

## **ADMINISTRATIVE PANEL DECISION**

shopware AG v. 铜陈 (Tong Chen)  
Case No. D2022-4962

### **1. The Parties**

The Complainant is shopware AG, Germany, represented by Jonas Rechtsanwalts-gesellschaft mbH, Germany.

The Respondent is 铜陈 (Tong Chen), China.

### **2. The Domain Name and Registrar**

The disputed domain name <uk-shopware.com> is registered with Name.com, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 23, 2022. On December 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 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 (Whols Privacy Service, Domain Protection Services, Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 9, 2023, 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 January 12, 2023.

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 of the Complaint, and the proceedings commenced on January 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 2, 2023.

The Center appointed Debrett G. Lyons as the sole panelist in this matter on February 20, 2023. 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 factual findings pertinent to the decision in this case are that:

(1) the Complainant provides a digital commerce system used by manufacturers, retailers, and brand owners under the trade mark SHOPWARE (“Trade Mark”);

(2) the Complainant is the registered proprietor of United Kingdom Intellectual Property Office (“UKIPO”) registration number UK00907290414, filed October 7, 2008, and registered April 20, 2009, for the Trade Mark; and

(3) the disputed domain name was registered on November 8, 2022, and resolves to a webpage showing the Trade Mark which states: “log in or register to grow your business with Shopware”.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant asserts trade mark rights in SHOPWARE. It holds national and pan-national registrations for the Trade Mark and submits that the disputed domain name is confusingly similar to the Trade Mark.

The Complainant alleges that the Respondent has no rights or legitimate interests in the disputed domain name because the Respondent is not known by the disputed domain name and the name is used for a nefarious purpose.

The Complainant alleges that the Respondent registered the disputed domain name in bad faith having targeted the Complainant and has since used the disputed domain name in bad faith and for illegal purposes.

The Complainant requests the Panel to order transfer of the disputed domain name.

##### **B. Respondent**

The Respondent did not submit a Response.

#### **6. Discussion and Findings**

According to paragraph 4(a) of the Policy, the Complainant must prove that:

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

(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.

It is the responsibility of the Panel to consider whether the requirements of the Policy have been met, regardless of the fact that the Respondent failed to submit a response. Having considered the Complaint and the available evidence, the Panel finds the following:

### **A. Identical or Confusingly Similar**

Paragraph 4(a)(i) of the Policy requires a two-fold enquiry – a threshold investigation into whether a complainant has rights in a trade mark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to the trade mark.

Paragraph 4(a)(i) of the Policy does not distinguish between registered and unregistered trade mark rights. It is accepted that a trade mark registered with a national or international trade mark authority is evidence of trade mark rights for the purposes of the Policy.<sup>1</sup> The Complainant provides evidence of its registration of the Trade Mark with the UKIPO, a national authority, and so the Panel finds that the Complainant has trade mark rights.

For the purposes of comparing the disputed domain name with the Trade Mark, the generic Top-Level Domain (“gTLD”) “.com” can be disregarded.<sup>2</sup> Otherwise, the disputed domain name merely hyphenates the letters “uk”, to the Trade Mark, which does not prevent a finding of confusing similarity. The Panel finds that the disputed domain name is confusingly similar to the Trade Mark<sup>3</sup> and so finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

### **B. Rights or Legitimate Interests**

The Complainant has the burden to establish that the Respondent has no rights or legitimate interests in the disputed domain name. Nevertheless, it is well settled that the Complainant need only make out a *prima facie* case, after which the *onus* shifts to the Respondent to rebut such *prima facie* case by providing evidence demonstrating rights or legitimate interests in the disputed domain name.<sup>4</sup>

Notwithstanding the lack of a response to the Complaint, paragraph 4(c) of the Policy states that any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate rights or legitimate interests to a domain name for purposes of paragraph 4(a)(ii) of the Policy:

- “(i) before any notice to you of the dispute, your 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) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

The publicly available Whois data obscured from public view the name of the underlying registrant of the disputed domain name due to the use of a privacy service. In consequence of these proceedings the Registrar identified the registrant as “铜 陈 (Tong Chen)”, which does not suggest that the Respondent might be commonly known by the disputed domain name. The Panel finds no other evidence that the Respondent might be commonly known by the disputed domain name.

There is no evidence of an association between the Parties and no evidence that the Respondent has any trade mark rights of its own. The use of the disputed domain name is as described, leading the Complainant

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<sup>1</sup> See section 1.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

<sup>2</sup> See section 1.11.1 of the [WIPO Overview 3.0](#).

<sup>3</sup> See, section 1.8 of the [WIPO Overview 3.0](#).

<sup>4</sup> See, for example, *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#).

to argue with good reason that a sinister scheme is at work. The Respondent is compounding the risk of implied affiliation found in the composition of the disputed domain name by resolving the disputed domain name to a website where the Complainant's trademark and logo are featured, and wherein which Internet users are requested to provide LogIn credentials, reflecting the underlying fraudulent intent of the Respondent in impersonating the Complainant.

The Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

Absent a Response, the Respondent has not rebutted this *prima facie* case. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name and so finds that the Complainant has satisfied the second element of the Policy.

### **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy sets out non-exclusive circumstances which shall be evidence of the registration and use of a domain name in bad faith. They are:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or  
(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or  
(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or  
(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

The Panel finds that paragraph 4(b)(iv) above has direct application to the facts. The Panel has already found the disputed domain name to be confusingly similar to the Trade Mark. Given the statement at the resolving webpage, the Panel concludes that the disputed domain name was chosen and registered in bad faith with the Complainant and the Trade Mark in mind. Further, the Panel is in agreement with the Complainant's submission that the use is for commercial gain and so, in terms of the Policy, the Panel finds that the Respondent's intention in registering and using the disputed domain name was to attract, for commercial gain, Internet users to its online location by creating a likelihood of confusion with the Trade Mark as to the source, sponsorship, affiliation, or endorsement of that location.

The Panel therefore finds that the Complainant has satisfied the third and final element 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, <uk-shopware.com>, be transferred to the Complainant.

/Debrett Lyons/

**Debrett Lyons**

Sole Panelist

Date: March 6, 2023