

ADMINISTRATIVE PANEL DECISION

Trove Brands, LLC v. 陈龙 (Chen Long)

Case No. D2023-3460

1. The Parties

The Complainant is Trove Brands, LLC, United States of America (“United States”), represented by Knobbe, Martens, Olson & Bear, LLP, United States.

The Respondent is 陈龙 (Chen Long), China.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 15, 2023. On August 15, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 16, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. The Center sent an email communication to the Complainant on August 18, 2023, providing the registrant’s 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 22, 2023.

On August 18, 2023, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant confirmed its request that English be the language of the proceeding on August 18, 2023. 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 Chinese of the Complaint, and the proceedings commenced on September 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 21, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 2, 2023.

The Center appointed Andrew Sim as the sole panelist in this matter on October 5, 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 a Utah, United States limited liability company involved in the business of designing, creating, marketing, and selling beverages containers and related products. It owns OWALA, a brand that specializes in water bottles.

The Complainant is the exclusive licensee and grantee of all rights of OWALA marks, including the following:

- OWALA, United States Registration No. 6,181,745, filed on August 23, 2019, published on December 31, 2019, and registered on October 20, 2020; and
- OWALA, United States Registration No. 7,049,270, filed on August 23, 2019, published on December 31, 2019, and registered on May 9, 2023.

The Complainant has used the OWALA mark in commerce in connection with the marketing and sale of its water bottle products on its website "www.owalalife.com", including in the domain name.

The Complainant has also used the OWALA mark in social media marketing pages, including the "@owala" Instagram page and the "owalalife" Facebook page.

The disputed domain name was registered on June 29, 2023, which previously resolved to a website imitating the Complainant's official website at "www.owalalife.com". The website at the disputed domain name purported to sell the Complainant's products in USD, and at a discount.

5. Parties' Contentions

A. Complainant

The Complainant contends that (i) the disputed domain name is identical or confusingly similar to the Complainant's OWALA mark; (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and (iii) the disputed domain name was registered and is being used in bad faith.

Firstly, the Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant's OWALA mark, since the former entirely reproduces the element "owala" with the mere addition of "lifeus" and the suffix ".com". The Complainant further submits that the disputed domain name points to a website that mimics the Complainant's website, increasing the likelihood of confusion.

Secondly, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name as the Complainant has not authorized, licensed, or permitted the Respondent to use the OWALA mark in connection with registering the disputed domain name. In addition, the Respondent has not been commonly known by the disputed domain name, as indicated by online and trademark search results. Further, the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. Instead, the Complainant's submission is that the Respondent is making illegitimate, commercial, and unfair use of the disputed domain name by impersonating the Complainant in a phishing scheme.

Thirdly, the Complainant contends that the disputed domain name was registered and is being used in bad faith. Regarding registration in bad faith, the Complainant submits that its reputation in the OWALA mark and the Respondent's lack of legitimate use indicates that registration was in bad faith. Moreover, the Complainant submits that the Respondent chose the disputed domain name to cause confusion. The OWALA mark is unique and distinctive such that this could not have been a mere coincidence. Further, the proximity in time between registration of the disputed domain name in June and its bad faith use in July indicates registration was in bad faith. Regarding the use of the disputed domain name, the Complainant submits that the Respondent is aware of the Complainant's rights in the OWALA mark. The Respondent uses the disputed domain name fraudulently to victimize the Complainant and consumers in a phishing scheme.

B. Respondent

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

6. Discussion and Findings

6.1 Procedural Matter – Language of the Proceeding

The Rules, in paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement between the respondent and the registrar in relation to the disputed domain name, the language of the 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. According to the information received from the Registrar, the language of the Registration Agreement for the disputed domain name is Chinese.

The Complainant submits that the language of the proceedings should be English. The Complainant observed that the Respondent advertises itself as English-speaking and communicates in English in its phishing scheme. This is evident from the fact that the disputed domain name points to a fraudulent imitation of the Complainant's website, and is entirely in English and solicits USD as currency. Meanwhile, the Complainant and its representatives are English-speaking, are based in the United States, and do not understand Chinese. The Complainant further notes that Internet searches of the OWALA mark would show reference to the Complainant's website in English, and that the Registrar has an English-language website and listed English-language terms for data usage and contact information.

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.

The Panel accepts the Complainant's submissions regarding the language of the proceeding. The disputed domain name resolves to an English website, which indicates the Respondent is conversant in English. The Complainant may be unduly disadvantaged by having to conduct the proceeding in Chinese. The Panel further notes that the Center has notified the Respondent in both Chinese and English of the language of the proceeding and the commencement of the proceeding. The Respondent chose not to comment on the language of the proceeding or respond to the Complaint in either English or Chinese. Having considered all the circumstances of this case, the Panel determines that English be the language of the proceeding.

