

ADMINISTRATIVE PANEL DECISION

Pink Floyd (1987) Limited v. chen chen, chenchen
Case No. D2023-2774

1. The Parties

The Complainant is Pink Floyd (1987) Limited, United Kingdom, represented by Boulton Wade Tennant, United Kingdom.

The Respondent is chen chen, chenchen, China.

2. The Domain Names and Registrar

The disputed domain names <metapinkfloyd.com> and <pinkfloydmetaverse.com> are registered with GMO Internet, Inc. d/b/a Discount-Domain.com and Onamae.com (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on June 29, 2023. On June 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On July 3, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Whois Privacy Protection Service by onamae.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 8, 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 amended Complaint in English on July 11, 2023.

On July 8, 2023, the Center transmitted an email communication to the Parties in English and Japanese regarding the language of the proceeding. On July 11, 2023, the Complainant submitted a 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 amended 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 Japanese of the Complaint, and the proceedings commenced on July 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 3, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 4, 2023.

The Center appointed Erica Aoki as the sole panelist in this matter on August 24, 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 an English rock band Pink Floyd which was formed in 1965. To date, the Band has released and sold numerous records, studio albums, live albums and singles (to date estimated in over 250 million albums sold worldwide). The band earned over USD 35,000 in revenue from streaming by Japanese consumers in 2022, and over USD 50,000 from streaming by Chinese consumers in 2022.

The Complainant is owner of a large number of trademarks registrations in particular, the following PINK FLOYD trademarks registrations: United Kingdom Trademark Registration No. UK00002066619 filed on March 28, 1996, registered on October 18, 1996; United States of America Trademark Registration No. 2194702 filed on December 23, 1996, registered on October 13, 1998; Chinese Trademark Registration No. 54326700A filed on March 15, 2021, registered on November 21, 2021.

The disputed domain names were registered on March 12, 2023. The disputed domain names do not resolve to active websites.

5. Parties’ Contentions

A. Complainant

The Complainant is the English rock band Pink Floyd formed in 1965 and since this date has released numerous records, including studio albums, live albums, and singles, with the most recent album, “Endless River”, being released in 2014.

The Complainant has also carried out extensive merchandising associated with the name of its band and its associated records and imagery.

The Complainant has sold an enormous number of records since its band formation. To date, it is estimated that the Complainant sold over 250 million albums worldwide.

The Complainant has also been recognized by numerous awards in several different countries and a list of awards won by the band from “www.aceshowbiz.com”.

The Complainant is the owner of all registered trademark rights relating to the word PINK FLOYD and is also owner of a number of pinkfloyd domain name registrations including: <pinkfloyd.com>, <thepinkfloyd.co.uk>, <thepinkfloyd.uk>, <pinkfloydrecords.com>, <pinkfloydexhibition.com>, <thepinkfloydexhibition.com>, <pinkfloydpulselight.co.uk>, <pinkfloydpulselight.com>, <pinkfloydpulselight.net>, <pinkfloydpulselight.org>, <pinkfloydpulselight.uk>, <themortalremains-pinkfloydexhibition.com>, <themortalremains-thepinkfloydexhibition.com>, <thepinkfloydexhibition-themortalremains.com>.

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The Complainant also asserts that it is well known and has a substantial reputation.

The disputed domain names are not currently being used but was previously resolved to websites that were not related to the Complainant. The domain name <metapinkfloyd.com> resolved to a news and broadcasting website and <pinkfloydmetaverse.com> resolved to the website of a brick manufacturer.

The Complainant contends that the disputed domain names are confusingly similar to the Complainant's trademark, that the Respondent has no rights or legitimate interests in respect of the disputed domain names, and that the disputed domain names were registered and are being used in bad faith.

B. Respondent

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

6. Discussion and Findings

The Complainant is required to establish the requirements specified under paragraph 4(a) of the Policy:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in respect of which the Complainant has rights; and
- (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. Language of the Proceeding

The language of the Registration Agreement for the disputed domain names is Japanese. Paragraph 11(a) of the Rules provides that "unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative 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". The Panel may also order that any documents submitted in a language other than that of the proceeding be translated.

However, as noted by previous UDRP panels, paragraph 11 of the Rules must be applied in accordance with the overriding requirements of paragraphs 10(b) and 10(c) of the Rules that the parties are treated equally, that each party is given a fair opportunity to present its case and that the proceeding takes place with due expedition (see, e.g., *General Electric Company v. Edison Electric Corp. General Energy a/k/a Edison GE GEEEEGE.COM a/k/a Edison-GE and Edison Electric Corp.*, WIPO Case No. [D2006-0334](#)).

In deciding whether to allow the proceeding to be conducted in a language other than the language of the Registration Agreement, and to require the Complainant in an appropriate case to translate the Complaint into the language of that Agreement, the Panel must have regard to all "the relevant circumstances" of the case. The factors that the Panel should take into consideration include *inter alia* whether the Respondent is able to understand and effectively communicate in the language in which the Complaint has been made and would suffer no real prejudice, and whether the expenses of requiring translation and the delay in the proceedings can be avoided without causing injustice to the Parties.

