

## **ADMINISTRATIVE PANEL DECISION**

CH Development, LLC (d/b/a March) v. zhuang xiu mei  
Case No. D2023-1891

### **1. The Parties**

The Complainant is CH Development, LLC (d/b/a March), United States of America (“United States”), represented by Arnold & Porter Kaye Scholer LLP, United States.

The Respondent is zhuang xiu mei, China.

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

The disputed domain name <marchzmo.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 April 27, 2023. On April 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 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 May 4, 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 May 5, 2023.

On May 4, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On May 5, 2023, the Complainant submitted its 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 of the Complaint, and the proceedings commenced on May 11, 2023. In accordance with the Rules, paragraph 5,

the due date for Response was May 31, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 1, 2023.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on June 9, 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 established in the United States and operates a retail store and website where it commercializes various home goods, kitchen goods, furniture, fine art, and other products in the United States and elsewhere in the world.

The Complainant provides evidence that it owns a portfolio of trademark registrations for the mark MARCH. Examples of such registrations include the following word mark registrations: United States trademark no. 2,971,105 for MARCH, registered on July 19, 2005; and United States trademark no. 4,554,659 for MARCH, registered on June 24, 2014. The Complainant also has a strong online presence through its official website hosted at the domain name <marchsf.com>, which it has used since at least as early as 2003 to host a website about the Complainant and its products.

The relevant registered trademarks adduced by the Complainant were successfully registered prior to the date of registration of the disputed domain name, which is September 30, 2022. The Complainant submits evidence that the disputed domain name directs to an active website, which presents itself as a website operated by the Complainant by prominently using the MARCH marks, as well as product images from the Complainant's official website, and offers for sale purported MARCH-branded products and other products.

#### **5. Parties' Contentions**

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

The Complainant essentially contends that the disputed domain name is confusingly similar to its trademarks for MARCH, 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 intensively used and enjoy a strong reputation in the home decoration and furniture industry and provides printouts of its official website. Moreover, the Complainant provides evidence that the disputed domain name is linked to an active website, which it claims the Respondent is operating as an e-commerce website, selling what the Complainant presumes to be counterfeit products, due to their unclear commercial origin. In this context, the Complainant also essentially argues that the Respondent is unlawfully misrepresenting its website as operated by the Complainant, by using the Complainant's trademarks and product images. The Complainant also claims that the Respondent is intentionally attracting Internet users for commercial gain to its website, by creating consumer confusion between the website associated with the disputed domain name and the Complainant's trademarks. The Complainant essentially contends that the registration and use of the disputed domain name in such circumstances constitutes registration and use in bad faith.

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, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

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 in English, and requests that English be the language of the proceeding. The Panel notes that the Respondent did not comment on the language of the proceeding and did not submit any arguments on the merits of this proceeding.

In considering this request, the Panel has carefully reviewed all elements of this case, and deems the following elements particularly relevant: the Complainant's request that the language of the proceeding be English; the lack of comment 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 by the Center in Chinese and English and in a timely manner to present its comments and response in either Chinese or English, but chose not to do so); the fact that the disputed domain name is written in Latin letters and not in Chinese characters and that the website linked to the disputed domain is exclusively in English, so that the Panel concludes that the Respondent is capable of writing and understanding English; and, finally, the fact that Chinese as the language of 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 proceeding shall be English.

### 6.2 Discussion and Findings on the Merits

The Policy requires the Complainant to prove three elements:

- (a) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (b) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (c) 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 provided sufficient evidence that it has valid rights in its trademarks for MARCH, based on its use and registration of the same as trademarks, as stated above.

Further, as to confusing similarity of the disputed domain name with the Complainant's MARCH marks, the Panel finds that the disputed domain name was created by the Respondent by merely adding the term "zmo" after the Complainant's MARCH trademark. In this regard, the Panel refers to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7, which states: "[...] in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing." The Panel concludes that the disputed domain name contains the Complainant's trademark MARCH, which remain easily recognizable in spite of the abovementioned addition of "zmo", and which is therefore confusingly similar to the Complainant's MARCH marks. The Panel also notes that the applicable generic Top-Level Domain (".com" in this case) is viewed as a standard registration requirement, and may as such be disregarded by the Panel, see in this regard the [WIPO Overview 3.0](#), section 1.11.1.

