

ADMINISTRATIVE PANEL DECISION

True Crime Obsessed LLC v. 黄立东 (lidong), 竹海國際貿易有限公司 (huanglidong)

Case No. D2024-0245

1. The Parties

The Complainant is True Crime Obsessed LLC, United States of America (“United States” or “USA”), represented by Abdi Law, PLLC, USA.

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 <truecrimeobsessedmerch.com> 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 January 19, 2024. On January 22, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 23, 2024, 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 (Xin Net (Xinnet) Technology Corp.) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 24, 2024, providing the registrant and contact information disclosed by the Registrar, and requiring the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint in English on January 29, 2024.

On January 24, 2024, the Center informed the Parties in Chinese and English, that the language of the Registration Agreement for the disputed domain name is Chinese. On January 26, 2024, 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 January 31, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 20, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 21, 2024.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on February 23, 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 company established in the USA and is active in the podcasting and media sector. The Complainant states that its True Crime Obsessed Podcast is one of the most popular podcasts in the United States. Since 2017, it has been downloaded more than 160 million times, and since 2019, has consistently ranked among Apple Podcasts' Top 200 podcasts in All Categories. The Complainant states that the podcast generates over a million US dollars in advertising and fan-supported revenue annually. The True Crime Obsessed Podcast is distributed on all major audio streaming outlets such as Apple Podcasts, Spotify, and Amazon, as well as on the Complainant's website. The Complainant uses its marks on merchandise, such as t-shirts, hats, hoodies, which it currently sells at its live shows and has previously sold on its website.

The Complainant is the owner of a trademark portfolio with trademark registrations for TRUE CRIME OBSESSED WITH PATRICK HINDS AND GILLIAN PENSAVALLE logo trademarks, including but not limited to:

- United States Trademark Registration number 6,024,239 registered on March 31, 2020; and
- United States Trademark Registration number 6,023,309 registered on March 31, 2020.

The Complainant also provides evidence that it possesses a domain name portfolio, including the domain name <truecrimeobsessed.com>, which is linked to the Complainant's official website. The Complainant has a strong online presence, including a substantial social media presence on Instagram, Facebook, YouTube, and etc. which it uses to engage with fans and advertise upcoming events and episodes. For instance, its Instagram page has over 132,000 followers, its Facebook group has over 62,000 followers, and its TikTok account has over 56,000 followers.

The Complainant's abovementioned trademark registrations were registered before the registration date of the disputed domain name, namely September 15, 2022. The Complainant provides evidence that previously, the disputed domain name was linked to an active website which prominently used the sign "TRUE CRIME OBSESSED", reproduced the image and likeness of the hosts of the True Crime Obsessed Podcast, and copyrighted images owned by the Complainant, and offered for sale merchandising products under the name True Crime Obsessed. However, the Panel notes that on the date of this Decision, the disputed domain name directs to an inactive 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 its prior registered trademarks since it incorporates the dominant part of the TRUE CRIME OBSESSED WITH PATRICK HINDS AND GILLIAN PENSAVALLE trademark with the addition of the descriptive word “merch”. Furthermore, the Complainant essentially contends that the Respondent is not affiliated in any way to the Complainant and has no rights or legitimate interests in the Complainant’s trademarks. The Complainant also argues that the Respondent connected the disputed domain name to a website offering for sale of unauthorized merchandising products by reference to the Complainant’s trademarks which were prominently used on the website linked to the disputed domain name. The Complainant essentially contends that such use does not confer any rights or legitimate interests on the Respondent and constitutes evidence of bad faith registration and use 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 several reasons, including the fact that the Respondent allegedly has sufficient knowledge of English to be able to understand and reply to the Complaint (according to the Complainant because the Respondent used English as the language of the website to which the disputed domain name resolved and because the disputed domain name contains the Latin script word “merch.”); and the fact that requiring the Complainant to translate the Complaint into Chinese would result in an undue burden on the Complainant.

