

ADMINISTRATIVE PANEL DECISION

SNT2 v. chen sheng
Case No. D2023-1302

1. The Parties

The Complainant is SNT2, France, internally represented.

The Respondent is chen sheng, Taiwan, China.

2. The Domain Name and Registrar

The disputed domain name <ops-store.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 24, 2023. On March 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 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 28, 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 in English on March 31, 2023.

On March 28, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On March 29, 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 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 April 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 24, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 25, 2023.

The Center appointed Matthew Kennedy as the sole panelist in this matter on April 28, 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.

On May 4, 2023, the Panel issued Administrative Panel Procedural Order No. 1 (the "Order") in which it requested the Complainant to provide evidence of the degree of distinctiveness and reputation of the mark under French Registration No. 4537954 and to elaborate on its allegation of bad faith registration and use of the disputed domain name. The Complainant's further submission was due by May 9, 2023. The Order gave the Respondent 5 days to respond to the Complainant's further submission and extended the Decision due date until May 16, 2023. The Complainant filed its further submission in response to the Order on May 8, 2023. No comments were received from the Respondent.

4. Factual Background

The Complainant is a company specializing in replicas, accessories and equipment for a military simulation sport known as "Airsoft". It holds French trademark registration number 4537954 for a semi-figurative mark featuring an eagle's head followed by the text OPS STORE above the text AIRSOFT SHOP in smaller font, registered in colors on March 28, 2019, specifying goods in classes 13, 18 and 25. That trademark registration remains current. The Complainant also registered the domain name <ops-store.fr> on September 2, 2014 that it uses in connection with a website where it markets its airsoft products. The site prominently displays the OPS STORE AIRSOFT SHOP semi-figurative mark. According to analytical data presented by the Complainant, the website received almost 900,000 visits from users in 2022.

The Respondent is an individual based in Taiwan, Province of China.

The disputed domain name was created on July 24, 2022. The registrant name field in the Registrar's Whois database contains the following message: "please contact our customer service to acquire it". It does not specify a price. The disputed domain name does not resolve to an active website; rather, it is passively held.

5. Parties' Contentions

A. Complainant

The domain name is identical to the Complainant's OPS STORE trademark.

The Respondent should be considered as having no rights or legitimate interests in respect of the disputed domain name because (1) he has not filed and/or registered any trademark containing the disputed domain name; (2) he is not known under the disputed domain name; and (3) there is no evidence of his use of, or demonstrable preparations to use the disputed domain name, bearing in mind that there is no active website under the disputed domain name. To date, the Respondent has not offered any explanation of any rights or legitimate interests in the disputed domain name.

The disputed domain name should be considered as having been registered and used in bad faith by the Respondent because it was registered primarily for the purpose of selling it to the Complainant bearing in mind that (1) the Respondent clearly mentions on the Whois information page in the heading Registrant "please contact our customer service to acquire it" and (2) the Complainant is the only one using the brand OPS STORE on the market. The Complainant's trademark was widely used online well before the registration of the disputed domain name. To date, the Respondent has not come forward to deny the Complainant's assertions of 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

Paragraph 11(a) of the Rules provides that “unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding”. The Registrar confirmed that the Registration Agreement for the disputed domain name is in Chinese.

The Complainant requests that the language of the proceeding be English. Its main arguments are that the Complainant is totally unable to speak or write in Chinese; and the disputed domain name includes an English word and clearly relates to companies in English-speaking countries. It also refers to the expenses incurred and delay caused by translations.

Paragraph 10(b) and (c) of the Rules require the Panel to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding take place with due expedition. Prior UDRP panels have decided that the choice of language of the proceeding should not create an undue burden for the parties. See, for example, *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#); and *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. ltd.*, WIPO Case No. [D2008-0293](#).

The Panel observes that the Complaint and the amendment to the Complaint were filed in English. The disputed domain name also incorporates an English word (“store”). Despite the Center having sent emails regarding the language of the proceeding and the notification of the Complaint in both English and Chinese, the Respondent has not requested that Chinese be the language of the proceeding nor expressed any interest in participating otherwise in this proceeding. Therefore, the Panel considers that requiring the Complainant to translate the Complaint would create an undue burden and delay.

Having considered all the circumstances above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English. The Panel would have accepted a Response in Chinese, but none was filed.