Accordingly, based on the above elements, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks. The Panel decides that the Complainant has satisfied the requirements of the first element under the Policy.

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

On the basis of the evidence and arguments submitted, the Panel accepts 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 legitimate noncommercial 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, no evidence or arguments have been submitted by the Respondent in reply.

The Panel also notes that the Respondent has not provided any evidence of the use of, or demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services. Further, upon review of the facts and the evidence submitted in this proceeding, the Panel notes that the disputed domain name directs to an active website which shows a clear intent on the part of the Respondent to misleadingly pass off as the Complainant's website for commercial gain. In fact, said website prominently displays the Complainant's trademarks and even uses the Complainant's own product images likely protected by copyright, and labels the website as "Deals MARCH Store", which is a deceptive description, thereby misleading Internet users into believing that the Respondent is at least licensed by, or affiliated with the Complainant and/or its trademarks. Moreover, the Panel also accepts that, given the unclear origin of the products and the Respondent's misrepresentation of the website as a website operated by the Complainant, it is probable that the products offered by the Respondent on such website are counterfeit products. However, even if they were legitimate products, it is clear to the Panel from the foregoing elements that the Respondent is not a good faith provider of goods or services under the disputed domain name, see also *Okidata Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#), and that there are no other circumstances conferring any rights or legitimate interests on the Respondent. Given the abovementioned elements, the Panel concludes that the Respondent's use does not constitute a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use of the disputed domain name.

On the basis of the foregoing elements, the Panel considers that none of the circumstances of rights or legitimate interests envisaged by paragraph 4(c) of the Policy apply, and that the Complainant has satisfied the requirements of the second element under the Policy.

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

Given the intensive use and the strong reputation of the Complainant's prior registered trademarks, the Panel finds that the subsequent registration of the disputed domain name clearly and consciously targeted the Complainant's prior registered trademarks for MARCH. The Panel deducts from these efforts to consciously target the Complainant's prior registered trademarks that the Respondent knew, or at least should have known, of the existence of the Complainant's trademarks at the time of registering the disputed domain name.

This finding is confirmed by the fact that the website linked to the disputed domain name is used to offer for sale MARCH products without authorization, since this indicates that the Respondent was fully aware of the Complainant's business and its prior trademarks. The Panel also notes that the website did not disclaim any relationship between the Parties (instead it contains a deceptive copyright notice). Furthermore, the Panel considers that through the Complainant's prior registration and intensive use of its trademarks, the disputed domain name is so closely linked and so obviously connected to the Complainant and its trademarks that the Respondent's registration of the disputed domain name points toward the Respondent's bad faith. In the Panel's view, the foregoing elements clearly indicate bad faith on the part of the Respondent, and the Panel therefore finds that it has been demonstrated that the Respondent registered the disputed domain name in bad faith.

As to use of the disputed domain name in bad faith, the Complainant provides evidence that the disputed domain name directs to an active website which shows a clear intent on the part of the Respondent to misleadingly pass off as the Complainant's website, displaying the Complainant's trademarks, official product images, and offering products for sale that are likely counterfeit products. The Panel concludes from these facts that the Respondent is intentionally attracting Internet users for commercial gain to such website, by creating consumer confusion between the website associated with the disputed domain name and the Complainant's trademarks. This constitutes direct evidence of the Respondent's bad faith under paragraph 4(b)(iv) of the Policy. The Panel therefore finds that it has been demonstrated that the Respondent has used, and is using the disputed domain name in bad faith.

Finally, the Respondent has failed to provide any response or evidence to establish its good faith or absence of bad faith. The Panel therefore finds that the Complainant has satisfied the requirements of the third requirement 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 <marchzmo.com> be transferred to the Complainant.

*/Deanna Wong Wai Man/*

**Deanna Wong Wai Man**

Sole Panelist

Date: June 22, 2023