

ADMINISTRATIVE PANEL DECISION

PrideStaff, Inc. v. leed johnny
Case No. D2022-3541

1. The Parties

The Complainant is PrideStaff, Inc., United States of America (“United States”), represented by Frost Brown Todd LLC, United States.

The Respondent is leed johnny, China.

2. The Domain Name and Registrar

The disputed domain name <pridestaffgreenemployee.com> is registered with DNSPod, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on September 25, 2022. On September 26, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 28, 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 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 amended Complaint in English on October 5, 2022.

On September 29, 2022, the Center transmitted another email communication to the Parties in English and Chinese regarding the language of the proceeding. On October 4, 2022, the Complainant submitted 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 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 Chinese and English of the Complaint, and the proceedings commenced on October 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 27, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 28, 2022.

The Center appointed Douglas Clark as the sole panelist in this matter on November 1, 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 founded in 1978 and is in the business of providing professional staffing services. The Complainant operates its business using the trade mark PRIDESTAFF and has used the <pridestaff.com> domain name since 1996.

The Complainant owns the following trade mark registration in the United States:

- PRIDESTAFF, Registration No. 2,116,589, registered November 25, 1997, for use in connection with Class 35 services, with a first use date of March 1, 1995.

The disputed domain name <pridestaffgreenemployee.com> was registered on June 6, 2022. At the date of this Complaint, the disputed domain name resolved to a webpage with pay-per-click links to third-party websites offering competitive services with those of the Complainant.

The Respondent is an individual apparently based in China.

5. Parties' Contentions

A. Complainant

The Complainant contends that:

(a) The disputed domain name is confusingly similar to its trade mark. The disputed domain name is almost identical to the Complainant's trade mark along with the addition of the words "green" and "employee". The use of the generic Top-Level Domain ("gTLD") ".com" in the disputed domain name does not eliminate the overall notion that the designation is connected to the trade mark and the likelihood of confusion that the disputed domain name and the trade mark are associated;

(b) The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not affiliated with the Complainant in any way and the Complainant has never granted any authorization or license to use the Complainant's trade mark. The Respondent is not commonly known by the disputed domain name, and has not made a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name; and

(c) The disputed domain name was registered and is being used in bad faith. The mere fact that the Respondent has registered the disputed domain name incorporating the trade mark of a well-known company gives rise to an inference of bad faith. Based on the use of the disputed domain name, the Respondent registered and is using the disputed domain name to attract Internet users for commercial gain, creating a likelihood of confusion with the Complainant's trade mark.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

According to paragraph 11(a) of the Rules, unless otherwise agreed by the Parties, or 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.

In this case, the language of the Registration Agreement for the disputed domain name is Chinese. There is no agreement between the Complainant and the Respondent regarding the language of the proceeding. The Respondent did not respond as to the language of the proceeding. The Complainant has filed its Complaint in English and has requested that English be the language for the proceeding under the following main grounds:

- (i) The disputed domain name is in English;
- (ii) The website under the disputed domain name is in English;
- (iii) The Respondent's name and email are in English and the phone number provided uses the United States country code and has an area code belonging to Ottawa, Canada; and
- (iv) Translation of the Complaint and continuation of the proceeding in Chinese would cause a delay in the proceeding.

The Panel notes that the above point about the phone number and area code is incorrect. The number given looks like a mobile number in the mainland China.

In accordance with paragraph 11(a) of the Rules and taking into consideration paragraphs 10(b) and (c) of the Rules, the Panel hereby determines that the language of the proceeding shall be in English after considering the following circumstances:

- the Center has notified the Respondent of the language of the proceeding in both English and Chinese;
- the Respondent has not commented on the language of the proceeding;
- the disputed domain name adds the English words "green" and "employee" to the Complainant's trade mark;
- the website to which the disputed domain name resolves is entirely in English; and
- an order for the translation of the Complaint will result in additional expenses for the Complainant and a delay in the proceeding.

Further, this Panel decided in *Zappos.com, Inc. v. Zufu aka Huahaotrade*, WIPO Case No. [D2008-1191](#), that a respondent's failure to respond to a preliminary determination by the Center as to the language of the proceeding "should, in general, be a strong factor to allow the Panel to decide to proceed in favour of the language of the Complaint".

6.2 Substantive Issues

The Complainant must satisfy all three elements of paragraph 4(a) of the Policy in order to succeed in its action:

- (i) the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights to;
- (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.

A. Identical or Confusingly Similar

The Panel finds that the disputed domain name <pridestaffgreenemployee.com> is confusingly similar to the Complainant's trade mark. The disputed domain name reproduces the PRIDESTAFF trade mark in its entirety along with the words "green" and "employee", which does not prevent a finding of confusing similarity. The gTLD ".com" is generally disregarded when considering the first element. (See section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)")).

The Panel notes that the Complainant did not rely on any registered trademarks in China where the Respondent is located. The ownership of a trademark is generally considered to be a threshold standing issue. The location of the trademark, its date of registration (or first use) and the goods and/or services for which it is registered, are all irrelevant for the purpose of finding rights in a trademark under the first element of the UDRP. These factors may however bear on a panel's further substantive determination under the second and third elements. (See section 1.1.2 of the [WIPO Overview 3.0](#)).

The Complainant has therefore satisfied the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

The Complainant asserts that the Respondent has no business with and is in no way affiliated with the Complainant. The Respondent is not authorized nor licensed to use the Complainant's PRIDESTAFF trade mark or to apply for registration of the disputed domain name. There is no evidence that the Respondent is commonly known by the name "Pridestaff" or the disputed domain name. Further, the disputed domain name resolves to a webpage with pay-per-click links to third-party websites offering competitive services with those of the Complainant.

Section 2.1 of the [WIPO Overview 3.0](#) provides:

"While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of 'proving a negative', requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element."

The Panel finds that the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests, which has not been rebutted by the Respondent. Accordingly, the Respondent has no rights or legitimate interests in regard to the disputed domain name.

The Complainant has therefore satisfied the second element under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Based on the given evidence, the disputed domain name was registered and is being used in bad faith.

The disputed domain name was registered long after the Complainant has registered the PRIDESTAFF trade mark. The PRIDESTAFF trade mark is used by the Complainant to conduct its business and the Complainant has used the trade mark for its staffing services for over 25 years. The Panel is satisfied that the Respondent was aware of the Complainant and its PRIDESTAFF trade mark when he or she registered the disputed domain name. It appears to the Panel that the Respondent has registered the disputed domain name to attract Internet users to the website for commercial gain in accordance with paragraph 4(b)(iv) of the Policy.

The current pay-per-click advertisements for competitive services to the Complainant's business on the website to which the disputed domain name resolves has established that the Respondent is likely seeking to make a commercial gain from the website by attracting users to generate click through revenue.

Furthermore, the Panel notes that the Complainant's evidence show that the Respondent has been involved in other UDRP cases in which the panels found the Respondent's bad faith in registering the domain names incorporating third party trade marks, such as *Take-Two Interactive Software, Inc. v. johnny, leed johnny*, WIPO Case No. [D2020-1200](#); and *Accenture Global Services Limited v. 蒋黎 (Leed Johnny)*, WIPO Case No. [D2020-0298](#).

For the above reasons, the Panel finds that the disputed domain name was registered and is being used in bad faith.

The Complainant has therefore satisfied the third element under paragraph 4(a) 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 <pridestaffgreenemployee.com> be transferred to the Complainant.

/Douglas Clark/

Douglas Clark

Sole Panelist

Date: November 15, 2022