

## ADMINISTRATIVE PANEL DECISION

Trove Brands, LLC v. 曾凡琪 (Zeng Fanqi)

Case No. D2023-3599

### 1. The Parties

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

Respondent is 曾凡琪 (Zeng Fanqi), China.

### 2. The Domain Names and Registrar

The disputed domain names <owalalifes.com> and <owalalifeusa.com> are 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 25, 2023. On August 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On August 29, 2023, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details. The Center sent an email communication to Complainant on September 1, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint in English on September 6, 2023.

On September 1, 2023, the Center informed the parties in Chinese and English, that the language of the registration agreement for the disputed domain names is Chinese. On September 2, 2023, Complainant requested English to 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 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 Respondent in English and Chinese of the Complaint, and the proceedings commenced on September 11, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 1, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on October 5, 2023.

The Center appointed Yijun Tian as the sole panelist in this matter on October 18, 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, Trove Brands, LLC, is a company incorporated in the United States. Complainant owns a line of active lifestyle brands primarily in the business of designing, creating, developing, marketing, and selling beverage containers and associated products and accessories. These brands have developed considerable popularity and recognition around the world, including OWALA marks.

Complainant claims rights by virtue of an exclusive license in the OWALA marks. Complainant cites several U.S. federal registrations for trademarks comprising or containing OWALA, including but not limited to the following: U.S. Trademark Registration No. 6181745 for OWALA, registered on October 20, 2020, owned by Runway Blue, LLC.

Complainant also operates domain names that contain the OWALA mark in its entirety, such as <owalalife.com> (registered on August 8, 2019), which is the official website of Complainant.

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

Respondent is 曾凡琪 (Zeng Fanqi), China.

##### **C. The Disputed Domain Names**

The disputed domain names <owalalifes.com> and <owalalifeusa.com> were registered on July 14, 2023, after the registration of the OWALA marks in 2020.

According to the Complaint and relevant evidence provided by Complainant, the disputed domain names both resolved to websites purporting to be authorised online stores for Complainant's products, and the websites were in the English language, contain the contents copied from the original website of Complainant, and purport to offer Complainant's goods for sale at extreme discounts for USD. Both disputed domain names are currently resolved to inactive websites.

#### **5. Parties' Contentions**

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

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain names.

Notably, Complainant contends that both disputed domain names are confusingly similar in that they wholly incorporate Complainant's registered trademark OWALA in its entirety. One is followed by "lifeusa" and the Top-Level Domain ("TLD") suffix ".com." The other is followed by "lifes" and the TLD suffix ".com." These terms do not distinguish the disputed domain names from the OWALA Mark.

Complainant contends that Respondent has no rights or legitimate interests in respect of the disputed domain names.

Complainant contends that the disputed domain names were registered and are being used in bad faith.

Complainant requests that the disputed domain names be transferred to it.

## **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

### **6.1 Procedural Issue: Language of the Proceeding**

The language of the Registration Agreements for all disputed domain names 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.

The Complaint was filed in English. Complainant requested that the language of the proceeding be English for several reasons, including the fact that:

- (a) the disputed domain names, <owalalifeusa.com> and <owalalifes.com>, include the English terms "life", "usa", and "lifes" in Latin script, and the webpages the disputed domain names point to are fraudulent imitations of Complainant's website at "www.owalalife.com", that are entirely in English and solicit USD as currency;
- (b) Respondent is clearly advertising itself as English-speaking and expressly communicating in English as part of Respondent's fraudulent scheme;
- (c) Complainant and its representative in this proceeding are English-speaking, are based in the United States, and do not understand Chinese. It would be costly for Complainant to have to conduct the proceeding in Chinese or any non-English language;
- (d) a simple Internet search of Complainant's OWALA mark would show at least hundreds of references to the OWALA brand in English and Complainant's website at "www.owalalife.com" in English;
- (e) the Registrar has an English-language website and listed English language terms of service for data usage and contact information; and
- (f) the circumstances of this administrative proceeding and the interests of fairness render English the most appropriate and least burdensome language for the proceeding.

Respondent did not make any submissions with respect to the language of the proceeding.

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 (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.5.1).

