading Internet users into believing that the Respondent's Websites are that of or authorised or endorsed by the Complainant. The Panel therefore concludes that the Domain Names were registered and are being used in bad faith under paragraph 4(b)(iv) of the Policy.

The Panel has also noted that a number of UDRP cases concerning other third party brand owners where the Respondent has been the named respondent and those domain names have been ordered to be transferred. These include *Syneos Health, LLC v. 杨智超 (Zhichao Yang)*, WIPO Case No. [D2021-2731](#); *Granicus, LLC v. 杨智超 (Zhichao Yang)*, WIPO Case No. [D2021-2844](#); *Corning Incorporated v. 杨智超 (Zhichao Yang)*, WIPO Case No. [D2021-4227](#); and *CenterPoint Energy, Inc. v. 杨智超 (Zhichao Yang)*, WIPO Case No. [D2021-4046](#). This is an indication that the Respondent is a serial cybersquatter and is engaged in a pattern of bad faith conduct (section 3.1.2 of the [WIPO Overview 3.0](#)).

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 Domain Names, <budahgirl.com>, <budhagil.com>, <budhagrl.com>, and <budhairl.com>, be transferred to the Complainant.

/Karen Fong/

Karen Fong

Sole Panelist

Date: October 5, 2022