

ADMINISTRATIVE PANEL DECISION

Stunlock LLC v. 黄立东 (lidong), 竹海國際貿易有限公司 (huanglidong)
Case No. D2023-4963

1. The Parties

The Complainant is Stunlock LLC, United States of America (“United States”), represented by Morrison Cooper LLP, United States.

The Respondent is 黄立东 (lidong), 竹海國際貿易有限公司 (huanglidong), Hong Kong, China.

2. The Domain Name and Registrar

The disputed domain name <xqcmerch.store> is registered with Xin Net Technology Corp. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on November 29, 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 November 30, 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 (Zhuhai Guojimaoyiyouxiangongsi) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 5, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On the same day, the Center informed the Parties in Chinese and English, that the language of the Registration Agreement for the disputed domain name is Chinese. The Complainant filed an amended Complaint in English on December 13, 2023, including a 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 proceedings commenced on December 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 8, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 11, 2024.

The Center appointed Matthew Kennedy as the sole panelist in this matter on January 24, 2024. 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.

On February 5, 2024, the Panel issued Administrative Panel Procedural Order No. 1 in which it invited the Complainant to clarify the basis of its claimed rights in the XQC trademark and to explain the schedule of licensed marks in the License Agreement. Further, the Complainant was invited to provide a clear authorization from Félix Lengyel to file the Complaint and/or to clarify Félix Lengyel's role/position within the Complainant's company. The above submission was due by February 10, 2024. The Respondent was given an opportunity to comment by February 15, 2024. The Decision due date was extended to February 22, 2024. The Complainant submitted a statement of relationship on February 13, 2024. The Respondent did not submit any comments. On February 23, 2024, the Panel issued Administrative Panel Procedural Order No. 2 in which it requested the Complainant to provide a copy of the schedule of licensed marks in the license agreement. This submission was due by February 26, 2024. The Respondent was given an opportunity to comment by February 29, 2024. The Decision due date was extended to March 4, 2024. The Complainant submitted schedule A to the license agreement on February 26, 2024. The Respondent did not submit any comments.

4. Factual Background

The Complainant is a company. Its sole member is Rainbow Road, Inc. The sole shareholder of Rainbow Road, Inc. is an online media personality named Félix Lengyel, who uses the pseudonym "xQc". Mr. Lengyel and the Complainant entered into a license agreement dated June 12, 2023, that was executed on November 22, 2023 by Mr. Lengyel on behalf of both himself and the Complainant. Under the agreement, Mr. Lengyel granted the Complainant a non-exclusive, royalty-free license to exploit the content on his social media channels, his likeness, and his trademarks, including XQC, solely for the purpose of merchandising. Under the license agreement, Mr. Lengyel also authorized the Complainant to take steps to eliminate unauthorized use and to enforce the intellectual property rights in and to the licensed materials, including the licensed marks.

The Complainant filed United States trademark application number 98221846 for XQC on October 12, 2023, with a claim of first use in commerce in March 2016, specifying certain entertainment services in class 41. That application is pending.

The Respondent is an individual and a company based in China. According to the Registrar's confirmation, the company's English name is "huanglidong", which is actually the Pinyin transliteration of the Chinese name of the individual Respondent. The company's Chinese name may be transliterated as "Zhu Hai Guo Ji Mao Yi You Xian Gong Si" and translated as "Zhuhai International Trading Co., Ltd."

The disputed domain name was registered on October 20, 2022. It resolves to a website in English titled "XQC" that prominently displays a photograph of Mr. Lengyel. The website is an online store that offers for sale a range of merchandise printed with Mr. Lengyel's likeness or with another image uploaded by the customer. The merchandise includes carry bags, Christmas socks, building blocks, sweatshirts, and pillows. Each item for sale is described as an "Xqc" product. Prices are displayed in USD. A series of answers to questions appears at the bottom of the homepage, which includes a claim that "[t]his site is the official Xqc store ..." and a description of the "Official Xqc Store Mission".

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 Mr. Lengyel granted it a non-exclusive license to exploit his trademarks for merchandising, and authorization to enforce rights in his trademarks. The disputed domain name is confusingly similar to the XQC mark. The Complainant has common law trademark rights in the XQC mark since at least 2016 when he began widely using the mark. The XQC mark has acquired a secondary meaning that consumers associate with the Complainant's goods and services. The term ".store" is highly relevant for the Complainant as the disputed domain name website sells merchandise using the image, likeness and protected assets of the Complainant.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has not licensed or authorized the Respondent to use its trademark. The Respondent is not affiliated to the Complainant. The Complainant did not authorize the Respondent to register or use the disputed domain name incorporating its trademark nor has the Complainant endorsed or sponsored the Respondent or the Respondent's website.

The disputed domain name was registered and is being used in bad faith. The Complainant was already well known before the date of the registration of the disputed domain name. The website associated with the disputed domain name actively sells products that incorporate the image and likeness of the Complainant. All content on the disputed domain name website is a representation of the Complainant. The website uses xQc's name and protected material throughout the page and allows visitors to purchase xQc merchandise without the Complainant's authorization. This use of the XQC mark is clearly intended to disrupt the Complainant's business and attract consumers to the Respondent's website for its own commercial gain.

