

ADMINISTRATIVE PANEL DECISION

Ecoalf Recycled Fabrics, S.L. v. huang xu and Yangfu Chen Case No. D2023-1991

1. The Parties

The Complainant is Ecoalf Recycled Fabrics, S.L., Spain, represented by Baylos 5.0 Legal Advisors, S.L., Spain.

The Respondents are huang xu, China; and Yangfu Chen, China.

2. The Domain Names and Registrar

The disputed domain names <ecoalfsale.com>, <ecoalfstore.com>, and <ecoalfwear.com> (the “Domain Names”) are registered with Gname.com Pte. Ltd. (the “Registrar”).

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 4, 2023. On May 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On May 8, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Names 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 10, 2023, providing the registrants 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 May 11, 2023.

On May 10, 2023, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant submitted its request that English be the language of the proceeding on May 12, 2023. 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 Respondents in English and Chinese of the Complaint, and the proceedings commenced on May 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 6, 2023. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on June 8, 2023.

The Center appointed Karen Fong as the sole panelist in this matter on June 16, 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, based in Spain, designs, manufactures, and markets fashion products made from sustainable materials since 2012 under the brand ECOALF. It has grown to become an international brand in sustainable fashion.

The ECOALF trade mark is registered in many jurisdictions around the world including Spain, the European Union, the United States of America, and China. The earliest trade mark registration submitted in evidence is Spanish Trade Mark No. M2857649 for ECOALF 1.0, registered on July 28, 2009; and European Union Trade Mark No. 018091933 for ECOALF, registered on February 13, 2020 (individually and collectively the "Trade Mark"). The Complainant's slogan, which is also registered as a trade mark, is BECAUSE THERE IS NO PLANET B.

The Complainant's official website is at the domain name <ecoalf.com>.

The Complaint involves three Domain Names registered by the Respondents as detailed below:

No.	Domain Name	Registrant	Date of Registration
1	<ecoalfsale.com>	Huang Xu	November 2, 2022
2	<ecoalfstore.com>	Yangfu Chen	October 24, 2022
3	<ecoalfwear.com>	Yangfu Chen	November 2, 2022

The Domain Names were all directed to websites which mimic the Complainant's website including using the Trade Mark, the Complainant's slogan, the images and videos belonging to the Complainant, and purports to sell the Complainant's products (collectively, the "Websites"). The Complainant was alerted by its followers on Instagram of the existence of fake websites impersonating the Complainant during its Black Friday 2022 campaign, hence leading to it becoming aware of the Domain Names.

The Websites are no longer active following take down requests by the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Names are identical or confusingly similar to the Trade Mark, the Respondents have no rights or legitimate interests with respect to the Domain Names, and that the Domain Names were registered and are being used in bad faith. The Complainant requests transfer of the Domain Names, all of which it believes are related and under management and common control of a single entity or network. The basis of its belief that the Respondents are related and under management and common control of a single network are set out in section 6.A below.

B. Respondents

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

6. Preliminary Procedural Issues

A. Consolidation of the Proceeding

Paragraph 4(f) of the Policy allows a panel to consolidate multiple disputes between parties at its sole discretion and paragraph 10(e) of the Rules empowers a panel to consolidate multiple domain name disputes in accordance with the Policy and the Rules. Neither the Policy nor the Rules expressly provide for the consolidation of multiple respondents in a single administrative proceeding. In fact, paragraph 3(c) of the Rules provides that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder. The panel in *Speedo Holdings B.V. v. Programmer, Miss Kathy Beckerson, John Smitt, Matthew Simmons*, WIPO Case No. [D2010-0281](#), reviewed the relevant UDRP decisions in relation to consolidation in multiple respondents' cases and extracted the following general principles:

(1) Consolidation of multiple registrants as respondents in a single administrative proceeding may in certain circumstances be appropriate under paragraphs 3(c) or 10(e) of the Rules provided the complainant can demonstrate that the disputed domain names or the websites to which they resolve are subject to common control, and the panel having regard to all of the relevant circumstances, determines that consolidation would be procedurally efficient and fair and equitable to all parties.