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

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

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds that the Complainant's mark TRUE CRIME OBSESSED WITH PATRICK HINDS AND GILLIAN PENSAVALLE is clearly recognizable within the disputed domain name, since it contains the dominant part of this mark, namely TRUE CRIME OBSESSED. Accordingly, the disputed domain name is confusingly similar to the Complainant's mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of the other term here, "merch", 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 mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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 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, upon review of the facts and evidence, the Panel notes that the Respondent has not provided any evidence of the use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services. Instead, upon review of the facts and the evidence submitted in this proceeding, the Panel notes that the disputed domain name previously directed to a website which impersonated the Complainant (e.g. by reproducing the dominant part of the Complainant's marks and the image and likeness of the hosts of True Crime Obsessed Podcast, Patrick Hinds and Gillian Pensavalle and by reproducing copyrighted images owned by the Complainant and displaying a misleading "About Us" section) and purportedly offered for sale merchandising products under the name True Crime Obsessed, without any disclaimer regarding the relationship between the Complainant and the Respondent. This shows that the Respondent was using the disputed domain name to mislead Internet users by creating a misleading affiliation with the Complainant. Moreover, even if the products offered on such website were legitimate products originating from the Complainant, it is clear to the Panel from the foregoing elements that the Respondent is not a good faith provider of goods or services under the disputed domain name, see also *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#). Given the abovementioned elements, the Panel concludes that the Respondent's use does not constitute a bona fide offering of goods or services, nor a legitimate noncommercial or fair use of the disputed domain name.

However, the Panel notes that on the date of this Decision, the disputed domain name directs to an inactive webpage. In this regard, the Panel finds that holding domain names passively, without making any use of them, also does not confer any rights or legitimate interests in the disputed domain name on the Respondent in the circumstances of this case (see in this regard earlier UDRP decisions such as *Bollore SE v. 赵竹飞*

(*Zhao Zhu Fei*), WIPO Case No. [D2020-0691](#); and *Vente-Privee.Com and Vente-Privee.com IP S.à.r.l. v. 崔郡 (jun cui)*, WIPO Case No. [D2021-1685](#)).

Finally, the Panel finds that the nature of the disputed domain name, being confusingly similar to the Complainant's trademarks and containing the descriptive term "merch" (generally used as an abbreviation for merchandising products), which clearly refers to the Complainant's products and business, carries a risk of implied affiliation and cannot constitute fair use, as it effectively impersonates the Complainant and its products or suggests sponsorship or endorsement by the Complainant (see [WIPO Overview 3.0](#), section 2.5.1).

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

Given the intensive use and reputation of the Complainant's prior registered trademarks, the Panel finds that the subsequent registration of the disputed domain name, which is confusingly similar to such marks and contains the word "merch" which describes the Complainant's products, clearly and consciously targeted the Complainant's prior registered trademarks. The Panel therefore deducts from the Respondent's efforts to consciously target the Complainant's widely-known prior trademarks that the Respondent knew of the existence of the Complainant's trademarks at the time of registering the disputed domain name. This finding is confirmed by the fact that the website linked to the disputed domain name was clearly used to impersonate the Complainant and to offer for sale merchandising products under the name True Crime Obsessed, since this proves that the Respondent was fully aware of the Complainant's business and its prior trademarks. In the Panel's view, the foregoing elements clearly indicate bad faith on the part of the Respondent, and the Panel therefore finds that it has been demonstrated that the Respondent registered the disputed domain name in bad faith.

As to use of the disputed domain name in bad faith, the Complainant provides evidence that the disputed domain name directed to an active website which showed a clear intent on the part of the Respondent to impersonate the Complainant and purportedly offer for sale products under the name True Crime Obsessed. The Panel concludes from these facts that the Respondent was intentionally attracting Internet users for commercial gain to such website, by creating consumer confusion between the website associated with the disputed domain name and the Complainant's trademarks. This constitutes direct evidence of the Respondent's bad faith under paragraph 4(b)(iv) of the Policy. The Panel therefore finds that it has been demonstrated that the Respondent has used the disputed domain name in bad faith.

However, the Panel notes that on the date of this Decision, the disputed domain name directs to an inactive or blank website. Panels have found that the non-use of a domain name (including a blank or "coming soon" page) 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 reputation and intensive use of the Complainant's trademarks, the composition of the disputed domain name (containing the dominant part of the Complainant's trademark combined with "merch", which clearly refers to the Complainant's products), and the unlikelihood of any good faith use of the disputed domain name by the Respondent, 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 <truecrimeobsessedmerch.com> be transferred to the Complainant.

/Deanna Wong Wai Man/

Deanna Wong Wai Man

Sole Panelist

Date: March 7, 2024