

ADMINISTRATIVE PANEL DECISION

Burttons Grill LLC v. 杨智超 (Zhi Chao Yang)

Case No. D2023-0853

1. The Parties

The Complainant is Burttons Grill LLC, United States of America (“USA”), represented by Greenberg Traurig, LLP, USA.

The Respondent is 杨智超 (Zhi Chao Yang), China.

2. The Domain Name and Registrar

The disputed domain name <burttonsgril.com> is registered with Chengdu West Dimension Digital Technology Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 23, 2023. On February 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 28, 2023, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 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 in English on March 17, 2023.

On March 1, 2023, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant confirmed its request that English be the language of the proceeding on March 17, 2023. 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 English and Chinese of the Complaint, and the proceedings commenced on March 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 9, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 12, 2023.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on April 19, 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 is a company headquartered in the USA, is active in the restaurant and hospitality sector. The Complainant was founded in 2004 and has grown to a network of 23 restaurant locations across the east coast of the USA. The Complainant has large business operations with revenues of approximately USD 100,000,000 per year and over 1,500 employees.

The Complainant provides evidence that it owns a trademark portfolio for BURTONS, BURTONS GRILL and BURTONS GRILL & BAR, including USA Trademark Registration number 5008706 for the mark BURTONS registered on July 26, 2016; USA Trademark Registration number 3143450 for the mark BURTONS GRILL registered on September 12, 2006; and USA Trademark Registration number 5279222 for the mark BURTONS GRILL & BAR registered on September 5, 2017. For the purposes of this Decision, the Panel will mainly refer to the BURTONS GRILL trademark as this is the most relevant registered trademark for this Decision.

The Complainant operates the domain name <burtonsg grill.com>, where the Complainant's official website is hosted. The website features general information about the Complainant including its menu and restaurant locations, loyalty program and online ordering.

The disputed domain name was registered on February 2, 2022 and is therefore of a later date than the abovementioned trademarks of the Complainant. The Complainant provides evidence that the disputed domain name is linked to an active website in English, which contains what are presumed to be pay-per-click hyperlinks titled "Burtons Grill and Bar", "Burtons Grill Menu" and "Burtons Hingham", which redirect Internet users to other websites presumably to generate pay-per-click revenue.

5. Parties' Contentions

A. Complainant

The Complainant essentially contends that the disputed domain name is confusingly similar to its trademarks for BURTONS, BURTONS GRILL and BURTONS GRILL & BAR, 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 claims that its trademarks are distinctive, used intensively and well-regarded in the sector in which it operates and submits company and marketing information. Particularly, the Complainant provides evidence that the disputed domain name is linked to an active website displaying what are presumed to be pay-per-click hyperlinks and argues that this constitutes an intentional attempt by the Respondent to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's marks for BURTONS GRILL. The Complainant also essentially contends that, based on those facts, the Respondent's registration and use of the disputed domain name does not confer any rights or legitimate interests in respect of the disputed domain name and constitutes registration and use of the disputed domain name in bad faith. The Complainant furthermore argues that the disputed domain name is

being offered for sale on domain name sale platform Afternic for an amount that far exceeds the Respondent's out-of-pocket expenses in registering the disputed domain name, which serves as further evidence of the Respondent's lack of rights and legitimate interests. The Complainant finally also claims in its amended Complaint that the Respondent was involved in multiple earlier domain name disputes with very similar facts and argues that the Respondent has therefore engaged in a pattern of trademark-abusive conduct.

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

Pursuant to paragraph 11(a) of the Rules, the language of the administrative proceeding shall be the language of the Registration Agreement. However, the Panel is given the authority to determine a language of the proceeding other than the language of the Registration Agreement, taking into account the circumstances of every individual case.

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 requests that English be the language of the 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, in Chinese and English, by the Center to present his comments and Response in either English or Chinese, but chose not to do so); the fact that the website hosted at the disputed domain name is exclusively in English 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 additional 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 BURTONS GRILL based on its intensive use and registration of the same as a trademark in several jurisdictions.

Moreover, as to confusing similarity of the disputed domain name with the Complainant's trademarks, the Panel considers that the disputed domain name consists of the Complainant's BURTONS GRILL trademark, whereby the Respondent merely deleted the last letter "l" at the end of the Complainant's BURTONS GRILL trademark. The Panel concludes that such deletion of the letter "l" constitutes an intentional and obvious misspelling of the Complainant's trademark (this practice is also called "typosquatting") while the Complainant's BURTONS GRILL trademark remains recognizable in the disputed domain name. In this regard, the Panel refers to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the "[WIPO Overview 3.0](#)"), section 1.9, which states: "a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element." The Panel also notes that the applicable generic Top-Level Domain ("gTLD") (".com" in this case) is viewed as a standard registration requirement, and may as such be disregarded by the Panel, see in this regard [WIPO Overview 3.0](#), section 1.11.1.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark and the first element required by the Policy is fulfilled.

