

ADMINISTRATIVE PANEL DECISION

Autumnpaper Ltd v. Lian Junping

Case No. D2023-2167

1. The Parties

The Complainant is Autumnpaper Ltd, United Kingdom, represented by Studio Barbero S.p.A., Italy.

The Respondent is Lian Junping, China.

2. The Domain Name and Registrar

The disputed domain name <cheapmcqueenstore.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 May 17, 2023. On May 17, 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 disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Not Disclosed) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 22, 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 May 25, 2023.

On May 22, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On May 25, 2021, 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 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 in English and Chinese of the Complaint, and the proceedings commenced on May 31, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 20, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 22, 2023.

The Center appointed Rachel Tan as the sole panelist in this matter on June 30, 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 the owner of the fashion brand Alexander McQueen. The brand was founded in 1992 by the British fashion designer Alexander McQueen. The brand offers a wide range of luxury products including clothing, bags, shoes, small leather goods, belts, eyewear, silks and perfumes. The Complainant distributes its products through a worldwide network of authorized third party retailers, exclusive department and specialty stores in Europe, Asia and North America.

The Complainant is the owner of the MCQUEEN and ALEXANDER MCQUEEN trade marks in several jurisdictions. For example, International Trade Mark Registration No. 840159A for ALEXANDER MCQUEEN, registered on April 23, 2004, in classes 9, 14, 18, and 25, designating, *inter alia*, China; International Trade Mark Registration No. 1273128 for MCQUEEN, registered on March 11, 2015, in classes 3, 9, 14, 18, 25, and 35, designating, *inter alia*, China; Chinese Trade Mark Registration No. 13916975 for MCQUEEN, registered on April 7, 2016, in class 25; and Chinese Trade Mark Registration No. 14003679A for MCQUEEN, registered on June 28, 2015, in class 18.

The Complainant is the registrant of numerous domain names incorporating the ALEXANDER MCQUEEN or MCQUEEN trade mark, for example <alexandermcqueen.com> registered on September 12, 2000 and <alexandermcqueen.cn> registered on March 17, 2003.

The Respondent is Lian Junping, China.

The disputed domain name was registered on May 30, 2022. At the date of this Decision, the disputed domain name does not resolve to any active websites. At the time of filing of the Complaint, the disputed domain name resolved to a website in English, which displayed the Complainant's MCQUEEN and ALEXANDER MCQUEEN trade marks, and allegedly offered the Complainant's products for sale at a heavily discounted price.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to its MCQUEEN mark. The fact that the disputed domain name differs from the Complainant's MCQUEEN mark by the additional non-distinctive elements "cheap" and "store" does not affect the finding of confusing similarity. The inclusion of these non-distinctive elements in the disputed domain name is apt to reinforce the likelihood of confusion, as the term "cheap" is descriptive of the characteristics of the purported ALEXANDER MCQUEEN products originally offered for sale on the resolved website and the term "store" is descriptive of a location where the Complainant's branded products can be purchased. Further, the Top-Level Domain ("TLD") of the disputed domain name is a standard registration requirement, which is disregarded under the first element confusing similarity test.

The Complainant further alleges that the Respondent is not a licensee, authorized agent of the Complainant or in any other way authorized to use the Complainant's trade mark. Specifically, the Respondent is not an authorized reseller of the Complainant and has not been authorized to register and use the disputed domain name. The Respondent is not commonly known by the disputed domain name. Further, the disputed domain name was originally redirected by the Respondent to a website displaying the Complainant's trade marks and offering for sale *prima facie* counterfeit ALEXANDER MCQUEEN products, without providing any

disclaimer as to the Respondent's lack of relationship with the Complainant. Hence, the Respondent engaged in an illegitimate activity that was undoubtedly commercial and not *bona fide* in nature.

