

ADMINISTRATIVE PANEL DECISION

William Grant & Sons Limited and William Grant & Sons Irish Brands Limited
v. 于青青 (yu qing qing)
Case No. D2024-0588

1. The Parties

The Complainants are William Grant & Sons Limited, United Kingdom (“UK”) (the “First Complainant”); and William Grant & Sons Irish Brands Limited, Ireland (the “Second Complainant”), represented by Demys Limited, UK.

The Respondent is 于青青 (yu qing qing), China.

2. The Domain Names and Registrar

The disputed domain names <balvenie.online>, <grantswhisky.online>, <hendricksgin.online>, <monkeyshoulder.online>, and <sailorjerry.online> are registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on February 8, 2024. On February 9, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On February 19, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing contact details. The Center sent an email communication to the Complainants on February 19, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint in English on February 20, 2024.

On February 19, 2024, the Center informed the Parties in Chinese and English, that the language of the Registration Agreement for the disputed domain names is Chinese. On February 20, 2024, the Complainants requested English to be the language of the proceeding. On February 19, 2024, the Respondent sent an email to the Center in Chinese, requesting Chinese to be 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 English and Chinese of the Complaint, and the proceedings commenced on February 27, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 18, 2024. Except for the language request submitted by the Respondent, the Respondent did not submit any formal response. On March 19, 2024, the Center notified the Parties that it would proceed with panel appointment.

The Center appointed Francine Tan as the sole panelist in this matter on March 27, 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 First Complainant, William Grant & Sons Limited, was founded by William Grant in 1887 in the UK. It distills, markets, and distributes Scotch whisky and other spirits. The First Complainant’s registered trade marks include BALVENIE, GRANT’S, and MONKEY SHOULDER.

The Second Complainant, William Grant & Sons Irish Brands Limited, which is a subsidiary of the First Complainant, is incorporated in Ireland. The Second Complainant holds registered trade mark rights in the marks HENDRICK’S and SAILOR JERRY.

A brief description of each of these brands is provided below:

- BALVENIE - a Speyside single malt Scotch whisky produced since the 1890’s in Balvenie distillery, Dufftown Scotland.
- GRANT’S - the Complainants’ oldest family-owned blended whisky produced since 1898, and one of the world’s top-selling blended Scotch whiskies, with sales exceeding 5 million cases per year in over 180 countries.
- HENDRICK’S - an award-winning gin produced at Girvan Distillery, Scotland which was launched in 1999.
- MONKEY SHOULDER - an award-winning blend of the Complainants’ three Speyside distilleries (Balvenie, Glenfiddich, and Kininvie), which was launched in 2003.
- SAILOR JERRY - an award-winning rum launched in the 1990’s, acquired by the Complainants in 2008, and currently one of the world’s biggest-selling brand of rum.

The Complainants, in combination, own the following trade mark registrations:

- UK trade mark Registration No. UK00000885731 for BALVENIE, registered on October 19, 1965;
- United States of America (“U.S.”) trade mark Registration No. 888377 for BALVENIE, registered on March 24, 1970;
- European Union (“EU”) trade mark No. 000192591 for BALVENIE, registered on January 7, 1999;
- UK trade mark Registration No. UK00000542300 for GRANT’S, registered on June 15, 1933;
- U.S. trade mark Registration No. 346426 for GRANT’S, registered on May 25, 1937;

- EU trade mark No. 000348599 for GRANT'S, registered on April 16, 2003;
- UK trade mark Registration No. UK00902722577 for HENDRICK'S, registered on September 23, 2003;
- U.S. trade mark Registration No. 2432377 for HENDRICK'S, registered on February 27, 2001;
- EU trade mark No. 002722577 for HENDRICK'S, registered on September 23, 2003;
- UK trade mark Registration No. UK00002366898 for MONKEY SHOULDER, registered on December 10, 2004;
- U.S. trade mark Registration No. 4239097 for MONKEY SHOULDER, registered on November 6, 2012;
- EU trade mark No. 004575486 for MONKEY SHOULDER, registered on August 21, 2006;
- UK trade mark Registration No. UK00002319867 for SAILOR JERRY, registered on August 29, 2003;
- U.S. trade mark Registration No. 2562207 for SAILOR JERRY, registered on April 16, 2002; and
- EU trade mark No. 006600571 for SAILOR JERRY, registered on October 7, 2009.

