

ADMINISTRATIVE PANEL DECISION

Real Value LLC dba Simple Modern v. 卢剑锋 (Jianfeng Lu)
Case No. D2023-3445

1. The Parties

The Complainant is Real Value LLC dba Simple Modern, United States of America (“United States”), represented by Hall Estill Hardwick Gable Golden & Nelson, P.C., United States.

The Respondent is 卢剑锋 (Jianfeng Lu), China.

2. The Domain Name and Registrar

The disputed domain name <simplemodernus.com> is registered with Jiangsu Bangning Science & technology Co. Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on August 11, 2023. On August 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 15, 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 (Redacted for Privacy, simplemodernus) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 16, 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 August 21, 2023.

On August 16, 2023, the Center sent an email communication to all Parties in Chinese and English regarding the language of the proceeding. On August 21, 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 Chinese and English of the Complaint, and the proceedings commenced on August 30, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 19, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 25, 2023.

The Center appointed Rachel Tan as the sole panelist in this matter on October 3, 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 sells bottles, tumblers, bags and accessories. The Complainant began advertising and selling products from a website at the domain name <simplemodern.com> soon after August 17, 2016.

The Complainant is the owner of marks consisting of the element “simple modern” and  in multiple jurisdictions. For example, China Trade Mark Registration No. 47455318 for , registered on October 28, 2021, in class 21; China Trade Mark Registration No. 47455236 for , registered on October 28, 2021, in class 18; United States Trade Mark Registration No. 6129231 for , registered on August 18, 2020, in class 18; and United States Trade Mark Registration No. 5284688 for , registered on September 12, 2017, in class 21.

The Respondent is 卢剑锋 (Jianfeng Lu), China.

The disputed domain name was registered on June 25, 2023. 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 allegedly used identical webpages, including copies of identical marketing pictures of the Complainant’s “www.simplemodern.com” webpages showing and selling products using the SIMPLE MODERN marks.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to the Complainant’s SIMPLE MODERN marks and domain name. The disputed domain name entirely reproduces the Complainant’s SIMPLE MODERN mark except for the addition of the letters “us”. The inclusion of the letters “us” does not negate the confusing similarity between the disputed domain name and the Complainant’s mark.

The Complainant further alleges that the Respondent does not have rights or legitimate interests in respect of the disputed domain name. Due to the use of identical webpages to the Complainant’s website, the Respondent knew of the Complainant’s existence and rights in the SIMPLE MODERN mark before it obtained the disputed domain name. The Respondent putatively sells bottles, tumblers and bags in connection with the disputed domain name and in direct competition with the Complainant. The products Respondent putatively sells are pictured as identical replicas of the Complainant’s patent protected products. Based on numerous complaints from customers of the Complainant, it appears that the Respondent is not selling anything at all on the resolved website, but merely defrauding people of money with ghost purchases. Hence, the Respondent’s use of the disputed domain name cannot constitute a *bona fide* offering of goods or services within the meaning of the Policy.

The Complainant finally asserts that the disputed domain name has been registered and is being used by the Respondent in bad faith. As evidenced by the many identical items listed for sale on the resolved website using the Complainant’s registered marks, and the Respondent is deriving profit from the resolved website in bad faith. The facts clearly establish that the Respondent registered the disputed domain name to blatantly misappropriate the Complainant’s goodwill in the SIMPLE MODERN mark. Hence, the Respondent use of the disputed domain name is in bad faith and primarily for the purpose of disrupting the business of a competitor with the intent to attempt to attract, for commercial gain, internet users to the resolved website by

creating a likelihood of confusion with the Complainant's domain name <simplemodern.com>, the SIMPLE MODERN marks and registrations as to the source, sponsorship, affiliation, or endorsement of the disputed domain name.

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.

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) the disputed domain name and the content of the resolved website are in English which indicate that the Respondent is able to communicate in English; and
- (b) the Complainant will be unduly disadvantaged by having to conduct the proceeding in Chinese.

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 States. Requiring the Complainant to translate the Complaint in Chinese would lead to delay and cause the Complainant to incur translation expenses;
- (b) the Respondent's choice of Roman letters for the disputed domain name and English contents for the resolved website indicate that the Respondent is familiar with 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 determines that the language of the proceeding shall be English, and 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 SIMPLE MODERN mark.

The Panel notes that the SIMPLE MODERN mark is wholly encompassed within the disputed domain name. The SIMPLE MODERN 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 letters "us" do not prevent a finding of confusing similarity between the SIMPLE MODERN mark and the disputed domain name.

Lastly, it is permissible for the Panel to ignore the generic Top-Level Domain, 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 SIMPLE MODERN 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 of evidence 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 "simple modern" 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 used identical webpages, including copies of identical marketing pictures of the Complainant's "www.simplemodern.com" webpages showing and selling products using the SIMPLE MODERN marks. The website did not accurately and prominently disclose a lack of a relationship between the Complainant and the Respondent. Moreover, according to the Complainant (which is not disputed by the Respondent), it appears that the Respondent is not selling anything at all on the resolved website, but merely defrauding people of money with ghost purchases. Therefore, the facts do not support a claim of a *bona fide* offering of goods or services under the "Oki Data test". See *Oki 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 SIMPLE MODERN mark was registered well before the registration of the disputed domain name. Through use and advertising, the Complainant's SIMPLE MODERN mark is known throughout the world, including in China. Search results using the term "simple modern" on the Internet search engines direct Internet users to the Complainant and its products, which indicates that an exclusive connection between the SIMPLE MODERN mark and the Complainant has been established. As such, the Respondent should have known of the Complainant's SIMPLE MODERN mark when registering the disputed domain name. This fact has been reinforced by the Respondent's use of the SIMPLE MODERN mark on the products selling at the resolved website of the disputed domain name.

The Panel notes that the disputed domain name, which is inherently misleading, previously resolved to a website allegedly used identical webpages, including copies of identical marketing pictures of the Complainant's "www.simplemodern.com" webpages showing and selling products using the SIMPLE MODERN marks. The lack of a disclaimer that the Respondent is not affiliated with the Complainant is noticeably absent. According to the Complainant, the Respondent does not actually offer goods at issue. 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 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 SIMPLE MODERN 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, <simplemodernus.com>, be transferred to the Complainant.

/Rachel Tan/

Rachel Tan

Sole Panelist

Date: October 17, 2023