According to section 4.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), prior UDRP 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 name, (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.

The Complainant has submitted a request that the language of the proceeding be English.

The Panel notes that the Center notified the Respondent in Japanese and English regarding the language of the proceeding and the Respondent was invited to present his objection to the proceeding being held in English and if the Center did not hear from the Respondent by the specified due date, the Center would proceed on the basis that the Respondent had no objection to the Complainant's request that English be the language of the proceeding. The Respondent had the opportunity to raise objections or make known his preference but did not do so. The Panel further notes that the Center notified the Respondent in Japanese and English of the Complaint, and the Respondent was informed that it could file a response either in Japanese or English, but the Respondent did not file any response.

Taking all these circumstances into account, the Panel finds that it is appropriate to exercise its discretion and allow the proceeding to be conducted in English.

B. Identical or Confusingly Similar

Based on the facts presented by the Complainant, this Panel finds that the Complainant has established its rights in PINK FLOYD through registration and use. The Panel finds that the disputed domain names are confusingly similar to the Complainant's registered trademark, as the disputed domain names include the Complainant's mark in full, with only the addition of the words "meta" and "metaverse" to the trademark PINK FLOYD, which does not prevent a finding of confusing similarity (see section 1.8 of the [WIPO Overview 3.0](#)).

The Panel finds that the disputed domain names are confusingly similar to the Complainant's trademark and that the Complainant has established paragraph 4(a)(i) of the Policy.

C. Rights or Legitimate Interests

The Panel finds the following on record in this proceeding under the Policy:

The Respondent is in default and thus has made no affirmative attempt to show any rights or legitimate interests in the disputed domain names.

Paragraph 4(c) of the Policy indicates that a respondent may have a right or legitimate interest in a domain name if it uses the domain name in connection with a *bona fide* offering of goods or services prior to notice of the dispute. In this regard, the Respondent is in no way connected with the Complainant and has no authorization to use any of the Complainant's trademarks, and has made no use of the disputed domain names.

There is no evidence on record that the Respondent is or was commonly known by the disputed domain names as an individual, business, or other organization.

There is no evidence on record that the Respondent is making a legitimate noncommercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's trademark.

Furthermore, the Panel notes that at least one disputed domain name incorporates the Complainant's PINK FLOYD trademark in its entirety combined with the third party trademark META that can cause confusion among Internet users and accordingly cannot constitute a fair use in these circumstances. Previous UDRP panels have found that the respondent's inclusion of a third-party trademark in a domain name does not eliminate the visual impression that the disputed domain name is associated with the complainant's trademark (see for example *WhatsApp Inc. v. Private Whois whatsappandroid.com*, *Private Whois whatsappipad.com* and *Private Whois whatsappiphone.com*, WIPO Case No. [D2012-0674](#) and *Yahoo! Inc. v. Scott Mcvey*, WIPO Case No. [D2011-1486](#)).

Thus, the Respondent has no rights or legitimate interests in respect of the disputed domain names.

The Panel therefore finds that the Complainant has established an un rebutted *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain names, under the Policy, paragraph 4(a)(ii).

D. Registered and Used in Bad Faith

The Respondent has registered the disputed domain names to make a connection with the Complainant through disputed domain names. The disputed domain names have been chosen to deliberately incorporate the entirety of the Complainant's core, and primary, trademark.

The Complainant's trademark was registered well before the registration of the disputed domain names, and considering the reputation of the Complainant's trademark, it is evident from the Respondent's use of the disputed domain names that the Respondent knew of the Complainant's PINK FLOYD trademark when registering the disputed domain names and intentionally registered the disputed domain names to take advantage of the Complainant's PINK FLOYD trademark and most likely the goodwill of the third party's trademark META.

Furthermore, the Complainant's PINK FLOYD trademark is distinctive and unique to the Complainant. It is therefore beyond the realm of coincidence that the Respondent chose the disputed domain names without the intention of invoking a misleading association with the Complainant.

The Panel finds that it is clear that the Respondent registered the disputed domain names in bad faith.

As to the use, the disputed domain names do not resolve to active websites. Section 3.3 of the [WIPO Overview 3.0](#) describes the circumstances under which the passive holding of a domain will be considered to be in bad faith: "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." In this case, based on the reputation of the Complainant's trademark, the lack of response from the Respondent, the Respondent's concealing its identity, and the implausibility of any good faith use the misleading disputed domain names may be put, the Panel finds that the non-use of the disputed domain names does not prevent a finding of bad faith under the doctrine of passive holding in this case.

Accordingly, and as also supported by the Panel's findings above under the second element of the Policy, the Panel finds that the Respondent has registered and is using the disputed domain names in bad faith under the Policy, paragraph 4(a)(iii).

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 names <metapinkfloyd.com> and <pinkfloydmetaverse.com> be transferred to the Complainant.

/Erica Aoki/

Erica Aoki

Sole Panelist

Date: September 7, 2023