

ADMINISTRATIVE PANEL DECISION

JJA v. zhou qian
Case No. D2023-3774

1. The Parties

The Complainant is JJA, France, represented by Dennemeyer & Associates S.A., Luxembourg.

The Respondent is zhou qian, China.

2. The Domain Name and Registrar

The disputed domain name <atmospherafly.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 11, 2023. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 12, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name that differed from the named Respondent (Unknown – Redacted for privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 14, 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 20, 2023.

On September 14, 2023, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant submitted a request that English be the language of the proceeding on September 14, 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 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 11, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 16, 2023.

The Center appointed Matthew Kennedy as the sole panelist in this matter on October 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, founded in 1976, develops home furnishings and decoration products. It is based in France and owns trademark registrations that include the following:

- European Union trademark registration number 010493229 for ATMOSPHERA CREATEUR D'INTERIEUR, registered on June 13, 2012, specifying goods and services in multiple classes;
- European Union trademark registration number 011303039 for a figurative mark including the textual element "Atmosphera Créateur d'intérieur", registered on May 25, 2014, specifying goods and services in multiple classes; and
- International trademark registration number 1236808 for ATMOSPHERA CREATEUR D'INTERIEUR, registered on July 31, 2014, designating multiple jurisdictions, including China, and specifying goods and services in multiple classes.

The above trademark registrations are current. The Complainant also registered the domain name <atmosphera.com> on June 2, 2003, that it uses in connection with a website where it offers its products for sale. The website homepage is in French but other language versions are available. The Complainant also registered the domain name <atmosphera.fr> on June 10, 2011, that redirects to <atmosphera.com>.

The Respondent is an individual based in China.

The disputed domain name was registered on October 14, 2022. It resolves to a website in French selling the Complainant's products. The website prominently displays the name "Atmosphera" in a logo different from the Complainant's figurative mark. The website displays images from the Complainant's website of home furnishings, including lighting, bed linen, and curtains. The website contact address is in Texas, United States of America ("United States").

5. Parties' Contentions

A. Complainant

The disputed domain name is confusingly similar to the Complainant's mark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has not licensed or otherwise authorized the Respondent to use its trademark or to apply for any domain name incorporating the trademark.

The disputed domain name was registered and is being used in bad faith. It is obvious that the Respondent was aware of the Complainant's trademark rights when the disputed domain name was registered, as it resolves to a website reproducing the Complainant's goods and trademarks.

B. Respondent

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

6. Discussion and Findings

6.1. Procedural Issue: Language of the Proceeding

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 Registrar confirmed that the Registration Agreement for the disputed domain name is in Chinese.

The Complainant requests that the language of the proceeding be English. Its main arguments are that the contact address on the website associated with the disputed domain name is in the United States, which shows that the Respondent understands English; the disputed domain name is not in Chinese but contains a trademark and an English word; the website associated with the disputed domain name is in French but contains English words and it offers worldwide delivery; and the cost of translation would impose an unfair burden on the Complainant.

Paragraph 10(b) and (c) of the Rules require the Panel to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding take place with due expedition. Prior UDRP panels have decided that the choice of language of the proceeding should not create an undue burden for the parties. See, for example, *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#); *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. Ltd.*, WIPO Case No. [D2008-0293](#).

The Panel observes that the Complaint and amended Complaint were filed in English. Despite the Center having sent an email regarding the language of the proceeding and the Notification of the Complaint in English and Chinese, the Respondent has not requested that Chinese be the language of the proceeding or expressed any interest in participating otherwise in this proceeding. Therefore, the Panel considers that requiring the Complainant to translate the Complaint would create an undue burden and delay.

Having considered all the circumstances above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English. The Panel would have accepted a Response in Chinese, but none was filed.

6.2 Substantive Issues

Paragraph 4(a) of the Policy provides that a complainant must prove each of the following elements with respect to each disputed domain name:

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

The burden of proof of each element is borne by the Complainant.

A. Identical or Confusingly Similar

Based on the evidence presented, the Panel finds that the Complainant has rights in the ATMOSPHERA CREATEUR D'INTERIEUR mark.

The disputed domain name incorporates the only distinctive element of the Complainant's mark, (*i.e.*, the coined term "atmosphera"). It omits the rest of the mark (*i.e.*, CREATEUR D'INTERIEUR), which is a descriptive phrase meaning "interior designer" in French. The disputed domain name adds the English word "fly" but the distinctive element of the Complainant's mark remains clearly recognizable within the disputed domain name. Accordingly, these differences do not prevent a finding of confusing similarity between the disputed domain name and the Complainant's mark. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), sections 1.7 and 1.8.

The only additional element in the disputed domain name is a generic Top-Level Domain ("gTLD") extension (.com). As a standard requirement of domain name registration, this element may be disregarded in the comparison between the disputed domain name and the Complainant's mark. See [WIPO Overview 3.0](#), section 1.11.

For the above reasons, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights. The Complainant has satisfied the first element of paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the Panel, shall demonstrate that the Respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- (i) before any notice to [the respondent] of the dispute, [the respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [the respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the respondent has] acquired no trademark or service mark rights; or
- (iii) [the respondent is] making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

As regards the first and third circumstances set out above, the disputed domain name resolves to a website titled "Atmosphera" selling the Complainant's products. Although the logo on the website is different from the Complainant's figurative mark, its sole textual element is the distinctive element in the Complainant's marks and the product images are reproduced from the Complainant's website. In addition, the website is in French, as is the homepage on the Complainant's website. The overall impression is that the Respondent's website is operated by the Complainant or an affiliate of the Complainant, such as an authorized discount retailer. However, the Complainant submits that it has not licensed or otherwise authorized the Respondent to use its trademark or to apply for any domain name incorporating the trademark. These circumstances indicate that the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services, and that he is not making a legitimate noncommercial or fair use of the disputed domain name either.

As regards the second circumstance set out above, the Registrar has confirmed that the Respondent's name is "zhou qian". Although the Respondent's website is titled "Atmosphera", nothing on the record indicates that the Respondent is commonly known by the disputed domain name.

In summary, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent failed to rebut that *prima facie* case because he did not respond to the Complainant's contentions.

Therefore, based on the record of this proceeding, the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that certain circumstances, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith, but these circumstances are not exhaustive. The fourth circumstance is as follows:

- (iv) by using the [disputed] domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location.

As regards registration, the disputed domain name was registered in 2022, years after the Complainant obtained its trademark registration for ATMOSPHERA CREATEUR D'INTERIEUR, including in China, where the Respondent is based. The disputed domain name incorporates the distinctive element of that mark, which is a coined term, combining it only with the word "fly" and a gTLD extension. The website to which the disputed domain name resolves displays product images from the Complainant's website and offers for sale the Complainant's home furnishings. In view of these circumstances, the Panel finds that the Respondent had the Complainant and its mark in mind when he registered the disputed domain name.

As regards use, the disputed domain name resolves to a website that displays the distinctive element of the Complainant's ATMOSPHERA CREATEUR D'INTERIEUR mark and offers for sale the Complainant's home furnishings. Given the Panel's findings in Section 6.2B *supra*, the Panel finds that, by using the disputed domain name, the Respondent has intentionally attempted to attract for commercial gain, Internet users to his website by creating a likelihood of confusion with the Complainant's ATMOSPHERA CREATEUR D'INTERIEUR mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or of the home furnishings offered for sale on that website, within the terms of paragraph 4(b)(iv) of the Policy.

Therefore, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant has satisfied the third element in 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 <atmospherafly.com> be transferred to the Complainant.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: October 30, 2023