

## **ADMINISTRATIVE PANEL DECISION**

Autumnpaper Ltd v. Wu Yin Xiao (伍寅啸)

Case No. D2023-2585

### **1. The Parties**

Complainant is Autumnpaper Ltd, United Kingdom (the “UK”), represented by Studio Barbero S.p.A., Italy.

Respondent is Wu Yin Xiao (伍寅啸), China.

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

The disputed domain name <alexandermcqueen.work> is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

### **3. Procedural History**

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 15, 2023. On June 16, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 19, 2023, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the complete contact details. The Center sent an email communication to Complainant on June 19, 2023 providing the complete registrant contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint in English on June 20, 2023.

On June 19, 2023, the Center sent an email communication to the Parties in Chinese and English regarding the language of the proceeding. On June 20, 2023, Complainant confirmed its request that English be the language of the proceeding. Respondent did not submit any comment on 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 Respondent in Chinese and English of the Complaint, and the proceedings commenced on June 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 16, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on July 20, 2023.

The Center appointed Yijun Tian as the sole panelist in this matter on August 11, 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**

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

Complainant, Autumnpaper Ltd, is a company incorporated in the UK. It is the owner of the international luxury fashion brand ALEXANDER McQUEEN. Founded in 1992 by the British fashion designer and couturier Alexander McQueen, ALEXANDER McQUEEN is a major player on the fashion scene and offers a wide range of luxury products from Haute Couture and Prêt-à-Porter to an extensive accessories collection that includes bags, shoes, small leather goods, belts, eyewear, silks and perfumes. The first Alexander McQueen store opened in London in 1999, followed by others around the world, reaching 100 Alexander McQueen stores worldwide by the end of 2020.

Complainant has rights in numerous ALEXANDER MCQUEEN marks which have been registered worldwide, including a Chinese trademark registration for ALEXANDER MCQUEEN registered on January 28, 2018 (the Chinese trademark registration number 22351583), a European Union (“EU”) trademark registration for ALEXANDER MCQUEEN registered on May 14, 2003 (the EU trademark registration number 000565796), and an international trademark registration for ALEXANDER MCQUEEN registered on April 23, 2004 (the international trademark registration number 840159A). Complainant has registered numerous domain names worldwide consisting of or comprising ALEXANDER MCQUEEN marks, including, *inter alia*, <alexandermcqueen.com> (registered on September 12, 2000) and <alexandermcqueen.cn> (registered on March 17, 2003). The domain name <alexandermcqueen.cn> is used by Complainant to promote and offer for sale the Alexander McQueen products online with a focus on the Chinese market.

##### **B. Respondent**

Respondent is Wu Yin Xiao (伍寅啸), China. The disputed domain name was registered on November 20, 2022, long after the ALEXANDER MCQUEEN marks were registered (since 2003) and first used in 1992. The disputed domain name currently resolves to an inactive website.

#### **5. Parties’ Contentions**

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

Complainant contends that the disputed domain name registered by Respondent is identical to the trademark ALEXANDER MCQUEEN in which Complainant has rights. As to the addition of the new generic Top-Level Domain (“gTLD”) “.work”, many decisions as well as section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) found that a TLD (including a new gTLD) is merely instrumental to the use in Internet and shall be disregarded for the determination of confusing similarity.

Complainant contends that Respondent has no rights or legitimate interests in the disputed domain name.

Complainant contends that Respondent has registered and used the disputed domain name in bad faith.

Complainant requests that the disputed domain name be transferred to Complainant.

##### **B. Respondent**

Respondent did not reply to Complainant’s contentions.

## 6. Discussion and Findings

### 6.1. 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 specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement. From the evidence presented on the record, no agreement appears to have been entered into between Complainant and Respondent to the effect that the language of the proceeding should be English. Complainant filed initially its Complaint in English, and has requested that English be the language of the proceeding for the following main reasons:

- (a) Complainant is not seeking to establish any advantage over Respondent. Rather, Complainant communicates in English and would be prejudiced, should it be required to translate the Complaint and participate in this proceeding in Chinese.
- (b) Requiring Complainant to translate the Complaint and all documents into Chinese would cause delay in contravention to paragraph 10(c) of the Rules, which requires that “[t]he Panel shall ensure that the administrative proceeding takes place with due expedition”.
- (c) Respondent has sufficient command of English. The disputed domain name is registered in Latin characters; and
- (d) Respondent secured the disputed domain name in the TLD “.work”, which reveals Respondent’s intention to target an audience of English-speaking users.

Respondent did not make any submissions with respect to the language of the proceeding and did not object to the use of English as the language of the proceeding.

