

ADMINISTRATIVE PANEL DECISION

Caroll International v. zhu yong hua and sad asdas
Case No. D2023-4465

1. The Parties

The Complainant is Caroll International, France, represented by MIIP MADE IN IP, France.

The Respondents are zhu yong hua and sad asdas, both located in China.

2. The Domain Names and Registrar

The disputed domain names <caroll-fr.shop>, <caroll-fr.top>, <carollsalefr.shop>, <caroll-sale.shop>, <carollsale.shop>, <caroll-sale.top>, and <carollsale.top> are 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 October 30, 2023. On October 31, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On November 2, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names 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 November 2, 2023, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrar, requesting the Complainant to either file separate complaints for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity. The Complainant filed an amended Complaint in English on November 6, 2023.

On November 2, 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 November 3, 2023, the Complainant requested English to be the language of the proceeding. The Respondents 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 Respondents in English and Chinese of the Complaint, and the proceeding commenced on November 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 7, 2023. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on December 8, 2023.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on December 19, 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 French company founded in 1963, and a manufacturer of fashion clothing marketed and sold under the trade mark CAROLL (the “Trade Mark”).

The Complainant is the owner of registrations for the Trade Mark in jurisdictions worldwide, including International registration No. 1208979, registered on February 25, 2014.

B. Respondents

The Respondents are located in China.

C. The Disputed Domain Names

The disputed domain names <caroll-fr.shop> and <caroll-fr.top> were registered on September 29, 2023.

The disputed domain names <carollsalefr.shop>, <carollsale.shop>, and <carollsale.top> were registered on September 30, 2023.

The disputed domain names <caroll-sale.shop> and <caroll-sale.top> were registered on October 3, 2023.

D. Use of the Disputed Domain Names

The disputed domain names were previously resolved to the same French language website, impersonating the official website of the Complainant.

As at the date of this Decision, the disputed domain names are no longer resolved to any active 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 names.

B. Respondents

The Respondents did not reply to the Complainant’s contentions.

6. Discussion and Findings

6.1 Consolidation: Multiple Underlying Respondents

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the domain name registrants are the same entity or mere alter egos of each other, or under common control. The Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules, for in particular the following reasons:

- (i) the disputed domain names were each registered using the same Registrar and within a short timeframe;
- (ii) the nominal registrants are both apparently located in Jiangsu, China; and
- (iii) each of the disputed domain names was previously used in the same manner in respect of the same website.

The disputed domain name registrants did not comment on the Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2.

The Panel finds that, in all the circumstances, the above matters highlighted by the Complainant demonstrate common control.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as "the Respondent") in a single proceeding.

6.2 Language of the Proceeding

The language of the Registration Agreement for the 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 Chinese. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that the disputed domain names contain Latin text and English words, which demonstrates the Respondent is likely conversant in English; and the additional expense and delay that would be incurred should the Complainant, a French company, be required to translate the Complaint into Chinese.

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

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

Although the addition of other terms (here, "fr" (an abbreviation of "France"), and "sale") may bear on assessment of the second and third elements, the Panel finds the addition of such terms does 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 the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names. 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 names such as those enumerated in the Policy or otherwise.

While panels have recognized the limited ability of resellers or distributors to utilize a trademark for "fair use", such use is limited to the safeguards found under the so-called "Oki Data test" enshrined in section 2.8 of the [WIPO Overview 3.0](#). Here, while the nature of the goods offered at the site is unclear, the website itself engages in blatant impersonation of the Complainant, copying content from the Complainant's website and failing to include any disclaimer as to the disputed domain names' lack of relationship to the Complainant. Panels have held that the use of a domain name for illegal activity (here, impersonation/passing off) 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.

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. Given the alleged commercial offering at the disputed domain names, it is evident that the Respondent sought to attract, for commercial gain, Internet users to its web sites by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the disputed domain names, which qualifies as bad faith registration and use under paragraph 4(b)(iv) of the Policy.

Moreover, panels have held that the use of a domain name for illegal activity (here, impersonation/passing off) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain names constitutes bad faith under the Policy.

Based on the available record, the Panel finds that the Complainant has established the third element 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 names <caroll-fr.shop>, <caroll-fr.top>, <carollsalefr.shop>, <caroll-sale.shop>, <carollsale.shop>, <caroll-sale.top>, and <carollsale.top> be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Date: January 2, 2024