6.2 Substantive Matter – Three Elements

Under the Policy, the Complainant must prove that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which it has rights;

- (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.

A. Identical or Confusingly Similar

The Complainant has established that it has registered trademark rights in the OWALA mark.

The test for confusing similarity involves a reasoned but relatively straight forward comparison between the OWALA mark and the disputed domain name. This test typically involves a side-by-side comparison of the disputed domain name and the textual components of the OWALA mark to assess whether it is recognizable within the disputed domain name, as indicated in section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Panel agrees with the Complainant's submissions. The disputed domain name incorporates the entirety of the OWALA mark. The additions of the terms "life" and "us" do not prevent a finding of confusing similarity. See *PepsiCo, Inc. v. Amilcar Perez Lista d/b/a Cybersor*, WIPO Case No. [D2003-0174](#).

Having considered the above, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights, in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Pursuant to Paragraph 4(a)(ii) of the Policy, the Complainant has to show that the Respondent lacks right and legitimate interests in the disputed domain name. As relied upon by the Complainant, it suffices if the Complainant can show that: (1) there is no evidence indicating that the Respondent has ever been commonly known by the disputed domain name; and (2) the Respondent has not made and is not making a legitimate, noncommercial, or fair use of the disputed domain name, and has not used the disputed domain name in connection with a *bona fide* offering. See *Banco Itau S.A. v. Laercio Teixeira*, WIPO Case No. [D2007-0912](#).

In the circumstances, the Complainant has confirmed that it is not associated with the Respondent in any way, nor has it licensed nor allowed the Respondent to use the OWALA mark. There is also no evidence showing that the Respondent has been commonly known by the disputed domain name in any manner, and that the Respondent is not commonly known by the disputed domain name. See *Unisys Corporation v. Unisys Consulting, LLC*, WIPO Case No. [D2004-0138](#).

Additionally, the Respondent's use of the disputed domain name is not legitimate, noncommercial, or fair. As submitted by the Complainant, the Respondent's use was unauthorized. The disputed domain name directs users to a webpage that mimics the Complainant's site. This cannot be considered a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name, particularly where the OWALA mark is fully incorporated in the disputed domain name, save for the price of goods and email address displayed on the website. See, e.g., *Hertz System, Inc. v. Super Privacy Service LTD c/o Dynadot / domain admin*, WIPO Case No. [D2021-3419](#). Use of the disputed domain name for impersonation can never confer rights or legitimate interests on the Respondent ([WIPO Overview 3.0](#), section 2.13).

The Panel is satisfied, based on the evidence submitted, that the Complainant has established a *prima facie* case that the Respondents was not making a legitimate noncommercial or fair use of the disputed domain name or a *bona fide* offering of goods or services. The burden of production of evidence, hence, shifts to the Respondent to prove the contrary. Since the Respondent failed to submit a response, the Panel concludes that the Respondent has not rebutted the Complainant's *prima facie* case to answer to these allegations.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name in accordance with paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The OWALA mark was registered since 2020, whereas the Respondent registered the disputed domain name in 2023. As submitted by the Complainant and also noted by the Panel in section 6.2A above, the disputed domain name comprises the OWALA mark in its entirety. Since the OWALA mark is not a generic or descriptive term, the Panel finds that the Respondent was aware of the OWALA mark at the time the disputed domain name was registered. Furthermore, the disputed domain name directs users to a webpage that mimics the Complainant's site, which indicates the disputed domain name was registered in bad faith.

Separately, the Panel agrees with the Complainant's observation that the Respondent's use of the disputed domain name is in bad faith. It is evident that the disputed domain name is used deliberately to create confusion with the Complainant's OWALA mark and website. As can be seen from the evidence submitted, the website hosted by the disputed domain name is highly identical with that of the Complainant aesthetically, save for the price of goods and contact email address. The resemblance between the two websites cannot be coincidental. Instead, it is likely that the Respondent is using the disputed domain name in a fraudulent phishing scheme to ascertain sensitive personal information from customers.

Having considered the circumstances above, the Panel is satisfied that the Complainant has made out its case that the disputed domain name was registered and is being used in bad faith under paragraph 4(a)(iii) 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 <owalalifeus.com> be transferred to the Complainant.

/Andrew Sim/

Andrew Sim

Sole Panelist

Date: October 19, 2023