

ADMINISTRATIVE PANEL DECISION

Chewy, Inc. v. Guo Shibin
Case No. D2024-0465

1. The Parties

The Complainant is Chewy, Inc., United States of America (“United States” or “U.S.”), represented by Winterfeldt IP Group PLLC, United States.

The Respondent is Guo Shibin, China.

2. The Domain Name and Registrar

The disputed domain name <americanjourneypet.com> (“Disputed Domain Name”) 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 January 30, 2024. On February 1, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On February 2, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 2, 2024, 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 February 7, 2024.

On February 2, 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 February 7, 2024, 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 Chinese and English of the Complaint, and the proceedings commenced on February 13, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 4, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 8, 2024.

The Center appointed Douglas Clark as the sole panelist in this matter on March 14, 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 Chewy, Inc., a corporation organized under the laws of the United States and the State of Delaware. It was founded in 2011 as a customer-service-focused online retailer of pet supplies with operations throughout the United States. Its online retail store provides pet supplies and pet wellness-related services, including pet food, treats, supplies, and veterinary pharmaceutical products and services.

The Complaint is based on various trademark registrations for AMERICAN JOURNEY (the "AMERICAN JOURNEY Mark") worldwide, including the United States and China (where the Respondent is located), for example:

- U.S. Reg. No. 5,281,428, AMERICAN JOURNEY, used in commerce since 2015 and registered on September 5, 2017 (Class 31);
- China Reg. No. 23703045, AMERICAN JOURNEY, registered on February 21, 2019 (Class 5); and
- China Reg. No. 23703044, AMERICAN JOURNEY, registered on March 7, 2019 (Class 31).

The Complainant has promoted the AMERICAN JOURNEY Mark globally and developed a considerable reputation and goodwill in the United States and worldwide. The Complainant's trademark registrations in paragraph 5 of its Amended Complaint pre-date the Respondent's registration of the Disputed Domain Name on June 19, 2023.

The Complainant provides pet supplies and pet wellness-related services through its domain name, <chewy.com> (the "Complainant's Website"). The Complainant's Website makes substantial use of the AMERICAN JOURNEY Mark. The Complainant also owns the domain name <americanjourney.com>, which redirects Internet users to "www.chewy.com/brands/american-journey-6422" for its AMERICAN JOURNEY branded products. The <chewy.com> and <americanjourney.com> domain names were created in April 2004.

The Respondent, Guo Shibin, is an individual in China.

The Disputed Domain Name was registered on June 19, 2023. The Dispute Domain Name resolves to a website offering pet supply products for sale under the AMERICAN JOURNEY Mark, using copyright-protected product photographs and descriptions from the Complainant's Website without authorization ("the Respondent's Website"). The Respondent's Website features the AMERICAN JOURNEY Mark and a "www.americanjourneypet.com" copyright notice.

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.

First, it contends that the Disputed Domain Name fully incorporates the AMERICAN JOURNEY Mark and is identical or confusingly similar to the AMERICAN JOURNEY Mark.

Second, it contends that the Respondent does not have rights or legitimate interests in the Disputed Domain Name. This is because the Respondent is not the Complainant's licensee and is not authorized to use the AMERICAN JOURNEY Mark. Further, it contends that the Respondent's use of the Dispute Domain Name (offering pet supply products for sale under the AMERICAN JOURNEY Mark using the Complainant's product photographs and descriptions) does not constitute a bona fide offering of goods or a legitimate noncommercial or fair use. Even if the products for sale are genuine, the Respondent does not satisfy the Oki Data test (set out in detail below) from *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) on the basis the Respondent does not accurately disclose the Respondent's lack of a relationship or affiliation with the trademark owner.

Third, the Complainant contends that the Respondent registered and is using the Disputed Domain Name in bad faith with actual knowledge of the Complainant's rights in the AMERICAN JOURNEY Mark. The Complainant asserts that: (i) the Respondent has registered the Disputed Domain Name long after the Complainant registered many of the AMERICAN JOURNEY Marks; (ii) the Respondent has used the Disputed Domain Name to direct users to a webpage offering goods under the AMERICAN JOURNEY Mark, and (iii) has registered and used the Disputed Domain Name to disrupt the Complainant's business and attract Internet users for commercial gain by creating a likelihood of confusion with the Complainant's AMERICAN JOURNEY Mark as to the source, sponsorship, affiliation or endorsement of the website to which the Disputed Domain Name resolves.

