

ADMINISTRATIVE PANEL DECISION

Walgreen Co. v. li xiao dong
Case No. D2023-3696

1. The Parties

The Complainant is Walgreen Co., United States of America (“United States”), represented by Winterfeldt IP Group PLLC, United States.

The Respondent is li xiao dong, China.

2. The Domain Name and Registrar

The disputed domain name <waglgreens.com> is registered with Gname.com Pte. Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on September 1, 2023. On September 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 6, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 6, 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 September 8, 2023.

On September 6, 2023, the Center informed the parties in Chinese and English, that the language of the registration agreement for the disputed domain name is Chinese. On September 8, 2023, the Complainant confirmed its request for English to be the language of the proceeding. The Respondent did not submit any 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 proceeding commenced on September 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 10, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 11, 2023.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on October 26, 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

The Complainant is a company headquartered in the United States and the operator of one of the largest retail pharmacy chains in the United States, under the trade mark WALGREENS (the "Trade Mark").

The Complainant is the owner of registrations in jurisdictions worldwide for the Trade Mark, including United States registration No. 1057249, with a registration date of January 25, 1977; Chinese registration No. 6997452, with a registration date of November 14, 2015; and International registration No. 1100522, with a registration date of August 19, 2011.

B. Respondent

The Respondent is located in China.

C. The Disputed Domain Name

The disputed domain name was registered on September 29, 2022.

D. Use of the Disputed Domain Name

The disputed domain name was previously resolved to a Chinese language website promoting waterproof tile coating, tiles, and other consumer products, and containing prominent suggestive images of partially clad women; and it is presently resolved to a Chinese language website with multiple links to gambling related websites (collectively, the "Websites").

5. Parties' Contentions

A. Complainant

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

Notably, the Complainant contends that the disputed domain name has been used, without the authorisation or approval of the Complainant, for commercial gain, to attract Internet users to the Websites.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Issue: 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 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. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that the disputed domain name uses English characters; and requiring the Complainant to translate the Complaint would incur additional expenses and delay.

The Respondent did not make any submissions with respect to the language of the proceeding, and has taken no part in this 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).

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

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 the Complainant's trade mark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The disputed domain name consists of a common, obvious, or intentional misspelling of the Trade Mark. [WIPO Overview 3.0](#), section 1.9.

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

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 light of the manner of the Respondent's use of the disputed domain name referred to above, the Panel finds, in all the circumstances, that the requisite element of bad faith has been made out pursuant to paragraph 4(b)(iv) of the Policy.

The evidence suggests that the Respondent has targeted the Complainant in registering and using the disputed domain name; and that there cannot be any actual or contemplated good faith use of the inherently misleading disputed domain name by the Respondent.

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 name <waglgreens.com> be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Date: November 9, 2023