6.2. Substantive Issues

Paragraph 4(a) of the Policy provides that a complainant must prove each of the following elements:

- (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 respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The burden of proof of each element is borne by the Complainant. The Respondent's default does not by itself mean that the Complainant is deemed to have prevailed. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.3.

A. Identical or Confusingly Similar

Based on the evidence presented, the Panel finds that the Complainant holds rights in the semi-figurative OPS STORE AIRSOFT SHOP mark. For technical reasons, the disputed domain name cannot include the figurative elements of that trademark, hence these other elements can be disregarded in the comparison between the disputed domain name and the mark. See [WIPO Overview 3.0](#), section 1.10.

The disputed domain name incorporates the dominant textual element of the mark, *i.e.*, OPS STORE, as its initial element. The components “ops” and “store” are separated by a hyphen in the disputed domain name but they are shown in different colors in the trademark and distinguished from each other in both formats. The disputed domain name does not incorporate the other textual elements of the mark, *i.e.*, AIRSOFT SHOP, which are in smaller font. Despite these differences, on a side-by-side comparison, the dominant textual element of the Complainant’s mark remains clearly recognizable in the disputed domain name.

The disputed domain name also includes a gTLD (“.com”). As a standard requirement of domain name registration, a gTLD extension may be disregarded in the comparison between a domain name and a trademark for the purposes of the first element of the Policy unless it has some impact beyond its technical function, which is not the case here. See [WIPO Overview 3.0](#), section 1.11.

Therefore, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the Panel, shall demonstrate that the respondent has rights or legitimate interests in a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- (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 trademark 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 trademark or service mark at issue.

As regards the first and third circumstances set out above, the disputed domain name is passively held. The disputed domain name incorporates the dominant element of the Complainant’s mark, and it is clear from the Complaint that the Respondent is not authorized by the Complainant. This is not a use in connection with a *bona fide* offering of goods or services and there is no evidence of any demonstrable preparations to make such a use of the disputed domain name. Nor is this a legitimate noncommercial or fair use of the disputed domain name.

According to the Registrar’s Whois database, the Respondent’s name is “chen sheng” and his contact email user name includes the name “Andy Liu”. There is no evidence on the record that the Respondent has been commonly known as the disputed domain name.

According to evidence presented by the Respondent, a search of the WIPO Global Brand Database did not reveal any trademark including the element “opsstore” filed and/or registered by any party besides the Complainant.

The Panel takes note that the element of the disputed domain name preceding the hyphen (“ops”) is short for “operations” in military, business, and other contexts, and that the element after the hyphen (“store”) is a dictionary word. However, there is no evidence that the Respondent is using, or intends to use, the disputed domain name in relation to the meaning of these terms.

In view of the above circumstances, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent did not rebut that case because he did not respond to the Complainant’s contentions.

Therefore, based on the record of this proceeding, the Panel finds that the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that certain circumstances shall be evidence of the registration and use of a domain name in bad faith but these circumstances are not exhaustive.

With respect to registration, the disputed domain name was registered in 2022, years after the registration of the Complainant’s OPS STORE AIRSOFT SHOP mark. The disputed domain name incorporates the dominant element of that mark. The disputed domain name is also identical to the Complainant’s domain name <ops-store.fr> but for the different gTLD. According to evidence presented by the Complainant, the top result of a search in the Google search engine for “opsstore” is the Complainant’s website associated with that domain name, where it prominently displays its mark. The evidence shows that the Complainant’s website has received considerable traffic, including in 2022, the year in which the disputed domain name was registered. The Respondent offers no explanation for his choice to register the disputed domain name. Based on this record, the Panel considers it more likely than not that the Respondent had the Complainant, its domain name, and its mark in mind at the time that he registered the disputed domain name.

With respect to use, the Respondent currently makes only passive use of the disputed domain name but this does not preclude a finding of use in bad faith. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). In the present dispute, the disputed domain name incorporates the dominant element of the Complainant’s mark and is identical to the Complainant’s domain name, including punctuation, but for the gTLD. The Complainant has acquired a considerable reputation in its mark through years of use in connection with its airsoft business, including online. The Respondent provides no explanation of any good faith use of the disputed domain name that it contemplates. In all these circumstances, and based on the findings in section 6.2B above, the Panel considers it more likely than not that the Respondent is using the disputed domain name in bad faith.

Therefore, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant has satisfied the third element in paragraph 4(a) 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 <ops-store.com> be transferred to the Complainant.

/Matthew Kennedy/
Matthew Kennedy
Sole Panelist
Date: May 16, 2023