

ADMINISTRATIVE PANEL DECISION

Locatelli S.P.A. v. zhang lin

Case No. D2023-5192

1. The Parties

The Complainant is Locatelli S.P.A., Italy, represented by Dr. Modiano & Associati S.p.A., Italy.

The Respondent is zhang lin, China.

2. The Domain Name and Registrar

The disputed domain name <airohstores.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 December 13, 2023. On December 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 15, 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 15, 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 17, 2023.

On December 15, 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 17, 2023, the Complainant requested English to 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 27, 2023. In accordance with

the Rules, paragraph 5, the due date for Response was January 16, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 17, 2024.

The Center appointed Karen Fong as the sole panelist in this matter on January 19, 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, founded in 1986, is an Italian company which specializes in the field of motorcycle safety helmets. It produces a range of products under the brand AIROH. AIROH products are sold in over 80 countries. The Complainant's official website is found at "wwwairoh.com".

The Complainant has trade mark registrations for AIROH in many jurisdictions around the world including the following:

- European Union Trade Mark Registration No. 010542991 AIROH registered on June 2, 2012; and
- International Registration No. 1615570 (designating among others the European Union and China) AIROH (stylized) registered on April 22, 2021

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

The Complainant also has trade mark registrations for AIROH HELMETS (device) including Chinese Trade Mark Registration No. 20417696 registered on April 21, 2018.

The Respondent appears to be based in China. The disputed domain name was registered on September 28, 2022. The disputed domain name is connected to a website which bears the AIROH HELMETS device, mimics the Complainant's own website including using its images and purportedly offers for sale helmets that bear the Trade Mark at discounted prices and purports to be the Complainant's products (the "Website").

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 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 the following main reasons:

- The Complainant is not familiar with Chinese;
- The disputed domain name is in Latin and not Chinese characters;
- The words "Airoh" and "Stores" are not Chinese words;
- The Respondent's email address is composed of English characters;
- The content of the Website is in English;
- English is the language most commonly used worldwide for business, negotiations, and administrative matters; 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 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 identical or 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 term here, "stores" after the Trade Mark in the disputed domain name, may bear on assessment of the second and third elements, the Panel finds the addition of such term 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 is inherently misleading 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 Respondent must have been aware of the Trade Mark when he registered the disputed domain name given the Trade Mark was registered prior to registration of the disputed domain name and, the reputation of the Trade Mark. It is therefore implausible that the Respondent was unaware of the Complainant when he registered the disputed domain name.

In the [WIPO Overview 3.0](#), section 3.2.2 states as follows:

“Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant's mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant's mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent's claim not to have been aware of the complainant's mark.”

The fact that there is a clear absence of rights or legitimate interests coupled with the Respondent's choice of the disputed domain name without any explanation is also a significant factor to consider (as stated in [WIPO Overview 3.0](#), section 3.2.1). The disputed domain name falls into the category stated above and the Panel finds that registration is in bad faith. The addition of the term “stores” after the Trade Mark further reflects that the Respondent had the Complainant in mind when registering the disputed domain name.

The disputed domain name is also being used in bad faith. The products offered for sale on the Website are likely to be unauthorised and heavily discounted AIROH products considering the difference in prices and the fact that there is no relationship between the Parties.

The Website prominently displays the Complainant's Trade Mark, uses the Complainant's images, but does not contain any disclaimer disclosing the (lack of) relationship between the Parties. The content of the Website is calculated to give the impression it has been authorized by or connected to the Complainant

when this is not the case. The Website was set up to deliberately mislead Internet users that it is connected to, authorised by, or affiliated with the Complainant. From the above, the Panel concludes that the Respondent has intentionally attempted to attract, for commercial gain, by misleading Internet users into believing that the Respondent's Website is and the products sold on it are those of or authorised or endorsed by the Complainant.

The Panel therefore finds that the disputed domain name has been registered and is being used in bad faith under paragraph 4(b)(iv) of the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 <airohstores.com> be transferred to the Complainant.

/Karen Fong/
Karen Fong
Sole Panelist
Date: February 13, 2024