(2) The administrative provider should act as a preliminary gatekeeper in such cases by determining whether or not such complaints fulfil the requisite criteria. Once a case is admitted on a *prima facie* basis, the respondent has the opportunity to make its submissions on the validity of the consolidation together with its substantive arguments. In the event that the panel makes a finding that the complaint has not satisfied the requisite criteria, the complainant is not precluded from filing the complaint against the individual named respondents.

In this case, the Complainant has submitted a request for consolidation of multiple Respondents, based on the following reasons:

- all three Domain Names share the same Registrar;
- two of three Domain Names are owned by the same registrant;
- the Domain Name <ecoalfsale.com>, which bears the name of a different registrant, was created on the same day and time (just one second apart) as Domain Name <ecoalfwear.com>; and
- all three Domain Names target the Trade Mark, and the Websites were identical to each other.

The Complainant has provided good evidence referred to above to substantiate its case that the Respondents are somehow connected to each other and under common control aimed at intentionally using the Trade Mark in the Domain Names in bad faith. The Respondents did not file a response and so has not challenged any of these allegations.

Accordingly, applying the principles to the facts in this case, the Panel finds that the Complainant has established more likely than not that the Domain Names are subject to common ownership or control. The Panel finds such common control to justify consolidation of the claims against the registrants of the Domain Names in this proceeding. The Panel further concludes in the circumstances of this case that consolidation would be fair and equitable to all Parties and procedurally efficient, and therefore will allow the consolidation as requested by the Complainant pursuant to paragraph 10(e) of the Rules. The Respondents may therefore be referred to as the "Respondent".

B. Language of the Proceeding

The Rules, paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement, the language of the 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 information received from the Registrar, the language of the Registration Agreement for the Domain Name is Chinese.

The Complainant submits that the language of the proceeding should be English for the following main reasons:

- (a) English is the language for international commerce, and this is an international business conflict. The Complainant's native language is Spanish whilst that of the Respondent is Chinese. English is thus a neutral language for both Parties in this matter;
- (b) the Registrar is based in Singapore which has four official languages including English;
- (c) the Registrar has also communicated with the Complainant's legal representatives in English prior to the filing of the Complaint;
- (d) the identity of the Respondent was not revealed at the time of the filing of the Complaint, hence English was selected as the reasonable option;
- (e) the Domain Names all include English words such as "wear", "store", and "sales", which indicate that the Respondent understands English; and
- (f) the Websites are all in English.

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.

The Panel accepts the Complainant's submission regarding the language of the proceeding. The Respondent has not challenged the Complainant's language request and in fact has failed to file a response in either Chinese or English. The Panel is also mindful of the need to ensure the proceeding is conducted in a timely and cost effective manner. In this case, the Complainant may be unduly disadvantaged by having to conduct the proceeding in Chinese. The Panel notes that all of the communications from the Center to the Parties were transmitted in both Chinese and English. In all the circumstances, the Panel determines that English be the language of the proceeding.

7. Discussion and Findings

A. General

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the Domain Names, the Complainant must prove each of the following, namely that:

- (i) the Domain Names are identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the Domain Names; and
- (iii) the Domain Names were registered and are being used in bad faith.

B. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has established that it has rights to the Trade Mark.

The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the trade mark and the domain name to determine whether the domain name is confusingly similar to the trade mark. The test involves a side-by-side comparison of the domain name and the textual components of the relevant trade mark to assess whether the mark is recognizable within the domain name.

In this case, the Trade Mark is reproduced in its entirety in the Domain Names together with the terms “sale” in respect of Domain Name <ecoalfsale.com>, “store” in respect of Domain Name <ecoalfstore.com>, and “wear” in relation to Domain Name <ecoalfwear.com>. The addition of these descriptive terms do not prevent a finding of confusing similarity between the Trade Mark and the Domain Names. *E.g.*, *N.V. Organon Corp. v. Vitalline Trading Ltd.*, *Dragic Veselin / PrivacyProtect.org*, WIPO Case No. [D2011-0260](#); *Oakley, Inc. v. wu bingjie aka bingjie wu/Whois Privacy Protection Service*, WIPO Case No. [D2010-0093](#); and *X-ONE B.V. v. Robert Modic*, WIPO Case No. [D2010-0207](#).