The Complainant finally asserts that the Respondent was fully aware of the Complainant and its trade marks when registering the disputed domain name. The use of the disputed domain name in connection with a commercial website displaying the Complainant's trade marks and information about the Complainant, and offering for sale *prima facie* counterfeit ALEXANDER MCQUEEN branded products, indicates that the Respondent's purpose in registering the disputed domain name was to capitalize on the reputation of the Complainant's trade marks, by intentionally attracting Internet users seeking the Complainant's branded products to its own website for commercial gain and creating a likelihood of confusion with the Complainant's trade marks as to the source, sponsorship, affiliation, or endorsement of its website and the goods offered and promoted through said website. The present inactiveness of the website should not *per se* prevent the Panel from finding that the disputed domain name is used in bad faith. Further, the Complainant claims that the Respondent was also involved in other UDRP proceedings which were concluded with the transfer of the domain names to the respective complainants.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

Initially, the Panel must address the language of the proceeding. Paragraph 11(a) of the Rules provides that the language of the administrative proceeding shall be the language of the Registration Agreement unless otherwise agreed by the parties, subject to the authority of the panel to determine otherwise, having regard to the circumstances of the administrative proceeding. The panel may choose to write a decision in either language, or request translation of either party's submissions.

In this case, the Registrar has confirmed to the Center that the language of the Registration Agreement as used by the registrant for the disputed domain name is Chinese. However, the Complainant has requested that English be adopted as the language of the proceeding for the reasons summarised below:

- (a) requiring the Complainant to translate the Complaint and all documents into Chinese would cause delay;
- (b) the disputed domain name is registered in Latin characters and includes the English terms "cheap" and "store" which suggests that the Respondent may be familiar with English; and
- (c) the disputed domain name was previously pointed to a website drafted entirely in English which demonstrates that the Respondent is able to communicate in the English language.

It is established practice to take paragraphs 10(b) and 10(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 burdens being placed on the parties and undue delay to the proceeding.

The Panel having considered the circumstances finds that English shall be the language of this proceeding. The reasons are set out below:

- (a) the Complainant is based in the United Kingdom. Requiring the Complainant to translate the Complaint in Chinese would lead to delay and cause the Complainant to incur translation expenses;

- (b) the disputed domain name previously resolved to a website in the English language;
- (c) even if the Respondent does not possess a sufficient command of English to understand the Complaint, there were ample opportunities for the Respondent to raise an objection. The Center notified the Parties in English and Chinese of the language of the proceeding, the Complainant requested English to be the language of the proceeding, but the Respondent did not protest against this request;
- (d) the Respondent has failed to participate in the proceeding even though the Center sent the notification of the Complaint in English and Chinese, and indicated that the Response may be submitted in Chinese or English; and
- (e) the Complaint has been submitted in English. No foreseeable procedural benefit may be served by requiring Chinese to be used. On the other hand, the proceeding may proceed expeditiously in English.

Accordingly, the Panel will proceed with issuing this Decision in English.

6.2 Substantive Issues

A. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has adduced evidence to demonstrate its established rights in the MCQUEEN and ALEXANDER MCQUEEN marks.

The Panel notes that the MCQUEEN mark is wholly encompassed within the disputed domain name. The MCQUEEN mark is instantly recognizable in the disputed domain name. In cases where a domain name incorporates the entirety of a trade mark, 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. See section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)).

Further, it is accepted by previous UDRP panels that the addition to the complainant’s trade mark of other words or terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity between the domain name and the complainant’s trade mark under the first element of the Policy. See section 1.8 of the [WIPO Overview 3.0](#). As such, the Panel finds the additional terms “cheap” and “store”, both of which are related to the Complainant’s business in the disputed domain name, do not preclude a finding of confusing similarity between the MCQUEEN mark and the disputed domain name.

Lastly, it is permissible for the Panel to ignore the generic TLD, in this case “.com”. See section 1.11.1 of the [WIPO Overview 3.0](#). Consequently, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s mark.

Accordingly, the Complainant has satisfied the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

In circumstances where the Complainant possesses rights to the MCQUEEN mark, whereas the Respondent seems to have no trade mark rights, the Panel is satisfied that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, and the burden of production shifts to the Respondent to show that he or she has rights or legitimate interests in the disputed domain name. See section 2.1 of the [WIPO Overview 3.0](#).

