

ADMINISTRATIVE PANEL DECISION

Performance Fabrics, Inc. dba HexArmor v. qiankuazhou, 广州韩和科技有限公司

Case No. D2022-3242

1. The Parties

The Complainant is Performance Fabrics, Inc. dba HexArmor,¹ United States of America (“United States”), represented by Price Heneveld LLP, United States.

The Respondent is qiankuazhou, 广州韩和科技有限公司, China.

2. The Domain Name and Registrar

The disputed domain name <hex-armor.net> is registered with DNSPod, Inc. (the “Registrar”).

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 31, 2022. On September 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 2, 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 September 5, 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 September 9, 2022.

On September 5, 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 September 8, 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”).

¹ On October 28, 2022, the Complainant informed the Center that it had formally changed its name to “Hexarmor, Limited Partnership”.

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 September 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 6, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 7, 2022.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on October 12, 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 active in the safety products industry and is headquartered in the United States. The Complainant particularly commercializes protective clothing, gear, and equipment and specializes in high-performance cut, puncture, needle, impact, and abrasion resistance technologies. The Complainant claims to be one of the United States leading companies in this sector and also commercializes its products internationally, with its products available for sale in at least 75 countries.

The Complainant provides evidence that it owns a large international trademark portfolio for a series of HEXARMOR marks, including, but not limited to, United Arab Emirates trademark registration number 195670 for HEXARMOR (word mark), registered on October 28, 2014; and Chinese trademark registration number 9145096 for HEXARMOR (word mark), registered on March 7, 2012. The Complainant also provides evidence that it owns an extensive domain name portfolio, containing a variety of domain names incorporating its trademarks for HEXARMOR, including the domain name <hexarmor.net>, registered on July 28, 2003.

The disputed domain name was registered on October 20, 2021, and is therefore of a later date than the abovementioned trademarks of the Complainant. The Complainant submits evidence that the disputed domain name directs to an inactive webpage.

5. Parties' Contentions

A. Complainant

The Complainant essentially contends that the disputed domain name is identical to its trademarks for HEXARMOR, 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 particularly claims that the Respondent is a cyber-squatter and that the Complainant has registered the disputed domain name with no intent to use it other than to sell it to a party with a legitimate interest, such as the Complainant, or to disrupt the business of such a party. The Complainant also argues that the use made of the disputed domain name by the Respondent amounts to passive holding of the disputed domain name, which, it claims, does not confer any rights or legitimate interests in respect of the disputed domain name. Furthermore, the Complainant claims that given the prior registration and prior intensive use of its HEXARMOR trademark, the Respondent has registered and is using the disputed domain name in bad faith.

The Complainant requests that the disputed domain name be transferred to it.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Issue: Language of the Administrative 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 requested 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.

The Panel has carefully considered all elements of this case, and considers the following elements particularly relevant: the Complainant's request that the language of the proceeding be English; the lack of comments 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 in a timely manner by the Center to present its comments and response in either English or Chinese, but chose not to do so); the fact that the disputed domain name contains the Complainant's trademark in its entirety and that the disputed domain name is written in Latin letters and not in Chinese characters; and, finally, the fact that Chinese as the language of this proceeding could lead to unwarranted delays and costs for the Complainant. In view of all these elements, the Panel grants the Complainant's request, and decides that the language of this administrative 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 shown that it has valid rights in the mark HEXARMOR, based on its portfolio of registered trademarks for HEXARMOR and based on its intensive use thereof.

As to whether the disputed domain name is identical to, or confusingly similar with, the Complainant's trademarks, the Panel considers that the disputed domain name consists of only the mark HEXARMOR, given that the hyphen may be disregarded as it is considered merely as a punctuation mark (see also *Vente-Privee.Com and Vente-Privee.com IP S.à.r.l. v. 崔郡 (jun cui)*, WIPO Case No. [D2021-1685](#)). The Panel also notes that the applicable generic Top-Level Domain ("gTLD"), ".net" 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 of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 1.11.1.

The Panel concludes that the disputed domain name is identical to the Complainant’s registered trademarks for HEXARMOR, and decides that the Complainant has satisfied the requirements of the first element under the Policy.

B. Rights or Legitimate Interests

On the basis of the evidence and arguments submitted, the Panel finds 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 *bona fide* provider of goods or services under the disputed domain name, and is not making 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.

Upon review of the facts and evidence provided by the Complainant, the Panel notes that the disputed domain name directs to an inactive webpage and is not being used. In this regard, the Panel finds that merely registering a domain name and holding it passively, without making any use of it, does not demonstrate a *bona fide* offering of goods or services, or a legitimate noncommercial or fair use.

Furthermore, the Panel considers that the nature of the disputed domain name, being identical to the Complainant’s trademarks for HEXARMOR and nearly identical to one of its official domain names, namely <hexarmor.net>, carries a high risk of implied affiliation and cannot constitute fair use, as it effectively impersonates the Complainant (see [WIPO Overview 3.0](#), section 2.5.1).

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

C. Registered and Used in Bad Faith

The Panel finds that the registration of the disputed domain name, which is identical to the Complainant’s intensively used trademark, by the Respondent, which is an unaffiliated entity, creates a presumption of bad faith (see in this regard the [WIPO Overview 3.0](#), section 3.1.4). Furthermore, the Panel notes that the Complainant’s prior rights in the HEXARMOR marks would have been readily discovered by the Respondent, if it had conducted a basic domain name or trademark search before registering the disputed domain name. The Panel also considers the disputed domain name, being identical to the Complainant’s marks and trade name, to be so closely linked and obviously connected to the Complainant and its trademarks that the Respondent’s registration of this disputed domain name points toward the Respondent’s bad faith. In the Panel’s view, the preceding elements establish the bad faith of the Respondent in registering the disputed domain name.

As to use of the disputed domain name in bad faith, the Complainant provides evidence that the disputed domain name links to an inactive website. In this regard, the [WIPO Overview 3.0](#), section 3.3 provides: “[f]rom 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 identical to the Complainant’s trademarks; the high degree of distinctiveness and the prior registration and intensive use of the Complainant’s trademarks, including in the Respondent’s jurisdiction China; the fact that the Respondent concealed its identity and used a false address; and, finally, the unlikelihood of any good faith use to which the disputed domain name may be put by the Respondent. In these circumstances, the Panel considers that the passive holding of the

disputed domain name constitutes use of the disputed domain name in bad faith. On the basis of the foregoing elements, the Panel finds that it has been demonstrated that the Respondent has used, and is using the disputed domain name in bad faith.

Finally, the Respondent failed to provide any response or evidence to establish its good faith or absence of bad faith. The Panel therefore decides that the Complainant has satisfied the requirements of the third element 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 <hex-armor.net> be transferred to the Complainant.

/Deanna Wong Wai Man/

Deanna Wong Wai Man

Sole Panelist

Date: October 31, 2022