

ADMINISTRATIVE PANEL DECISION

Daniel Austin Green v. peng gao qi
Case No. D2023-2376

1. The Parties

The Complainant is Daniel Austin Green, United States of America, self-represented.

The Respondent is peng gao qi, China.

2. The Domain Name and Registrar

The disputed domain name <daustgreen.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 27, 2023. On June 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 5, 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 (*Gname.com Pte. Ltd*) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 5, 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 June 5, 2023 the Center informed the parties in Chinese and English, that the language of the registration agreement for the disputed domain name is Chinese. On June 6, 2023, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

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 proceeding commenced on June 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 6, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 7, 2023.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on July 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 August 8, 2023, the Panel issued Procedural Panel Order No. 1 (the "Order"), requesting the Complainant to provide (1) evidence of the Complainant's use of DAUSTGREEN as a personal trade mark; and (2) evidence of the Respondent's offer to sell the disputed domain name of USD 8,000 to the Complainant, and allowing the Respondent to comment on the Complainant's submissions in response to the Order.

On August 13, 2023, the Complainant filed its response to the Order.

The Respondent did not file any submissions in respect of the Order.

4. Factual Background

A. Complainant

The Complainant is an individual located in the United States of America.

The Complainant was the owner of the disputed domain name from 2000 until 2022, when he inadvertently failed to renew his registration for the disputed domain name due to an illness and a change of his credit card details, which prevented the automatic renewal of his registration.

The Complainant has used DAUSTGREEN (the "Trade Mark"), an abbreviation of his full name, professionally since 2000, including in respect of social media websites, and (up until 2022), in respect of the disputed domain name, and the website to which the disputed domain name previously resolved, containing his professional resume and other professional and personal information.

B. Respondent

The Respondent is located in China.

C. The Disputed Domain Name

The disputed domain name was registered by the Respondent on April 23, 2022.

D. Use of the Disputed Domain Name

The disputed domain name was previously resolved to a Chinese language website with gambling content (the "Website").

As at the date of this Decision, the disputed domain name is no longer resolved to an active website.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to the Trade Mark; the Respondent has no rights or legitimate interests in respect of the disputed domain name; and the disputed domain name has been registered and is being used in 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

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the Parties, or unless specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement.

Paragraph 11(a) of the Rules allows the Panel to determine the language of the proceeding having regard to all the circumstances. In particular, it is established practice to take paragraphs 10(b) and (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 burden being placed on the parties and undue delay to the proceeding (see [WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition](#) ("[WIPO Overview 3.0](#)"), section 4.5.1).

The Complainant has requested that the language of the proceeding be English, for several reasons, including the fact the disputed domain name is an English language domain name. The Complainant also contends that the proceeding in Chinese would pose an undue burden on the Complainant.

The Respondent did not make any submissions regarding the language of the proceeding, and did not file any response in either Chinese or English, after the Respondent had been duly notified in both Chinese and English of the language of the proceeding, and of the Complaint.

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.

Although there is insufficient evidence to support the conclusion that the Respondent is conversant in English, the Panel is mindful of the need to ensure the proceeding is conducted in a timely and cost effective manner, and notes further that the Respondent has not taken any part in this proceeding.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.2. Substantive Elements of the Policy

The Complainant must prove each of the three elements in paragraph 4(a) of the Policy in order to prevail.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has rights in the Trade Mark, having used it professionally since 2000.

Disregarding the generic Top-Level Domain ".com", the disputed domain name is identical to the Trade Mark.

The Panel therefore finds that the disputed domain name is confusingly similar to the Trade Mark.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a disputed domain name:

- (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 trade mark 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 trade mark or service mark at issue.

The Complainant has not authorised, licensed, or permitted the Respondent to register or use the disputed domain name or to use the Trade Mark. The Panel finds on the record that there is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and the burden of production is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that he has acquired any trade mark rights in respect of the disputed domain name or that the disputed domain name has been used in connection with a *bona fide* offering of goods or services. To the contrary, the disputed domain name was registered opportunistically by the Respondent upon its expiry in 2022, and having previously been registered and used by the Complainant since 2000; it was previously used in respect of the Website to provide gambling content; and as at the date of this Decision, the disputed domain name is no longer being used.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain name; and there has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

The Panel finds that the Respondent has failed to produce any evidence to rebut the Complainant's *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Panel therefore finds that the Respondent lacks rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

The Panel finds that the disputed domain name has been registered and used in bad faith for the following reasons:

- (i) the Respondent's opportunistic registration of the disputed domain name following the expiry of its previous registration by the Complainant;
- (ii) the manner of use of the disputed domain name highlighted in section 6.2.B above, which constitutes bad faith pursuant to paragraph 4(b)(iv) of the Policy;
- (iii) the Respondent's offer to sell the disputed domain name to a friend of the Complainant for USD 8,000, which constitutes bad faith pursuant to paragraph 4(b)(i) of the Policy; and
- (iv) the fact the Website has been taken down at some stage following the filing of the Complaint.

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 <daustgreen.com> be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Dated: August 22, 2023