

ADMINISTRATIVE PANEL DECISION

Fat Face Holdings Limited v. 林杰 (Jie Lin)
Case No. D2023-5084

1. The Parties

The Complainant is Fat Face Holdings Limited, United Kingdom, represented by SafeNames Ltd., United Kingdom.

The Respondent is 林杰 (Jie Lin), China.

2. The Domain Name and Registrar

The disputed domain name <ukfatfaceoutles.com> is registered with Cloud Yuqu LLC (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on December 6, 2023. On December 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 7, 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 December 7, 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 December 8, 2023.

On December 7, 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 December 8, 2023, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

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 December 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 2, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 3, 2024.

The Center appointed Karen Fong as the sole panelist in this matter on January 9, 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.

4. Factual Background

The Complainant is a British clothing, accessories and lifestyle brand founded in 1988. The Complainant's FAT FACE brand originates from the beginnings of the company, where founders Tim Slade and Jules Leaver sold t-shirts at ski resorts. The term FAT FACE comes from the famous black mountain skiing run in Val d'Isère, France, named "La Face". The Complainant has over 200 stores in the United Kingdom and Ireland and many stores in the United States of America ("United States"). The Complainant is a highly successful business, with a revenue of GBP 234.8 million in 2022.

The Complainant has various trade mark registrations for FAT FACE around the world including the following:

- European Union Trade Mark Registration No. 001764760 for FAT FACE registered on October 16, 2001;
- United Kingdom Trade Mark Registration No. 00002448877 for FAT FACE registered on August 31, 2007; and
- United States Registration No. 4934466 for FAT FACE registered on April 12, 2016.

(Together, individually and collectively referred to as the "Trade Mark").

The Complainant's official website which incorporates the Trade Mark is at "www.fatface.com".

The Respondent appears to be based in China. The disputed domain name was registered on July 18, 2023. The disputed domain name is inactive. A cease-and-desist letter was sent to the Respondent on August 14, 2023 but no response was received.

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 confusingly similar to the Trade Mark, that the Respondent has no rights or legitimate interests with respect to the disputed domain name, and that the disputed domain name was registered and is being used in bad faith. The Complainant requests transfer of the disputed domain name.

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 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 English. The Complainant requested that the language of the proceeding be English for the following main reasons:

- The disputed domain name is in Latin and not Chinese characters;
- The disputed domain name includes the term “uk” which stands for the United Kingdom indicating that the Respondent likely intended to target a British audience and therefore has some knowledge of the English language;
- The Complainant also includes a misspelling of “outles” for “outlet” highlighting the Respondent’s familiarity with the Roman alphabet and how words can be misspelled; and
- The Complainant having to translate the Complaint into Chinese would unfairly disadvantage and burden the Complainant in terms of costs and delay the proceeding and adjudication of this matter.

The Respondent has not challenged the Complainant’s language request and in fact has failed to file a response in either English or Chinese.

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 identity or 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 Panel finds the entirety of the Trade Mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the Trade Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of the other terms here, “uk” and “outles” which is a misspelling of “outlet”, 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 name and the Trade 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.

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.

Moreover, the nature of the disputed domain name carries a risk of implied affiliation with the Complainant as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. [WIPO Overview 3.0](#), section 2.5.1

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.

In the present case, the Panel notes that the disputed domain name fully incorporates the Trade Mark which predates the disputed domain name, indicating that the Respondent had actual knowledge of and was targeting the Complainant and the Trade Mark when registering the disputed domain name. The Panel also notes that the disputed domain name is inactive. 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.

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3.

Having reviewed the available record, the Panel notes the distinctiveness and reputation of the Trade Mark, the composition of the disputed domain name, the incomplete or false address provided by the Respondent when registering the disputed domain name (the courier service was unable to deliver the Written Notice), and lack of a response from the Respondent to the cease and desist notice and Complaint, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under 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 <ukfatfaceoutles.com> be transferred to the Complainant.

Karen Fong

Sole Panelist

Date: January 29, 2024