

## **ADMINISTRATIVE PANEL DECISION**

Spendless Shoes Pty. Ltd v. Gbcd Pnqw and Wnjleb Evjmio  
Case No. D2023-0412

### **1. The Parties**

The Complainant is Spendless Shoes Pty. Ltd, Australia, represented by HWL Ebsworth Lawyers, Australia.

The Respondents are Gbcd Pnqw, China and Wnjleb Evjmio, China.

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

The disputed domain names <spendlessfootware.com> and <spendless-shoes.com> are registered with Name.com, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 30, 2023. On January 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On January 31, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondents (Whois Agent, Domain Protection Services, Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 1, 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 amended Complaint on February 6, 2023.

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 proceedings commenced on February 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 26, 2023. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on February 27, 2023.

The Center appointed Peter Burgstaller as the sole panelist in this matter on March 8, 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 Complainant manufactures and sells footwear under the brand “Spendless Shoes” in physical stores in Australia and online via its website addressed under the domain name <spendless.com.au> (Annexes 15, 16/1, and 16/2 to the Complaint).

The Complainant’s registered business name is SPENDLESS (Annex 5 to the Complaint); the Complainant owns the Australian word trademark \$PEND-LESS \$HOES, registered on March 22, 1993, Registration No. 598606, in the International Class 42 (Annex 4 to the Complaint).

The Complainant’s main business website is addressed under the domain name <spendless.com.au> (Annexes 15, 16/1, and 16/2 to the Complaint).

The disputed domain names were registered on September 16, 2022 (Annex 1 to the Complaint). The disputed domain names resolve to websites containing shoes and footwear for sale (Annexes 15, 16/1, and 16/2 to the Complaint).

#### **5. Parties’ Contentions**

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

The Complainant manufactures and sells footwear under the brand SPENDLESS SHOES and has done so for over 30 years. The Complainant has over 200 physical stores in Australia, as well as an online store, which is accessible internationally. Its corporate name is “Spendless Shoes Pty Ltd” which incorporates the mark SPENDLESS.

The Complainant is the owner the Australian trademark \$PEND-LESS \$HOES, Registration No. 598606, registered on March 22, 1993, in the International Class 42.

The Complainant operates its footwear retail business besides the 200 physical stores throughout Australia also internationally via its online store. This online store is operated from the Complainant’s main website located at <spendless.com.au>.

The Complainant moreover owns several other domain names containing the mark SPENDLESS, *e.g.* <spendless.com.au>, <spendlessshoes.com.au> and <spendlessshoes.com>, each of these redirect to the Complainant’s website.

The Complainant’s trademark consists of the plain words “\$PEND-LESS \$HOES” with dollar signs taking the place of the capital letter “s”. The Complainant’s registered trademark is clearly recognizable in the disputed domain names. Hence, the disputed domain names are confusingly similar to the \$PEND-LESS \$HOES trademark of the Complainant.

The Respondents are not affiliated with the Complainant. The Complainant has not, at any time, expressly licensed the Respondents the right to register either of the disputed domain names, or otherwise authorized registration of the disputed domain names or use the SPENDLESS brand by the Respondents in any way.

The Complainant is unaware of any rights that the Respondents might have in other similar names incorporating words similar to “spend-less shoes” or “spendless footwear”.

As the Respondents are based in Hong Kong, China, the Complainant’s lawyers conducted searches using the Hong Kong Intellectual Property Department’s online Trade Mark Search tool on February 3, 2023, which suggest that the Respondents do not hold any trademark applications or registrations in Hong Kong, China. Finally, the Complainant has no knowledge of the business of the Respondents.

Hence, the Respondents have no rights or legitimate interests in respect of the disputed domain names.

The Respondents used the disputed domain names in relation to websites impersonating the Complainant, and which lists the Complainant's footwear for sale. The product listings appearing on the websites seem to be directly copied from the Complainant's website. All of the photographs of products appearing on the Respondents' websites are identical to those used on the Complainant's website, and are copyright works of the Complainant.