The Respondent has not provided evidence of a legitimate noncommercial or fair use of the disputed domain

name or reasons to justify his or her choice of the term “mcqueen” in the disputed domain name. There is no indication to show that the Respondent is commonly known by the disputed domain name or otherwise has rights or legitimate interests in it. Moreover, the Complainant has not granted the Respondent any license or authorization to use the Complainant’s marks or register the disputed domain name.

The Panel notes that the disputed domain name previously resolved to a website in English, which allegedly offered the Complainant’s products for sale. Those products may be counterfeits as they were sold at heavily discounted prices. The website noticeably displayed the Complainant’s ALEXANDER MCQUEEN and MCQUEEN marks together with images of the Complainant’s products. The website did not accurately and prominently disclose a lack of a relationship between the Complainant and the Respondent. Therefore, the facts do not support a claim of a *bona fide* offering of goods or services under the “Ok! Data test” even if the products sold on the website were genuine products (most likely not). See *Ok! Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#).

Furthermore, the nature of the disputed domain name carries a risk of implied affiliation. See section 2.5.1 of the [WIPO Overview 3.0](#).

None of the circumstances in paragraph 4(c) of the Policy are present in this case. For these reasons, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

Accordingly, the Complainant has satisfied the second element under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Complainant’s MCQUEEN mark was registered well before the registration of the disputed domain name. Through use and advertising, the Complainant’s MCQUEEN mark is known throughout the world, including in China. Search results using the term “mcqueen” on the Internet search engines direct Internet users to the Complainant and its products, which indicates that an exclusive connection between the MCQUEEN mark and the Complainant has been established. As such, the Respondent should have known of the Complainant’s MCQUEEN mark when registering the disputed domain name. This fact has been reinforced by the Respondent’s use of the MCQUEEN mark on the website at the disputed domain name.

The Panel notes that the disputed domain name previously resolved to a website allegedly offering for sale the Complainant’s products at heavily discounted prices (presumably counterfeits), and on which the Complainant’s MCQUEEN and ALEXANDER MCQUEEN marks prominently appeared. The lack of a disclaimer that the Respondent is not affiliated with the Complainant is noticeably absent. The Panel is satisfied that the Respondent intends to take advantage of the reputation of the Complainant’s trade marks to attract, for commercial gain, Internet users to the Respondent’s website by creating a likelihood of confusion with the Complainant’s marks as to source, sponsorship, affiliation, or endorsement of the website. This demonstrates bad faith registration and use of the disputed domain name, as provided in paragraph 4(b)(iv) of the Policy.

The Panel also notes that the Respondent appears to be engaged in a pattern of abusive registration having registered other domain names comprising third party trade marks. The Panel finds this case is a continuation of that bad faith pattern. See *ABG Juicy Couture LLC v. Junping Lian*, WIPO Case No. [D2021-1836](#). Such constitutes evidence of bad faith registration and use as contemplated under paragraph 4(b)(ii) of the Policy.

The Panel notes that the disputed domain name currently does not resolve to any active website. The current inactive use of the disputed domain name in this case would not prevent a finding of bad faith under the doctrine of passive holding. In its determination, the Panel considers the degree of reputation of the Complainant’s MCQUEEN mark, the Respondent’s failure to respond in the face of the Complainant’s allegations of bad faith, as well as the implausibility of any good faith use that the disputed domain name may be put. See section 3.3 of the [WIPO Overview 3.0](#).

Given all the circumstances of the case, the Panel finds that the Respondent must have known of the Complainant before registering the disputed domain name, and considering the Respondent's lack of rights or legitimate interests, and by registering and using the disputed domain name as discussed above as well as continuing to hold the disputed domain name, the Panel is led to conclude that the disputed domain name was registered and is being used in bad faith.

Accordingly, the Panel finds that the Complainant has satisfied the third element under 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, <cheapmcqueenstore.com>, be transferred to the Complainant.

/Rachel Tan/

Rachel Tan

Sole Panelist

Date: July 13, 2023