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 other words, it is important to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes (*Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. ltd.*, WIPO Case No. [D2008-0293](#); *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#)). The language finally decided by the panel for the proceeding should not be prejudicial to either one of the parties in its abilities to articulate the arguments for the case (*Groupe Auchan v. xmxzl*, WIPO Case No. [DCC2006-0004](#)). Section 4.5.1 of the [WIPO Overview 3.0](#) further states:

“Noting the aim of conducting the proceedings with due expedition, paragraph 10 of the UDRP Rules vests a panel with authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case.

Against this background, panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios include (i) evidence showing that the respondent can understand the language of the complaint, (ii) the language/script of the domain name particularly where the same as that of the complainant’s mark, (iii) any content on the webpage under the disputed domain name, (iv) prior cases involving the respondent in a particular language, (v) prior correspondence between the parties, (vi) potential unfairness or unwarranted delay in ordering the complainant to translate the complaint, (vii) evidence of other respondent-controlled domain names registered, used, or corresponding to a particular language, (viii) in cases involving multiple domain names, the use of a particular language agreement for some (but not all) of the disputed domain names, (ix) currencies accepted on the webpage under the disputed domain name, or (x) other indicia tending to show that it would not be unfair to proceed in a language other than that of the registration agreement.” (see *L’Oreal S.A. v. MUNHYUNJA*, WIPO Case No. [D2003-0585](#)).

On the record, Respondent appears to be a Chinese resident and is thus presumably not a native English speaker. However, considering the following, the Panel has decided that English should be the language of the proceeding: (a) the disputed domain name includes Latin characters rather than Chinese scripts; (b) the gTLD of the disputed domain name is the English word “work”. So the disputed domain name seems to be prepared for users worldwide, including English-speaking countries; (c) the Center has notified Respondent of the language of the proceeding in both Chinese and English, and Respondent has indicated no objection to Complainant’s request that English be the language of the proceeding; (d) the Center informed the Parties, in English and Chinese, that it would accept a Response in either English or Chinese. The Panel would have accepted a Response in either English or Chinese but none was filed; and (e) Complainant will be spared the burden of working in Chinese as the language of the proceeding.

Accordingly, the Panel finds the choice of English as the language of the present proceeding is fair to both Parties and is not prejudicial to either one of the Parties in its ability to articulate the arguments for this case. Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that English shall be the language of the proceeding, and the decision will be rendered in English.

## **6.2. Substantive Issues**

Paragraph 4(a) of the Policy requires that a complainant must prove each of the following three elements to obtain an order that the disputed domain name should be cancelled or transferred:

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

On the basis of the evidence introduced by Complainant and in particular with regard to the content of the relevant provisions of the Policy (paragraphs 4(a)-(c)), the Panel concludes as follows:

### **A. Identical or Confusingly Similar**

The Panel finds that Complainant has rights in the ALEXANDER MCQUEEN marks. The disputed domain name comprise the ALEXANDER MCQUEEN mark in its entirety. The disputed domain name only differs from Complainant’s trademarks by the gTLD suffix “.work”.

Previous UDRP panels have consistently held that a domain name is identical or confusingly similar to a trademark for purposes of the Policy “when the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name”. (*Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale*, WIPO Case No. [D2000-0662](#)).

Further, in relation to the gTLD suffix, [WIPO Overview 3.0](#) further states: “The applicable Top Level Domain (‘TLD’) in a domain name (e.g., ‘.com’, ‘.club’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.” ([WIPO Overview 3.0](#), section 1.11.1.) The Panel therefore holds that the disputed domain name is identical to Complainant’s marks, and the Complaint fulfils the first condition of paragraph 4(a) of the Policy.

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

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

- (i) before any notice to the respondent of the dispute, the use by the respondent 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 has been commonly known by the disputed domain name, even if the respondent has acquired no trademark 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 complainant's trademarks.

The overall burden of proof on this element rests with Complainant. However, it is well established by previous UDRP panel decisions that once a complainant establishes a *prima facie* case that a respondent lacks rights or legitimate interests in a domain name, the burden of production shifts to the respondent to rebut the complainant's contentions. If the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. (*Danzas Holding AG, DHL Operations B.V. v. Ma Shikai*, WIPO Case No. [D2008-0441](#); [WIPO Overview 3.0](#), section 2.1 and cases cited therein).

The ALEXANDER MCQUEEN marks have been registered internationally, including a EU trademark registration for ALEXANDER MCQUEEN registered since 2003; and a Chinese trademark registration for ALEXANDER MCQUEEN registered since 2018, which long preceded Respondent's registration of the disputed domain name (in 2022). According to Complainant, The first Alexander Mcqueen store opened in London in 1999, followed by others around the world, reaching 100 Alexander Mcqueen stores worldwide by the end of 2020. The domain name <alexandermcqueen.cn> is used by Complainant to promote and offer for sale the ALEXANDER MCQUEEN products online with a focus on the Chinese market. Moreover, Respondent is not an authorized dealer of ALEXANDER MCQUEEN branded products or services. Complainant has therefore established a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name and thereby shifted the burden to Respondent to produce evidence to rebut this presumption (*The Argento Wine Company Limited v. Argento Beijing Trading Company*, WIPO Case No. [D2009-0610](#); *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