The Complainants, in combination, own and operate the following primary domain names for their various and respective brands:

- <thebalvenie.com>;
- <grantswhisky.com>;
- <hendricksgin.com>;
- <monkeyshoulder.com>;
- <sailorjerry.com>.

The disputed domain names <balvenie.online>, <grantswhisky.online>, <monkeyshoulder.online>, and <sailorjerry.online> were registered on November 14, 2023. The disputed domain name <hendricksgin.online> was registered on November 20, 2023.

At the time of filing the Complaint, the disputed domain names resolved to various Dan.com webpages where they were each offered for sale for USD1,450.

5. Parties' Contentions

A. Complainants

The Complainants contends that they have satisfied each of the elements required under the Policy for a transfer of the disputed domain names.

Notably, the Complainants contend that:

1) The disputed domain names are, respectively, confusingly similar to the Complainants' BALVENIE, GRANT'S, HENDRICK'S, MONKEY SHOULDER, and SAILOR JERRY trade marks (collectively, the "Registered Marks") in which the Complainants have rights. The disputed domain names <balvenie.online>, <monkeyshoulder.online>, and <sailorjerry.online> contain the respective BALVENIE, MONKEY SHOULDER, and SAILOR JERRY trade marks in their entirety without any typographical variants or omissions. The disputed domain names <grantswhisky.online> and <hendricksgin.online> contain the respective GRANT'S and HENDRICK'S trade marks with the addition of the respective descriptive terms, "whisky" and "gin", which are intrinsically associated with the Complainants. The generic Top-Level Domain ("gTLD") ".online" in the disputed domain names is a technical requirement and should be disregarded when making a comparison of the disputed domain names with the Registered Marks.

2) The Respondent has no rights or legitimate interests in respect of the disputed domain names. The Respondent is not commonly known by any of the disputed domain names. There is no evidence that the Respondent owns any trade marks incorporating the terms "Balvenie", "Grant's" / "Grant's Whisky", "Hendrick's" / "Hendrick's Gin", "Monkey Shoulder", and "Sailor Jerry" or ever legitimately traded under these names.

The Complainants have never granted any licence or authorized the Respondent to use the Registered Marks including registering the disputed domain names. Given the confusing similarity of the disputed domain names to the Registered Marks, there is no conceivable use to which the disputed domain names could be put that would confer any rights or legitimate interests on the Respondent. There is no evidence that the Respondent is using or preparing to use the disputed domain names in connection with any bona fide offering of goods or services. The disputed domain names resolve to Dan.com webpages where they are listed for sale for a sum that far exceeds the Respondent's likely out-of-pocket registration costs. The sole purpose of the registration of the disputed domain names was for sale to a third party or to the Complainants for profit. Such conduct is not by itself a bona fide offering of goods and/or services or a legitimate noncommercial or fair use under the Policy.

3) The disputed domain names were registered and are being used in bad faith. Given the fame and established nature of the Registered Marks, it is not conceivable that the Respondent did not have the Complainants firmly in mind when he/she registered the disputed domain names. The offering for sale of the disputed domain names for a sum that far exceeds the Respondent's likely out-of-pocket registration costs is evidence of bad faith. One cannot conceive of any good faith use or intent on the Respondent's part in listing the disputed domain names for sale. The Respondent is also engaged in a pattern of registering domain names which incorporate registered trade marks of third parties, examples of which include <allergandirect.online>, <givlaari.online>, <sportpursuit.online>, <bingbunny.online>, and <dodopomellato.online>.

B. Respondent

Except for the language request submitted by the Respondent, the Respondent did not formally reply to the Complainants' contentions.

6. Discussion and Findings

6.1. Preliminary Issues

A. Consolidation of Complainants

The Complainants requested consolidation in respect of the five disputed domain names into one proceeding, citing section 4.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), which states that:

“[i]n assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels look at whether (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation.”