Moreover, the Respondents appear to be using the disputed domain names as part of a pattern of fraudulent activity: In the present case, the disputed domain names were operated by "spendlessshoes.com LLC" and "spendlessfootwear.com LLC", with contact address of [...] Hudson Street, New York. However, the Complainant's searches of the New York Department of State Division of Corporations database on January 27, 2023, for any entity with a name incorporating "spendless" did not yield any entity with the name "spendlessshoes.com LLC" or "spendlessfootwear.com LLC". Moreover, an external IT service provider engaged by the Complainant attempted to make a purchase via the website addressed by the disputed domain name <spendless-shoes.com> on or around January 12, 2023. A charge appeared on the credit card used for the purchase, listing the vendor as "AP \*lccoutlets store". However, to date, no goods have been received from the purchase, nor has any shipping information been received.

Hence, the Respondents have registered the disputed domain names in bad faith and are using the disputed domain names in bad faith since they operate websites and misleadingly divert the Complainant's customers for commercial gain and falsely suggests affiliation with the Complainant. Moreover, the registration and use of the disputed domain names are part of a pattern of behaviour by the Respondents that involves misappropriating and fraudulently impersonating the Complainant's trademark.

Finally, the Complainant requests a consolidation of Respondents regarding the disputed domain names since there is evidence that in fact the disputed domain names are subject to common control, so that the consolidation of Respondents would be procedurally efficient, fair and appropriate.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **A. Preliminary Procedural Issue – Consolidation of Respondents**

The Complainant has requested consolidation of multiple respondents and stated that the disputed domain names belong in fact to the same person or organization. No objection to this request was made by the Respondents.

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. Moreover, procedural efficiency would also underpin panel consideration of such a consolidation scenario (see section 4.11.2 of the [WIPO Overview 3.0](#)).

When determining whether a consolidation is appropriate, panels consider a range of factors, *e.g.*

- the registrants' identity(ies) including pseudonyms;
- the registrants' contact information including email address(es), postal address(es), or phone number(s), including any pattern of irregularities;
- relevant IP addresses, name servers, or webhost(s);
- the nature of the marks at issue (*e.g.*, where a registrant targets a specific sector),
- any naming patterns in the disputed domain names (*e.g.* suffix/prefix); or

- other arguments made by the complainant and/or disclosures by the respondent(s).

If some of these factors are present in some combination a consolidation or respondents is appropriate (see section 4.11 of the [WIPO Overview 3.0](#)).

Following the Complainant's contentions in the present case, which left unrebutted by the Respondents, the Panel is convinced that the arguments and evidence provided by the Complainant demonstrates that the named Respondents are in fact the same entity and the disputed domain names are under common control.

In this respect, the Panel notes that:

- the disputed domain names were both registered through the same registrar "Name.com Inc." (Annex 1 to the Complaint);
- the disputed domain names were registered within five minutes of each other on September 16, 2022 at 01:59:47 UTC, and at 02:04:44 UTC;
- the disputed domain names were both registered using the same privacy service via the same listed Registrant;
- both disputed domain names have been configured to operate via the same Cloudflare name servers (Annex 1 to the Complaint);
- the names of both Respondents, "Wnjleb Ejimo" and "Gbcd Pnqw", seem to be fake, they both appear to be random combinations of letters which are not real names or words. The names do not resemble anything coherent in English or any other language;
- the Hong Kong, China contact details for the Respondents are also similar, with the phone numbers provided being precisely identical; and
- the email addresses for both Respondents are also at the same domain name "[...].@vipmaill.com".

Furthermore, the courier service was unable to deliver the Center's written communication to the Respondents, reinforcing the Complainant's claim that the provided contact information is likely false.

Taking together these facts, the Panel finds that there is evidence that the disputed domain names are subject to common control, and that it would be procedurally efficient, fair, and equitable to all Parties to accept the Complainant's consolidation request. The Panel further notes that the Respondents did not react in any way – the Respondents neither rejected the consolidation request nor filed a Response.

The Panel therefore accepts the Complainant's consolidation request. Hence, the Panel will refer to the Respondents in the singular, *i.e.*, "the Respondent".

## **B. Substantive Issues**

Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) the respondent has no rights or legitimate interests in the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

### **(i) Identical or Confusingly Similar**

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Complainant submitted evidence, which clearly establishes rights in the mark \$PEND-LESS \$HOES.