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. First, it contends that the Respondent can communicate in English, given that (i) the Disputed Domain Name uses English characters and English words; (ii) the website to which the Disputed Domain Name resolves is entirely in English; and (iii) the website displays a contact address in the United States, a majority English-speaking country.

Second, the Complainant contends that translating the Complaint and future email communications would incur additional expenses and delay enforcement against the Respondent's bad faith registration and use of the Disputed Domain Name.

The Respondent did not make any specific submissions concerning 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, as summarized in the Factual Background. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the AMERICAN JOURNEY Mark is reproduced within the Disputed Domain Name. The only difference between the Complainant's AMERICAN JOURNEY Mark and the Disputed Domain Name is the addition of the term "pet" to the end of the AMERICAN JOURNEY Mark at the second level and the ".com" Top-Level Domain extension. Accordingly, the Disputed Domain Name is confusingly similar to the AMERICAN JOURNEY Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Further, the Panel finds the mark is recognizable within the Disputed Domain Name. 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. Accordingly, the Disputed Domain Name is confusingly similar to the AMERICAN JOURNEY 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.

The Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

First, the Complainant has never authorized the Respondent to use the AMERICAN JOURNEY Mark in any manner.

Second, the Panel is satisfied that the Respondent is using the Disputed Domain Name to infringe and cybersquat on the Complainant's rights in the AMERICAN JOURNEY Mark. The evidence includes: (i) screenshots of the relevant websites showing the Respondent's use of copyright-protected product photographs and descriptions lifted from the Complainant's Website without its authorization; and (ii) screenshots of the "Terms and Conditions" page on the Respondent's Website stating that "all material, including the website design, text, logos, graphics, icons and images [...] is exclusively the property of www.americanjourneypet.com."

Third, Panels have held that the use of a domain name for illegal activity here, claimed impersonation/passing off, can never confer rights or legitimate interests on a respondent.

[WIPO Overview 3.0](#), section 2.13.1. As the Complainant contends, the “americanjourney” in the Disputed Domain Name and the pet supplies and services featured on the Respondent’s Website are so closely and uniquely associated with the Complainant that there can be no credible and legitimate intent that would not capitalize on the reputation and goodwill inherent in the AMERICAN JOURNEY Mark.

Fourth, even if the products for sale on the website under the Disputed Domain Name are genuine, in *Ok! Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#), the panel held that to be bona fide within the meaning of paragraph 4(c)(i) of the policy, the offering should meet the following requirements:

- The Respondent must actually be offering the goods or services at issue;
- The Respondent must use the site to sell only the trademarked goods; otherwise, it could be using the trademark to bait Internet users and then switch them to other goods;
- The site must accurately and prominently disclose the registrant’s relationship with the trademark owner; it may not, for example, false suggest that it is the trademark owner, or that the website is the official site; and
- The Respondent must not try to corner the market in all domain names, thus depriving the trademark owner of reflecting its own mark in a domain name.

In this case the Respondent does not meet, at least, the third requirement set out above. The website under the Disputed Domain Name does not accurately and prominently disclose its relationship with the Complainant, rather it gives the clear impression it is an official AMERICAN JOURNEY website when, in fact, it is not.

The Respondent has not responded at all to the Complaint. Therefore, it 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.

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 Panel finds that the Respondent has engaged in bad faith registration and use of the Disputed Domain Name.

The Respondent’s registration and use of the Disputed Domain Name constitutes bad faith under paragraph 4(b)(iv) of the Policy. The Respondent is using the Disputed Domain Name to direct Internet users to an imitation website offering pet supply products, namely, cat and dog food and treats, for sale under the AMERICAN JOURNEY Mark, and using the Complainant’s copyright-protected product photographs and descriptions without authorisation. Therefore, the Respondent has intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the AMERICAN JOURNEY Mark.

Further, panels have held that the use of a domain name for illegal activity here, claimed impersonation/passing off constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

The Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

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 <americanjourneypet.com> be transferred to the Complainant.

/Douglas Clark/

Douglas Clark

Sole Panelist

Date: April 2, 2024