For the purposes of assessing identity or confusing similarity under paragraph 4(a)(i) of the Policy, it is permissible for the Panel to ignore the generic Top-Level Domain which in this case is “.com”. It is viewed as a standard registration requirement (section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”)).

For the reasons above, the Panel finds that the Domain Names are confusingly similar to trade marks in which the Complainant has rights.

C. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights or legitimate interests in the domain name by demonstrating any of the following:

- (i) before any notice to it of the dispute, the respondent’s use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name, even if it has acquired no trade mark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name, it is well established that, as it is put in section 2.1 of the [WIPO Overview 3.0](#), that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. Once such *prima facie* case is made out, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent does come forward with some allegations or evidence of relevant rights or legitimate interests, the panel weighs all the evidence, with the burden of proof always remaining on the complainant.

The Complainant contends that the Respondent is not authorized to use the Trade Mark within the Domain Names. The Respondent’s unauthorized use of the Trade Mark in the Domain Names in relation to Websites purporting to be the Complainant’s is not a *bona fide* offering of goods or services or legitimate noncommercial or fair use of the Domain Names.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not responded and the Panel is unable to conceive of any basis upon

which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the Domain Names.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name. The fact that the Domain Names do not currently resolve to active websites does not obviate the Panel's finding of lack of rights or legitimate interests.

The requirements of paragraph 4(a)(ii) of the Policy therefore are fulfilled.

D. Registered and Used in Bad Faith

To succeed under the Policy, the Complainant must show that the Domain Names have been both registered and used in bad faith. It is a double requirement.

The Panel is satisfied that the Respondent must have been aware of the Trade Mark when it registered the Domain Names. The trade mark registrations of the Complainant predate the registration of the Domain Names and the Domain Names consist of the Trade Mark in its entirety and they are linked to the Websites which mimic the Complainant's official website and reference the Complainant's products. Therefore, it is implausible that the Respondent was unaware of the Complainant when it registered the Domain Names.

In the [WIPO Overview 3.0](#), section 3.2.2 states as follows:

"Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant's mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant's mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent's claim not to have been aware of the complainant's mark."

The fact that there is a clear absence of rights or legitimate interests coupled with no explanation for the Respondent's choice of the Domain Names is also a significant factor to consider (as stated in section 3.2.1 of the [WIPO Overview 3.0](#)). In light of the above, the Panel finds that registration was in bad faith.

The Domain Names are also being used in bad faith. The Websites were set up for the commercial benefit to the Respondent without authorisation from the Complainant. The Domain Names were registered just before Black Friday in 2022 to take advantage of consumers assuming that the offering of discounted products were because of Black Friday rather than a likely scam. It is highly likely that Internet users when typing the Domain Names into their browser or finding them through a search engine would have been looking for a site operated by the Complainant rather than the Respondent.

The Domain Names are likely to confuse Internet users trying to find the Complainant's official website. Such confusion will inevitably result due to the incorporation of the Trade Mark as the most prominent element of the Domain Names. The Respondent employs the fame of the Trade Mark to mislead Internet users into visiting the websites connected to the Domain Names instead of the Complainant's.

The contents of the Websites were calculated to give the impression that they have been authorized by or connected to the Complainant when this is not the case. The Websites were set up to deliberately mislead Internet users that it is connected to, authorised by or affiliated with the Complainant and likely to be part of a phishing scam to obtain confidential information from Internet users. From the above, the Panel concludes that the Respondent intentionally attempted to attract, for commercial gain, Internet users to the Respondent's Websites by misleading Internet users into believing that the Respondent's websites are authorised or somehow connected to the Complainant.

The Panel therefore concludes that the Domain Names were registered and are being used in bad faith under paragraph 4(b)(iv) of the Policy.

Therefore, the Complainant has satisfied the third element of the Policy.

8. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Names, <ecoalfsale.com>, <ecoalfstore.com>, and <ecoalfwear.com>, be transferred to the Complainant.

/Karen Fong/

Karen Fong

Sole Panelist

Date: July 4, 2023