

ADMINISTRATIVE PANEL DECISION

Vix Swimwear, Inc. v. Guizhi Li
Case No. D2023-1169

1. The Parties

The Complainant is Vix Swimwear, Inc., United States of America (“United States”), represented by Montaury Pimenta Machado & Vieira de Mello, Brazil.

The Respondent is Guizhi Li, China.

2. The Domain Name and Registrar

The disputed domain name <vixpaulabeauty.com> is registered with Gname.com Pte. Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on March 15, 2023. On March 16, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 17, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 17, 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 20, 2023.

On March 17, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On March 20, 2023, the Complainant submitted a 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 English and Chinese of the Complaint, and the proceeding commenced on March 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 13, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 14, 2023.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on April 27, 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

A. Complainant

The Complainant is a swimwear company founded in the United States in 1998. The Complainant markets and sells its swimwear products under the trade mark VIX PAULA HERMANNY (the "Trade Mark").

The Complainant is the owner of several registrations for the Trade Mark, including United States registration No. 4510284, registered on April 8, 2014. The Complainant also owns the United States registration No. 2692225 for VIX, registered on March 4, 2003.

The Complainant promotes its products on the website at the domain name <vixpaulahermanny.com>.

B. Respondent

The Respondent is located in China.

C. The Disputed Domain Name

The disputed domain name was registered on October 12, 2022.

D. Use of the Disputed Domain Name

The disputed domain name is resolved to an English language website, which impersonates an official or authorised website of the Complainant, featuring prominently the Trade Mark and products of the Complainant (the "Website").

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to the Trade Mark; the Respondent has no rights or legitimate interests in respect of the disputed domain name; and the disputed domain name has been registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1. Procedural Issue: Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11(a), 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 of WIPO Panel Views on Selected UDRP Questions, Third Edition \(“WIPO Overview 3.0”\)](#), section 4.5.1).

The Complainant has requested that the language of the proceeding be English, for several reasons, including the fact the Website is an English language website. The Complainant also contends that the proceeding in Chinese would involve additional costs and delay.

The Respondent did not make any submissions regarding the language of the proceeding, and did not file any response in either Chinese or English, after the Respondent had been duly notified in both Chinese and English of the language of the proceeding, and of the Complaint.

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.

In light of the content of the Website, the Panel finds there is sufficient evidence in support of the conclusion that the Respondent is conversant in English.

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

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.

6.2. 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.

The disputed domain name consists of a dominant feature of the Trade Mark (see [WIPO Overview 3.0](#), section 1.7) – namely, the words “vix paula” – together with the word “beauty”. The Panel notes also that the Website features prominently the Trade Mark and products of the Complainant, which affirms a finding of confusing similarity (see [WIPO Overview 3.0](#), section 1.15). Further, the disputed domain name also incorporates the Complainant's VIX trade mark in its entirety.

The Panel therefore finds that the disputed domain name is confusingly similar to the trade marks in which the Complainant has rights.

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 a 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 organization) 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 name or to use the Trade Mark or other trade marks in which the Complainant has rights. 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 name, and the burden of production 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 name or that the disputed domain name has been used in connection with a *bona fide* offering of goods or services. To the contrary, the disputed domain name has been used in respect of the Website, in order to impersonate the Complainant and pass off the Website as a website of, or authorised by, the Complainant. Furthermore, the Complainant's representatives were unable to complete orders for products purportedly offered via the Website, which suggests the disputed domain name has been used in respect of the Website for an improper motive.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain name; and there has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

The Panel finds that the Respondent has failed to produce any evidence to rebut the Complainant's *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Panel therefore finds that the Respondent lacks rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

In light of the manner of use of the disputed domain name highlighted in section 6.2.B above, the Panel concludes that the disputed domain name has been registered and is being used in bad faith pursuant to paragraph 4(b)(iv) 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 <vixpaulabeauty.com> be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Dated: May 11, 2023