

ADMINISTRATIVE PANEL DECISION

Fiskars Corporation v. Juan Lian

Case No. D2023-2144

1. The Parties

The Complainant is Fiskars Corporation, Finland, represented by Corsearch, Inc., United States of America (“United States”).

The Respondent is Juan Lian, China.

2. The Domain Name and Registrar

The disputed domain name <wedgwoodus.com> is registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 15, 2023. On May 16, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 18, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 May 22, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 11, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 14, 2023.

The Center appointed Luca Barbero as the sole panelist in this matter on June 21, 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, founded in 1649, is one of the oldest companies in Finland and owns numerous design-driven brands for indoor and outdoor living.

In 2015, the Complainant acquired the WWRD group of companies and its portfolio of iconic luxury home and lifestyle brands which include Waterford, Wedgwood, Royal Doulton, Royal Albert, and Rogaška.

The Complainant is available in more than 100 countries across Europe, Asia, and the Americas, with 350 global retail stores employing approximately 6,595 people in 30 countries and with a reported revenue of EUR 1.25 billion in 2021.

WEDGWOOD is an English brand of fine porcelain and luxury accessories, which was founded in 1759 by the entrepreneur Josiah Wedgwood. Its rapid success led it to becoming one of the largest manufacturers of Staffordshire pottery, exported across Europe as far as the Russian Federation and to the Americas.

In 1995, the WEDGWOOD brand was granted the Royal Warrant, a mark of recognition of those who have supplied goods or services to the Royal Households for at least five years, from Her Majesty Queen Elizabeth II.

The Complainant's subsidiary WWRD UNITED KINGDOM, LTD is the owner, amongst others, of the following United States trademark registrations: No. 0060198 for WEDGWOOD (word mark), filed on July 6, 1905, and registered on January 29, 1907, in international class 21; No. 1425444 for WEDGWOOD (word mark), filed on February 24, 1986, and registered on January 20, 1987, in international class 21; No. 1471030 for WEDGWOOD (word mark), filed on January 21, 1987, and registered on December 29, 1987, in international class 42; No. 1761413 for WEDGWOOD (word mark), filed on January 27, 1992, and registered on March 30, 1993, in international class 21; and No. 3372695 for WEDGWOOD (word mark), filed on June 15, 2007, and registered on January 22, 2008, in international classes 8 and 21.

The Complainant's subsidiary Fiskars UK Limited is the owner, amongst others, of the following trademark registrations:

- European Union trademark: No. 000502898, for WEDGWOOD (word mark), filed on March 27, 1997, and registered on May 31, 1999, in international classes 6, 14, 16, 18, 21, 24, 25, 29, and 30; No. 002197176, for WEDGWOOD (word mark), filed on April 27, 2001, and registered on August 5, 2002, in international classes 8, 11, and 21; and No. 018672964, for WEDGWOOD (word mark), filed on March 16, 2022, and registered on July 20, 2022, in international class 27; and
- China trademark registration: No. 253581 for WEDGWOOD (word mark), filed on September 7, 1984, and registered on June 30, 1986, in international class 21; and No. 4424040 for WEDGWOOD (word mark), filed on December 20, 2004, and registered on April 28, 2009, in international class 21.

The WEDGWOOD brand and products are promoted online via the websites available at the domain name <wedgwood.com>, registered in the name of the Complainant's subsidiary WWRD IPCO LLC on September 17, 1997, and <wedgwood.cn>, registered in the name of the Complainant's subsidiary Fiskars Commercial (Shanghai) Co., Ltd on March 17, 2003.

The disputed domain name <wedgwoodus.com> was registered on September 8, 2022, and is pointed to a website displaying the Complainant's trademark WEDGWOOD and promoting the sale of dinnerware, plates, mugs, and cups at very low prices.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to the trademark WEDGWOOD in which the Complainant has rights as it reproduces the trademark in its entirety with the mere addition of the geographical indicator "us" (standing for United States) and the generic Top-Level Domain ("gTLD") ".com".

With reference to rights or legitimate interests in respect of the disputed domain name, the Complainant states that the Respondent is not commonly known by the disputed domain name and submits that there is no evidence that at the time the Respondent registered the disputed domain name, it had trademark or other intellectual property rights in it.

The Complainant underlines that it is in no way affiliated with the Respondent nor has it ever licensed or granted any authorization or permission to the Respondent, to use the trademark WEDGWOOD in a domain name or in any other way.

The Complainant further emphasizes that the Respondent is selling dinnerware, plates, mugs, and cups at extremely low prices, displaying the Complainant's trademark WEDGWOOD and submits that, considering the Respondent does not have a license or any other right to sell the products using the Complainant's trademark, the use of the trademark WEDGWOOD, both within the disputed domain name and on the Respondent's website, is evidence that the Respondent is defrauding customers into believing that the goods being sold on the Respondent's website are authentic by creating a strong impression of affiliation with the Complainant.

The Complainant further states that the Respondent has also used the Complainant's copyrighted images without the Complainant's consent and asserts that this is neither a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name.

