

ADMINISTRATIVE PANEL DECISION

Benefitfocus.com, Inc. v. Shilei, 石磊 (Lei Shi), and Huade Wang
Case No. D2022-4054

1. The Parties

The Complainant is Benefitfocus.com, Inc., United States of America (“United States”), represented by Nelson Mullins Riley & Scarborough, L.L.P., United States.

The Respondents are Shilei, 石磊 (Lei Shi), and Huade Wang, China.

2. The Domain Names and Registrars

The disputed domain names <benefitfocusecuritiessettlement.com>, <benefitfocussecuritessettlement.com>, <benefitfocussecuritiesettlement.com>, <benefitfocussecuritiessettlment.com>, <benefitfocussecuritetysettlement.com>, and <benefitfocussettlement.com> are registered with Dynadot, LLC, and the disputed domain name <wwwbenefitfocusecuritiessettlement.com> is registered with Chengdu West Dimension Digital Technology Co., Ltd. (the “Registrars”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on October 27, 2022. On October 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On October 31, 2022, the Registrars each transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on November 1, 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 November 2, 2022.

On November 1, 2022, the Center transmitted another email communication to the Parties in English and Chinese regarding the language of the proceeding. On November 2, 2022, the Complainant confirmed its request that English be the language of the proceeding. The Respondents 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 Respondents of the Complaint, and the proceeding commenced on November 10, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 30, 2022. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on December 5, 2022.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on December 19, 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

A. Complainant

The Complainant is a company established in 2000 and headquartered in South Carolina in the United States. The Complainant has since its inception provided employee benefit related services to employers in the United States and elsewhere under the trade mark BENEFITFOCUS (the “Trade Mark”).

The Complainant is the owner of numerous registrations in several jurisdictions worldwide for the Trade Mark, including United States registration No. 2,496,059, registered on October 9, 2001.

In August 2022, the Complainant settled a class action law suit, and authorised the plaintiffs’ attorneys in the class action to register and use the domain name <benefitfocusecuritiessettlement.com> comprising the Trade Mark (the “Settlement Domain Name”) - duly registered on August 11, 2022 - in order to provide information to prospective claimants under the settlement.

B. Respondents

The Respondents are apparently individuals with addresses in China.

C. The Disputed Domain Names

Each of the disputed domain names was registered on the same date, August 12, 2022.

D. The Websites at the Disputed Domain Names

The disputed domain names all resolve to similar English language websites containing sponsored links relating to in particular employee benefits (the “Websites”) – the same services offered by the Complainant since 2000 under the Trade Mark.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the disputed domain names are confusingly similar to the Trade Mark, the Respondents have no rights or legitimate interests in respect of the disputed domain names, and the disputed domain names were registered and are being used in bad faith.

B. Respondents

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

6. Discussion and Findings

6.1. Preliminary Issue: Consolidation of Respondents

Section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)) provides as follows:

"Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario."

The Complainant contends that there should be consolidation of the Respondents in the present proceeding, for several reasons, including in particular the following:

- (i) each of the disputed domain names was registered on the same date;
- (ii) seven of the disputed domain names were registered with the same Registrar;
- (iii) each of the disputed domain names is associated with the same server and IP address;
- (iv) each of the disputed domain names uses the same naming convention, namely, the Trade Mark plus a misspelling of "securities settlement";
- (v) each of the disputed domain names was registered one day after the Settlement Domain Name was registered.

For the above reasons put forward by the Complainant, the Panel concludes that there are sufficient grounds to support the conclusion that the disputed domain names are subject to common control and that consolidation would be fair and equitable to all Parties. The Panel notes, in addition to the factors relied upon by the Complainant, each of the disputed domain names has been used in the same manner in respect of the Websites.

Save where the context suggests otherwise, the Respondents will accordingly be referred to as the "Respondent" hereinafter.

6.2. Preliminary Issue: Language of the Proceeding

The language of the Registration Agreement for the disputed domain names <benefitfocussecuritiessettlement.com>, <benefitfocusecurityessettlement.com>, <benefitfocussecuritiessettlement.com>, <benefitfocussecuritiessettlement.com>, <benefitfocussecuritiessettlment.com>, <benefitfocussecuritysettlement.com> and <benefitfocussettlement.com> is English.

The language of the registration agreement for the disputed domain name <wwwbenefitfocussecuritiessettlement.com> is Chinese.

Pursuant to the Rules, paragraph 11, in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

Paragraph 11(a) of the Rules allows the Panel to determine the language of the proceeding having regard to all the circumstances. In particular, it is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding, in order to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. Language requirements should not lead to undue burden being placed on the parties and undue delay to the proceeding (see [WIPO Overview 3.0](#)), section 4.5.1).

The Complainant has requested that the language of the proceeding be English.

The Respondent did not make any submissions regarding the language of the proceeding, and did not file any response.

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 is also mindful of the need to ensure the proceeding is conducted in a timely and cost effective manner.

The Panel notes, in particular, that:

- (i) the language of the registration agreements for seven of the eight disputed domain names is English; and
- (ii) the Websites are in the English language.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.3. Substantive Elements of the Policy

The Complainant must prove each of the three elements in paragraph 4(a) of the Policy in order to prevail.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has rights in the Trade Mark acquired through use and registration.

Disregarding the generic Top-Level Domain ("gTLD") ".com", each of the disputed domain names incorporates the entirety of the Trade Mark, together with a misspelling of the terms "security", "securities", and/or "settlement" (see [WIPO Overview 3.0](#), section 1.7).

Where a relevant trade mark is recognisable within a disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element (see [WIPO Overview 3.0](#), section 1.8).

The Panel therefore finds that the disputed domain names are confusingly similar to the Trade Mark.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in the disputed domain name:

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

- (ii) the respondent (as an individual, business, or other organisation) has been commonly known by the disputed domain name even if the respondent has acquired no trade mark 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 trade mark or service mark at issue.

The Complainant has not authorised, licensed, or permitted the Respondent to register or use the disputed domain names or to use the Trade Mark. The Panel finds on the record that there is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain names, and the burden is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that he has acquired any trade mark rights in respect of the disputed domain names or that the disputed domain names have been used in connection with a *bona fide* offering of goods or services.

To the contrary, each of the disputed domain names consists of typos of the Settlement Domain Name comprising the Complainant's Trade Mark, and has been resolved to the Websites, containing sponsored links relating to employee benefits services, the services provided by the Complainant since 2000 under the Trade Mark.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain names.

There has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain names.

In all the circumstances, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names.

C. Registered and Used in Bad Faith

In light of the composition of each of the disputed domain names, their date of registration, and the manner of use of the Websites set out section 6.2.B. above, the Panel finds that bad faith has been made out by the Complainant under paragraph 4(b)(iv) of the Policy.

For all the foregoing reasons, the Panel concludes that the disputed domain names have been registered and are being used in bad faith.

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 names <benefitfocussecuritiessettlement.com>, <benefitfocussecuritessettlement.com>, <benefitfocussecuritiessettlement.com>, <benefitfocussecuritiessettlment.com>, <benefitfocussecuritysettlement.com>, <benefitfocussettlement.com> and <wwwbenefitfocussecuritiessettlement.com> be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Dated: January 2, 2023