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 and amended Complaint were filed in English. The Complainant requested that the language of the proceeding be English. Its main reasons are that the website associated with the disputed domain name hosts content entirely in the English language, and the disputed domain name comprises two words in the English language, from which it is safe to assume that the Respondent understands English. Moreover, translation of the Complaint would entail significant additional costs for the Complainant and delay the proceedings.

Despite the Center sending an email regarding the language of the proceeding and the notification of the Complaint in both Chinese and English, the Respondent did not make any submissions with respect to the language of the proceeding or express any interest in otherwise participating 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. 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 the Complainant must prove each of 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.

A. Identical or Confusingly Similar

The Complainant bases its claim on alleged unregistered trademark rights in XQC. It presents evidence showing that Mr. Lengyel, a lifestyle vlogger, is widely known by the pseudonym "xQc". The Panel recalls that a personal name can provide standing where it is being used in commerce as a distinctive identifier of a complainant's goods or services, not simply because the personal name is famous. See [WIPO Overview 3.0](#), section 1.5. The Panel considers that the same applies to a pseudonym.

In the present case, the evidence shows that xQc (i.e., Mr. Lengyel) began his eSports career in 2016 as a professional Overwatch video game player, at which time he also began streaming regularly on the Twitch livestreaming service and posting content on YouTube and other social media channels. By 2020, he was the most watched streamer on Twitch and gained 2.58 million followers on that service in the same year. He now has over 11 million followers on Twitch, over 500,000 followers on the Kick livestreaming service, and he frequently uploads video content to his YouTube channel, which has over 2 million subscribers. These channels are all branded "xQc". The Panel finds this evidence sufficient to demonstrate that XQC has become a distinctive identifier associated with Mr. Lengyel's entertainment services since at least 2020. The Panel finds the Complainant has established that Mr. Lengyel has unregistered trademark rights for the purposes of the Policy. See [WIPO Overview 3.0](#), section 1.3.

The Complainant received a license from Mr. Lengyel to his rights in the XQC mark in 2023, prior to the filing of the Complaint. The license is non-exclusive but the Panel notes that Mr. Lengyel is the sole ultimate beneficial owner of the Complainant. In these circumstances, the Panel is prepared to infer the existence of an authorization to file the Complaint. Accordingly, the Panel finds that the Complainant has rights in the XQC mark and standing to file the Complaint. See [WIPO Overview 3.0](#), section 1.4.

The disputed domain name wholly incorporates the XQC mark as its initial element. Although it adds the abbreviation "merch" (short for "merchandise"), the mark is clearly recognizable within the disputed domain name. The only additional element in the disputed domain name is the generic Top-Level Domain ("gTLD") extension ".store" which, as a standard requirement of domain name registration, may be disregarded in the assessment of confusing similarity. Accordingly, the Panel finds the disputed domain name confusingly similar to the mark for the purposes of the Policy. See [WIPO Overview 3.0](#), sections 1.7, 1.8 and 1.11.

Therefore, 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. See [WIPO Overview 3.0](#), section 2.1.

In the present case, the disputed domain name resolves to an online store titled “XQC” that prominently displays a photograph of Mr. Lengyel and offers for sale a range of merchandise printed with his likeness. The website gives the impression that it is affiliated with, or authorized by, Mr. Lengyel, and even claims to be an “official Xqc store”. However, the Complainant submits that it has not licensed or authorized the Respondent to use its trademark and that the Respondent is not affiliated with the Complainant. These circumstances indicate that the disputed domain name is not being used in connection with a bona fide offering of goods or services for the purposes of the Policy, and that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. Further, the Registrar has verified that the Respondent’s personal name is “黄立东 (lidong)” and its company name is “竹海國際貿易有限公司 (huanglidong)”, which is “Zhu Hai Guo Ji Mao Yi You Xian Gong Si” in Pinyin, and may be translated as “Zhuhai International Trading Co., Ltd.” Neither of these names resembles the disputed domain name. Nothing on the record indicates that the Respondent has been commonly known by the disputed domain name.

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 name. The Respondent has not rebutted the Complainant’s prima facie showing because it 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 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. The fourth of these 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] web site or location.”

In the present case, the disputed domain name was registered in 2022, after Mr. Lengyel acquired unregistered rights in the XQC mark. The disputed domain name wholly incorporates the XQC mark as its initial element, combining it with the abbreviation “merch” (short for merchandise) and the gTLD extension “.store”. As the disputed domain name implies, it is used in connection with an online store that offers for sale merchandise printed with the likeness of xQc (i.e., Mr. Lengyel). Each item for sale is described as an

“Xqc” product. In view of these circumstances, the Panel finds that the Respondent had the XQC mark in mind when it registered the disputed domain name.

The disputed domain name resolves to an online store claiming to be the “official Xqc store” that offers for sale a range of merchandise printed with the likeness of xQc (i.e., Mr. Lengyel) and that gives the false impression that it is affiliated with, or authorized by, Mr. Lengyel. Accordingly, the Panel finds that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent’s website by creating a likelihood of confusion with the XQC mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website or of a product on the Respondent’s website within the terms of paragraph 4(b)(iv) of the Policy.

Therefore, 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 name <xqcmerch.store> be transferred to the Complainant.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: March 4, 2024