With reference to the circumstances evidencing bad faith, the Complainant indicates that the Respondent is intentionally attempting to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. The Complainant submits that the Respondent is commercially gaining from the sales of dinnerware and home accessories sold on the website to which the disputed domain name resolves.

The Complainant points out that, given the world-wide fame of the Complainant and its trademark, and the fact that the disputed domain name incorporates that trademark and the corresponding website displays the Complainant's trademark and copyrighted images, it is obvious that the Respondent had actual knowledge of the Complainant and its trademark WEDGWOOD at the time of registering the disputed domain name.

The Complainant further submits that the Respondent has engaged in a pattern of registering domain names that incorporate well known third-party trademarks.

Lastly, the Complainant informs the Panel that a representative of the Complainant attempted to purchase a product from the Respondent's website, was charged for the purchase, but did not receive the product.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules: "A Panel shall decide a complaint on the basis of the statements

and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.” Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- (i) that the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has established rights over the trademark WEDGWOOD based on the trademark registrations cited under section 4 above, registered in the name of the Complainant’s subsidiaries WWRD UNITED KINGDOM, LTD and Fiskars UK Limited, and the related trademark registration details submitted as Annexes E and F to the Complaint.

Indeed, as stated in section 1.4.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), a trademark owner’s affiliate such as a parent company is considered to have rights in a trademark under the UDRP for purposes of standing to file a complaint.

As highlighted in section 1.7 of the [WIPO Overview 3.0](#), the first element functions primarily as a standing requirement, and the threshold test for confusing similarity typically involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the trademark is recognizable within the disputed domain name. Moreover, where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element (section 1.8 of the [WIPO Overview 3.0](#)).

In the case at hand, the Complainant’s trademark WEDGWOOD is entirely reproduced in the disputed domain name, with the mere addition of the two-letter term “us”, which may be interpreted as an abbreviation for “United States”, and the gTLD “.com”, which is commonly disregarded under the first element confusing similarity test (section 1.11 of the [WIPO Overview 3.0](#)).

Therefore, the Panel finds that the Complainant has proven that the disputed domain name is confusingly similar to a trademark in which the Complainant has established rights according to paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant must show that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent may establish a right or legitimate interest in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

- “(i) before any notice to you of the dispute, your 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) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

In the case at hand, by not submitting a Response, the Respondent has failed to invoke any circumstance that could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in the disputed domain name.

The Panel notes that there is no relation, disclosed to the Panel or otherwise apparent from the record, between the Respondent and the Complainant. The Respondent is not a licensee of the Complainant, nor has the Respondent otherwise obtained an authorization to use the Complainant's trademark.

Moreover, there is no element from which the Panel could infer the Respondent's rights and legitimate interests over the disputed domain name, or that the Respondent might be commonly known by the disputed domain name.

As mentioned above, the disputed domain name has been pointed to a website displaying the Complainant's trademark WEDGWOOD and promoting the sale of purported WEDGWOOD dinnerware, plates, mugs, and cups at very low prices.

Irrespective of the nature of the products offered by the Respondent, the Panel finds that the Respondent's use of the disputed domain name does not meet the cumulative requirements set forth in the Oki Data test for resellers using a domain name containing a complainant's trademark to be making a *bona fide* offering of goods and services. Specifically, the website does not accurately and prominently disclose the Respondent's (lack of) relationship with the trademark holder. See *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#); and section 2.8.1 of the [WIPO Overview 3.0](#). Moreover, the Panel finds that the disputed domain name is inherently misleading. See section 2.5.1 of the [WIPO Overview 3.0](#).

Therefore, the Panel finds that the Complainant has proven that the Respondent has no rights or legitimate interests in the disputed domain name according to paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires that the Complainant prove that the disputed domain name was registered and is being used by the Respondent in bad faith.

As to the bad faith at the time of the registration, the Panel notes that, in light of the prior registration and use of the Complainant's trademark WEDGWOOD in connection with the Complainant's products, advertised and offered for sale also online via the websites "www.wedgwood.com" and "www.wedgwood.cn", the Respondent was or should have been aware of the Complainant's trademark. Indeed, a simple online search for "Wedgwood" would have revealed the existence of the Complainant and its trademark.

Moreover, the fact that the disputed domain name has been pointed to a website featuring the Complainant's trademark and offering purported WEDGWOOD products at discounted prices, clearly suggests that the Respondent was indeed well aware of the Complainant and its trademark.

The Panel also finds that, by pointing the inherently misleading disputed domain name to the website described above, promoting and offering for sale purported WEDGWOOD products and failing to accurately and prominently disclose the relationship with the trademark owner, the Respondent has intentionally attempted to attract Internet users to its website for commercial gain, by causing a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of its website and the products promoted therein according to paragraph 4(b)(iv) of the Policy.

Therefore, the Panel finds that the Complainant has also proven that the Respondent registered and is using the disputed domain name in bad faith according to paragraph 4(a)(iii) 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 <wedgwoodus.com> be transferred to the Complainant.

/Luca Barbero/

Luca Barbero

Sole Panelist

Date: July 5, 2023