On the record, Respondent appears to be located in China and is thus presumably not a native English speaker, but considering the following aspects, the Panel has decided that the language of the proceeding shall be English: (a) the disputed domain names are registered in Latin characters, particularly in English (e.g., English words “life” and “usa”), rather than Chinese script; (b) the TLD of the disputed domain names is “.com”, so the disputed domains names seem to be prepared for users worldwide, particularly English speaking countries; (c) the webpages which the disputed domain names resolve to are in the English language; (d) 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; (e) the Center also notified Respondent in both Chinese and English of the Complaint, and informed Respondent that it would accept a response in either English or Chinese, but Respondent chose not to file any response.

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 Issues: Three Elements**

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

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between Complainant’s trademark and the disputed domain names. [WIPO Overview 3.0](#), section 1.7.

Complainant claims rights by virtue of being an exclusive licensee of the OWALA marks, but has not provided any evidence of such license agreement nor any attestation from the trademark owner, Runway Blue, LLC. However, the Panel notes that both respective entities share the same company address in Utah, United States, and that the trademark owner is also the owner of a trademark corresponding to Complainant’s name<sup>1</sup>. Furthermore, given the certification of truth included in the Complaint, Complainant’s claim to being an exclusive licensee, and its operation of the domain name <owalalife.com> since 2019 that cites “© 2023 Trove Brands, LLC. All Rights Reserved”, the Panel finds Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.4.

The Panel finds the entirety of the mark is reproduced within the disputed domain names. Accordingly, the disputed domain names are identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms “lifes”, “life”, and “usa” may bear on assessment of the second and third elements, the Panel finds the addition of such terms do not prevent a finding of confusing similarity between the disputed domain names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8. Based on the available record, the Panel finds the first element of the Policy has been established.

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

Paragraph 4(c) of the Policy provides a list of circumstances in which Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with

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<sup>1</sup> Noting in particular the general powers of a panel articulated *inter alia* in paragraphs 10 and 12 of the UDRP Rules, it has been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision. [WIPO Overview 3.0](#), section 4.8.

relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain names. Respondent has not rebutted Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

More specifically,

(i) there has been no evidence adduced to show that Respondent is using the disputed domain names in connection with a *bona fide* offering of goods or services. Respondent has not provided evidence of reasons to justify the choice of the term "owala", Complainant's OWALA trademark, in the disputed domain names. There has been no evidence to show that Complainant has licensed or otherwise permitted Respondent to use the OWALA marks or to apply for or use any domain name incorporating the OWALA marks;

(ii) there has been no evidence adduced to show that Respondent has been commonly known by the disputed domain names. There has been no evidence adduced to show that Respondent has any registered trademark rights with respect to the disputed domain names. Respondent registered the disputed domain names in 2023, after the OWALA marks became widely known. The disputed domain names are confusingly similar to Complainant's OWALA marks; and

(iii) there has been no evidence adduced to show that Respondent is making a legitimate noncommercial or fair use of the disputed domain names. By contrast, both disputed domain names resolved to websites purporting to be authorised online stores for Complainant's products, and the websites were in the English language, contain the contents copied from the original website of Complainant, and purport to offer Complainant's goods for sale at extreme discounts for USD. It seems that Respondent is making profits through the Internet traffic attracted to the websites under the disputed domain names. (See *BKS Bank AG v. Jianwei Guo*, WIPO Case No. [D2017-1041](#); and *Pet Plan Ltd. v. 权中俊 and 李金梁 (Li Jin Liang)*, WIPO Case No. [D2020-3358](#).)

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Based on the available record, the Panel finds the second element of the Policy has been established.

### **C. Registered and Used in Bad Faith**

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that Respondent has registered and used the disputed domain names in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

UDRP panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds Respondent's registration and use of the disputed domain names constitute bad faith under the Policy.

Based on the information provided by Complainant, the Panel finds that Complainant has a widespread reputation in the OWALA marks with regard to its products and services. It is not conceivable that Respondent would not have had Complainant's trademark in mind at the time of the registration of the disputed domain names (in 2023). This has been reinforced by the fact that each disputed domain name incorporates Complainant's OWALA trademark.

Respondent has used the website resolved by each disputed domain name for displaying the contents copied from the original website of Complainant, and purports to offer Complainant's goods for sale at extreme discounts for USD.

Thus, the Panel concludes that Respondent is currently using confusingly similar disputed domain names with the intention to attract, for commercial gain, Internet users to Respondent's websites by creating a likelihood of confusion with Complainant. Such use constitutes bad faith pursuant to paragraph 4(b)(iv) of the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

## **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 <owalalifes.com> and <owalalifeusa.com> be transferred to Complainant.

*/Yijun Tian/*

**Yijun Tian**

Sole Panelist

Dated: November 13, 2023