Based on the following reasons, the Panel finds that Respondent has no rights or legitimate interests in the disputed domain name:

- (a) there has been no evidence adduced to show that Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services. Respondent has not provided evidence of any legitimate use of the disputed domain name or reasons to justify the choice of the term "Alexander Mcqueen" in the disputed domain name. There has been no evidence to show that Complainant has licensed or otherwise permitted Respondent to use the ALEXANDER MCQUEEN marks or to apply for or use any domain name incorporating the ALEXANDER MCQUEEN marks.
- (b) there has been no evidence adduced to show that Respondent has been commonly known by the disputed domain name. There has been no evidence adduced to show that Respondent has any registered trademark rights with respect to the disputed domain name. Respondent registered the disputed domain name in 2022, long after the ALEXANDER MCQUEEN marks became internationally known. The disputed domain name is identical to Complainant's ALEXANDER MCQUEEN marks; and there has been no evidence adduced to show that Respondent is making a legitimate noncommercial or fair use of the disputed domain name. By contrast, the disputed domain name currently resolves to an inactive website.

The Panel notes that Respondent has not produced any evidence to establish his rights or legitimate interests in the disputed domain name. Accordingly, Complainant has established that Respondent has no rights or legitimate interests in the disputed domain name. The Panel therefore holds that the Complaint fulfils the second condition of paragraph 4(a) of the Policy.

### C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out four circumstances, which, without limitation, shall be evidence of the registration and use of the disputed domain name in bad faith, namely:

- (i) circumstances indicating that the respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of the complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) the respondent has registered the disputed domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the disputed domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's website or other online location, by creating a likelihood of confusion with complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the website or location.

The Panel concludes that based on the evidence of the circumstances of this case, it is adequate to conclude that Respondent has registered and used the disputed domain name in bad faith.

#### (a) Registration in Bad Faith

The Panel finds that Complainant has established that its ALEXANDER MCQUEEN marks have a widespread reputation as a major player on the fashion scene and offers a wide range of luxury products from Haute Couture and Prêt-à-Porter to an extensive accessories collection that includes bags, shoes, small leather goods, belts, eyewear, silks and perfumes. The first Alexander McQueen store opened in London in 1999, followed by others around the world, reaching 100 Alexander McQueen stores worldwide by the end of 2020. The ALEXANDER MCQUEEN marks are registered internationally, including a EU trademark registration for ALEXANDER MCQUEEN registered since 2003; and a Chinese trademark registration for ALEXANDER MCQUEEN registered since 2018. It is not conceivable that Respondent would not have had actual knowledge of the ALEXANDER MCQUEEN marks at the time of the registration of the disputed domain name in 2022. The Panel therefore finds that the ALEXANDER MCQUEEN mark is not one that Respondent could legitimately adopt other than for the purpose of creating an impression of an association with Complainant (*The Argento Wine Company Limited v. Argento Beijing Trading Company, supra*).

Moreover, Respondent has chosen not to respond to Complainant's allegations. According to the UDRP decision in *The Argento Wine Company Limited v. Argento Beijing Trading Company, supra*, "the failure of Respondent to respond to the Complaint further supports an inference of bad faith". See also *Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. [D2002-0787](#).

Thus, the Panel concludes that the disputed domain name was registered in bad faith.

#### (b) Use in Bad Faith

Complainant has adduced evidence to show that the disputed domain name does not resolve to an active website. UDRP panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding.

In terms of inactive domain name, section 3.3 of the [WIPO Overview 3.0](#) provides: “From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or ‘coming soon’ page) would not prevent a finding of bad faith under the doctrine of passive holding.” It further states: “While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.”

As discussed above, Complainant’s ALEXANDER MCQUEEN marks are distinctive and widely known. Further, given the lack of Response, the Panel cannot envision any other plausible use of the disputed domain name that would not be in bad faith under the present circumstances. Taking into account all the circumstances of this case, the Panel concludes that the non-use of the disputed domain name by Respondent does not prevent a finding of bad faith.

In summary, Respondent, by choosing to register and use the disputed domain name, which is identical to the ALEXANDER MCQUEEN mark, intended to ride on the goodwill of this trademark. In the absence of evidence to the contrary and rebuttal from Respondent, the choice of the disputed domain name and the use of the disputed domain name are indicative of registration and use of the disputed domain name in bad faith.

The Panel therefore holds that the Complaint fulfils the third condition of paragraph 4(a) of the Policy.

## **7. Decision**

For all 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 <alexandermcqueen.work> be transferred to Complainant.

*/Yijun Tian/*

**Yijun Tian**

Sole Panelist

Dated: September 10, 2023