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 good faith provider of goods or services under the disputed domain name and is not making a 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, the Respondent did not provide any Response or evidence in this proceeding.

Furthermore, upon review of the facts, the Panel notes that the disputed domain name is linked to an active website in English, which contains what are presumed to be pay-per-click hyperlinks titled "Burtons Grill and Bar", "Burtons Grill Menu" and "Burtons Hingham", which redirect Internet users to other websites presumably to generate pay-per-click revenue. The Panel concludes that this shows the Respondent's intention to capitalize on the reputation and goodwill of the Complainant's trademarks for BURTONS GRILL, from which the Respondent cannot derive any rights or legitimate interests in the disputed domain name (see also [WIPO Overview 3.0](#), section 2.9 and previous UDRP decisions in this sense such as *Maker Studios, Inc. v. ORM LTD / Contact Privacy Inc. Customer 0137258808*, WIPO Case No. [D2014-0918](#) and *Lennar Pacific Properties Management, Inc., Lennar Mortgage, LLC v. 徐海民 (Xu Hai Min), 权中俊 (Quan Zhong Jun), 殷磊 (Lei Yin), 杨智强 (Zhi Qiang Yang)*, WIPO Case No. [D2021-0576](#)).

On the basis of the foregoing elements, the Panel finds that the Complainant has satisfied the requirements for 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 contains a typosquatted version of the Complainant's intensively used trademark for BURTONS GRILL and the Complainant's domain name <burtongrill.com>, was consciously selected and registered by the Respondent with the clear intention to divert unsuspecting Internet users to the Respondent's website linked to the disputed domain name. Furthermore, the Panel finds that even a cursory Internet search at the time of registration of the disputed domain name would have made it clear to the Respondent that the Complainant owned prior rights in the trademarks for BURTONS GRILL. The Panel concludes that the registration of the disputed domain name was done with the Respondent's knowledge of the existence of the Complainant's marks. Given these elements, the Panel considers that the registration of the disputed domain name was conducted in bad faith.

As to use of the disputed domain name in bad faith, according to the evidence provided by the Complainant the disputed domain name is linked to an active website in English, which contains what are presumed to be

pay-per-click hyperlinks titled “Burtons Grill and Bar”, “Burtons Grill Menu” and “Burtons Hingham”, which redirect Internet users to other websites presumably to generate pay-per-click revenue. This shows that the Respondent intentionally attempted to attract, for commercial gain, Internet users to his website by creating a likelihood of confusion with the Complainant’s trademarks as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website. The Panel considers that this constitutes direct evidence of bad faith of the Respondent under paragraph 4(b)(iv) of the Policy.

Moreover, the Panel also agrees with the Complainant that the Respondent is attempting to sell the disputed domain name on the domain name sale platform Afternic for an amount most likely in excess of the Respondent’s out-of-pocket costs, *i.e.*, for USD 7,999, and finds that this also constitutes evidence of bad faith of the Respondent under paragraph 4(b)(i) of the Policy.

Finally, the Panel finds that the Complainant sufficiently proves that the Respondent has been engaged in a pattern of trademark-abusive domain name registrations. In this regard, the Panel refers to numerous prior UDRP decisions, including the following cases: *ZenBusiness Inc. v. See PrivacyGuardian.org / Zhichao Yang*, WIPO Case No. [D2022-3177](#) and *Milliman, Inc. v. 杨智超 (yang zhi chao aka Zhichao Yang)*, WIPO Case No. [D2022-3077](#). These cases involve the Respondent, and in these cases, the respective panels found that the Respondent had engaged in very similar acts of cybersquatting and also found that the Respondent had engaged in a pattern of trademark-abusive domain name registrations. The preceding elements lead the Panel to conclude that the Respondent registered and is using the disputed domain name in bad faith.

Further, the Respondent has failed to provide any response or evidence to establish his good faith or absence of bad faith. The Panel therefore finds 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 <burtonsgril.com> be transferred to the Complainant.

/Deanna Wong Wai Man/

Deanna Wong Wai Man

Sole Panelist

Date: April 26, 2023