

ADMINISTRATIVE PANEL DECISION

Lone Star National Bank v. 山东泡泡糖网络科技有限公司 (Shan Dong Pao Pao Tang Wang Luo Ke Ji You Xian Gong Si)
Case No. D2023-4258

1. The Parties

The Complainant is Lone Star National Bank, United States of America (“United States”), represented by Dykema Gossett PLLC, United States.

The Respondent is 山东泡泡糖网络科技有限公司 (Shan Dong Pao Pao Tang Wang Luo Ke Ji You Xian Gong Si), China.

2. The Domain Name and Registrar

The disputed domain name <lsnb.com> is registered with Alibaba Cloud Computing (Beijing) Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on October 12, 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 October 13, 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 (Unnamed Individual, Alibaba Cloud Computing (Beijing) Co., Ltd.) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 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 October 26, 2023.

On October 16, 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 the same day, the Complainant requested that the language of the proceeding be English. 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 proceedings commenced on October 30, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 19, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 20, 2023.

The Center appointed Matthew Kennedy as the sole panelist in this matter on December 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 offers consumer and commercial banking services from over 30 locations in the United States. It owns the following United States trademark registrations:

- number 3,609,463 for LSNB MOBILE, registered on April 21, 2009 with a claim of first use in commerce on October 31, 2007, specifying banking services in class 36, with a disclaimer of exclusive use of "mobile" apart from the mark as shown; and
- number 6,865,364 for LSNB, registered on October 4, 2022, with a claim of first use in commerce in July 2013, specifying banking and financial services in class 36.

The above trademark registrations are current. The Complainant operates a website in connection with the domain name <lonestarnationalbank.com>. The website and the Complainant's promotional material prominently display a logo featuring the name "Lone Star National Bank". The website provides information about the Complainant's products and services, including "LSNB Card Manager", "LSNB Checking", "LSNB Rewards", and "LSNB Investment Services", and a mobile application named "LSNB Rewards".

The Respondent is a Chinese company. Its name may be translated as "Shandong Bubblegum Network Technology Co., Ltd."

The disputed domain name was registered on March 27, 2012. It formerly resolved to a website in Chinese and English that displayed a notice advising that offers for the disputed domain name could be made on a certain broker's website and provided the names and contact details of four brokers. At the time of this Decision, the disputed domain name no longer resolves to any active website; rather, it is passively held.

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 is identical to its LSNB mark. The Complainant submits that it has used the LSNB mark for over 15 years in connection with a wide variety of banking and financial services and that such use has been continuous, substantial, and uninterrupted.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not in any way affiliated with the Complainant, nor has the Complainant authorized or licensed the Respondent to use the Complainant's LSNB mark, or to register domain names incorporating the Complainant's LSNB mark or variations thereof.

The disputed domain name was registered and is being used in bad faith. The Respondent registered the disputed domain name for the primary purpose of disrupting the Complainant's business by creating a likelihood of confusion with the Complainant's LSNB mark as to the source, sponsorship, affiliation or endorsement of any future website and/or to prevent the Complainant from having access to the disputed domain name. The Respondent is on constructive notice, as the LSNB trademark is a registered trademark in the United States by virtue of the Complainant's United States trademark registrations, combined with over 15 years of use in the United States. Given the Complainant's reputation and the ubiquitous presence of the Complainant's distinctive LSNB trademark on the Internet, it can only logically follow that the Respondent was aware of the LSNB trademark prior to registering the disputed domain name, which consists of the trademark in its entirety. The passive or inactive holding of the disputed domain name that incorporates a registered trademark, without a legitimate Internet purpose, clearly indicates that it is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1 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 Registrar's International Website Domain Name Service Agreement is written in English and that the Registrar's website displays an ICANN Supplemental Notice written in English.

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

The Panel reiterates that the Registrar has verified that the Registration Agreement used by the Respondent for the disputed domain name in this case is in Chinese. While the Registrar may make available an English version of its standard registration agreement, that is evidently not the version that the Respondent used. In any case, despite the Center having sent the notification of the Complaint, the written notice of the Complaint, and an email regarding the language of the proceeding in both Chinese and English, the Respondent has not commented on the issue of language nor expressed any interest in otherwise participating in this proceeding. Therefore, the Panel considers that requiring the Complainant to translate the Complaint, as amended, would create an undue burden and delay, whereas accepting it as filed without translation will not cause unfairness to either Party. 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. 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 the following elements:

(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. The Respondent's default does not by itself mean that the Complainant is deemed to have prevailed. See [WIPO Overview 3.0](#), section 4.3.

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 trademark and the disputed domain name. See [WIPO Overview 3.0](#), section 1.7.

Based on the evidence of its trademark registrations, the Panel finds that the Complainant has shown rights in respect of the LSNB MOBILE and LSNB trademarks. See [WIPO Overview 3.0](#), section 1.2.1.