In the present case, the disputed domain names <spendless-shoes.com> and <spendlessfootware.com> are confusingly similar to the Complainant's registered trademark \$PEND-LESS \$HOES since they only replace the dollar signs with the letter "s", omit the hyphen between "spend" and "less", and:

- replaces the space between "less" and "shoes" with a hyphen with regard to the disputed domain name <spendless-shoes.com>; and
- replaces the word "shoes" with the synonym "footware" with regard to the disputed domain name <spendlessfootware.com>.

It has long been established under UDRP decisions that where the relevant trademark is recognizable within the disputed domain name the mere addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) or omission of letters or hyphens will not prevent a finding of confusing similarity under the first element of the Policy (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition "[WIPO Overview 3.0](#)").

Finally, it has also long been held that generic Top-Level-Domains are generally disregarded when evaluating the confusing similarity of a disputed domain name.

Therefore, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

### **(ii) Rights or Legitimate Interests**

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP 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 (see section 2.1 of the [WIPO Overview 3.0](#)).

In this regard, the nature of the disputed domain names, containing the Complainant's trademark \$PEND-LESS \$HOES in a confusing similar form and the Complainant's contentions that the Respondent has no rights or legitimate interests in the disputed domain names, that the Respondent has no connection or affiliation with the Complainant, and the Respondent has not received any license or consent, express or implied, to use the Complainant's trademarks in a domain name or in any other manner, as well as the Respondent not having rebutted these allegations, lead the Panel to the conclusion that the Complainant has made out an undisputed *prima facie* case so that the conditions set out in paragraph 4(a)(ii) of the Policy have been met by the Complainant.

This finding is also supported by the fact that the Respondent's use of the disputed domain name, as shown in the screenshots submitted as Annexes 15, 16/1, and 16/2 to the Complaint, does not meet the requirements for a reseller or distributor to be making a *bona fide* offering of goods or services under a domain name incorporating a third-party trademark.

### (iii) Registered and Used in Bad Faith

As stated in many decisions rendered under the Policy (e.g. *Robert Ellenbogen v. Mike Pearson*, WIPO Case No. [D2000-0001](#)) both conditions, registration and use in bad faith, must be demonstrated; consequently, the Complainant must show that:

- the disputed domain names were registered by the Respondent in bad faith, and
- the disputed domain names are being used by the Respondent in bad faith.

The Complainant's registered business name is SPENDLESS and it is the owner of the registered trademark \$PEND-LESS \$HOES, long before the registration of the disputed domain names. Moreover, the Complainant registered and is using the domain names <spendless.com.au>, <spendlessshoes.com.au> and <spendlessshoes.com> each of which redirect to the Complainant's website.

It is inconceivable for this Panel that the Respondent registered and used the disputed domain names without knowledge of the Complainant's rights, which leads to the necessary inference of bad faith. This finding is supported by the fact that the disputed domain names incorporate the Complainant's \$PEND-LESS \$HOES trademark entirely with regard to <spendless-shoes.com> (except for the replacement of the dollar signs with the letter "s") or in part with regard to <spendlessfootware.com> (except for the replacement of the dollar signs with the letter "s" and replacing the word "shoes" with the synonym "footware"), and also the Complainant's company name, all of which in fact indicate that the Respondent must have been aware of the Complainant's business and trademark when registering the disputed domain names.

Therefore, the Panel is convinced that the disputed domain names were registered in bad faith by the Respondent.

The Complainant put forward evidence that the disputed domain names were used until at least January 20, 2023, and January 23, 2023, to address websites on which products of the Complainant were offered. According to the Complainant, the product listings appearing on the websites seem to be directly copied from the Complainant's website and all of the photographs of products appearing on the websites are identical to those used on the Complainant's website, and are copyright works of the Complainant.

In doing so, the Respondent intentionally attempted to attract Internet users to its websites for commercial gain, by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation or endorsement of its website according to paragraph 4(b)(iv) of the Policy – this constitutes bad faith use of the disputed domain names.

Therefore, the Panel finds that the Complainant has also proven that the Respondent registered and has been using the disputed domain names in bad faith according to paragraph 4(a)(iii) 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 names <spendlessfootware.com> and <spendless-shoes.com> be transferred to the Complainant.

*/Peter Burgstaller/*

**Peter Burgstaller**

Sole Panelist

Date: March 22, 2023