The Complainant also claims unregistered trademark rights in LSNB and submits that it has used this mark for over 15 years. It provides no evidence of instances of use of any mark prior to the present time. It claims that it is commonly referred to by the service mark and trade name LSNB "in a multitude of marketing platforms". In support, it provides screenshots of its current website and pages of its promotional material. The Panel observes that this evidence identifies the Complainant by its full name, "Lone Star National Bank" rather than by its initials. The evidence shows that the abbreviation "LSNB" as part of composite product names, such as "LSNB Card Manager", "LSNB Checking", "LSNB Rewards", and "LSNB Investment Services" rather than as a stand-alone mark. It also shows that the Complainant offers a mobile application named "LSNB Rewards". However, this evidence does not show that the Complainant uses "LSNB" as a distinctive identifier that consumers associate with its services. In these circumstances, the Panel is unable to find that the Complainant has established unregistered rights in the LSNB mark. See [WIPO Overview 3.0](#), section 1.3.

The Panel will conduct a comparison between the disputed domain name and the Complainant's registered trademarks. The Panel finds that the disputed domain name incorporates the entirety of the LSNB mark, which is the dominant and sole distinctive element of the LSNB MOBILE mark. The dominant element of the LSNB MOBILE mark ("LSNB") is clearly recognizable in the disputed domain name. The only additional element in the disputed domain name is a generic Top-Level Domain ("gTLD") extension which, as a standard requirement of trademark registration, may be disregarded in this comparison. See [WIPO Overview 3.0](#), section 1.11.

Accordingly, the disputed domain name is identical to the LSNB registered mark and confusingly similar to the LSNB MOBILE registered mark for the purposes of the Policy. See [WIPO Overview 3.0](#), section 1.7. Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Given the Panel's findings below regarding bad faith, it is unnecessary to consider the second element of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Panel notes that paragraph 4(b) of the Policy establishes circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. While those circumstances are not an exhaustive list, it is necessary in any case for the Complainant to show both that the disputed domain name was registered in bad faith and also that the disputed domain name is being used in bad faith. Bad faith registration requires a showing that the Respondent's aim in registering the disputed domain name was to profit from or exploit the Complainant's trademark.

In the present case, the Respondent registered the disputed domain name in 2012, which was ten years before the registration of the Complainant's LSNB mark. Although the Complainant asserts in this proceeding that it has used the LSNB mark for over 15 years (i.e., since 2008 or earlier), the claimed date of first use of that mark in commerce included in its trademark registration is 10 years ago (i.e., July 2013), which is over one year later than the date of registration of the disputed domain name. The Complainant provides no evidence of use of the LSNB mark prior to that date. While the Complainant's other trademark registration includes a claim of first use in commerce on October 31, 2007, that claim refers to use of the LSNB MOBILE mark, not LSNB alone. The Panel recalls that, where a respondent registers a domain name before a complainant's trademark rights accrue, panels will not normally find bad faith on the part of the respondent. See [WIPO Overview 3.0](#), section 3.8.1.

The Complainant does not assert that the Respondent anticipated that the Complainant would eventually seek trademark rights in LSNB alone, and there is no evidence on the record that would support such an inference. The Panel sees no evidence of any exceptional circumstances that would indicate that the Respondent registered the disputed domain name in 2012 in anticipation of nascent trademark rights in "LSNB". See [WIPO Overview 3.0](#), section 3.8.2.

If the Complainant means to imply that the Respondent targeted part of the LSNB MOBILE mark, the evidence does not allow the Panel to draw such an inference. Although this mark was registered three years earlier than the disputed domain name, and the disputed domain name reproduces this mark's dominant element, that element consists of four letters that can serve as the initials of multiple combinations of four words unrelated to the Complainant. The Panel does not consider that the Respondent, which is based in China, should be deemed to have notice of the contents of the United States trademark register or to have otherwise generally been aware of (and targeted) the Complainant's LSNB MOBILE mark. There is no evidence in the record of use of the LSNB MOBILE mark to identify the Complainant or its services prior to the registration of the disputed domain name. There is no evidence that the Respondent has targeted the Complainant or its trademarks, nor that the Respondent has registered other domain names that target other trademarks. Based on this Complaint, the Panel is unable to conclude that the Respondent had the Complainant in mind when it registered the disputed domain name.

Accordingly, the evidence in the Complaint as presented does not indicate that the Respondent's aim in registering the disputed domain name was to profit from or exploit either of the Complainant's trademarks. Therefore, the Panel is unable to find that the Respondent registered the disputed domain name in bad faith. Given that finding, it is unnecessary to evaluate whether the disputed domain name is being used in bad faith.

Based on the available record, the Panel finds the third element of the Policy has not been established.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: December 13, 2023