The Complainants submit that they have a specific common grievance against the Respondent. Both Complainants form part of the same corporate group. The Second Complainant is a wholly-owned subsidiary of the First Complainant. The Respondent targeted the Complainants' reputation and brands, i.e., BALVENIE, GRANT'S, MONKEY SHOULDER, HENDRICK'S, and SAILOR JERRY.

The Panel finds that the Complainants have a common grievance against the Respondent which affects their respective rights on substantially the same basis. The Respondent has not filed a Response and therefore not indicated that he/she would suffer any prejudice from a consolidation of the complaints. The Panel considers it procedurally efficient and equitable to permit the consolidation.

B. 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 Complainants requested that the language of the proceeding be English for these reasons:

- 1) the disputed domain names comprise the Complainants' English-language trade marks, either alone or combined with generic, dictionary words in the English language;
- 2) the websites associated with each of the disputed domain names are entirely written in English;
- 3) the disputed domain names are listed for sale in U.S. currency;
- 4) the disputed domain names are in the gTLD “.online”, instead of “.cn”, which is indicative of the Respondent's intent to target English speaking Internet users; and
- 5) the working language of the Complainants and that of their representative is English. The Complainants will be put to great expense and inconvenience to translate its Complaint into Chinese.

The Respondent did not provide any substantive comments on the issue of the language of the proceeding but simply notifying the Center in Chinese of his/her request that the language of the proceeding be 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; any content on the webpage under the disputed domain name(s); potential unfairness or unwarranted delay in ordering the complainant to translate the complaint; evidence of other respondent-controlled domain names registered, used or corresponding to a particular language; currencies accepted on the webpage under the disputed domain name(s); and other indicia tending to show that it would not be unfair to proceed in a language other than that of the registration agreement (see [WIPO Overview 3.0](#), section 4.5.1).

Having considered all these relevant factors and policy considerations, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English. The nature of the disputed domain names registered by the Respondent indicates that he/she is comfortable with the English language and has a familiarity with brands that are not of Chinese origin.

6.2. Substantive Issues

A. Identical or Confusingly Similar

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.

The Complainants have shown that they have rights in respect of the Registered Marks. The entirety of each of the Registered Marks is reproduced within the respective disputed domain names. The Panel finds that the disputed domain names <balvenie.online>, <monkeyshoulder.online>, and <sailorjerry.online> are identical to the BALVENIE, MONKEY SHOULDER, and SAILOR JERRY trade marks, and that the disputed domain names <grantswhisky.online> and <hendricksgin.online> are confusingly similar to the GRANT'S and HENDRICK'S trade marks. The addition of the terms "whisky" and "gin" in the disputed domain names <grantswhisky.online> and <hendricksgin.online>, respectively, does not prevent a finding of confusing similarity with the GRANT'S and HENDRICK'S trade marks. [WIPO Overview 3.0](#), section 1.8.

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

B. Rights or Legitimate Interests

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 names. The Respondent is not commonly known by any of the disputed domain names and was not licensed by the Complainants to use the Registered Marks or to register domain names incorporating the Registered Marks. The disputed domain names resolve to Dan.com webpages where they are listed for sale for USD 1,450, a price which far exceeds the out-of-pocket registration costs incurred by the Respondent. There is no evidence that the Respondent is using or preparing to use any of the disputed domain names for any legitimate noncommercial or fair use. Paragraph 4(c) of the Policy provides a list of circumstances by which the Respondent may demonstrate rights or legitimate interests in the disputed domain names. The Respondent has, however, not rebutted the Complainants' prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names.

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 names incorporate the entirety of the Complainants' distinctive and famous trade marks. The Registered Marks have been registered for many years. Given that length of time of registration and the fame of the Registered Marks, the Panel finds it highly unlikely that the Respondent did not know of the Complainants and the Registered Marks at the time

he/she registered the disputed domain names. Further, the addition of the terms “whisky” and “gin” in two of the disputed domain names is a tell-tale sign of the Respondent’s familiarity with the Complainants and their trade marks. The Panel agrees that the Complainants have been specifically targeted by the Respondent.

Considering the above-mentioned use of the disputed domain names, the Panel finds that the Respondent has registered the disputed domain names primarily for the purpose of selling them to the Complainants or to a competitor of that Complainants, for valuable consideration in excess of the Respondent’s out-of-pocket costs directly related to the disputed domain names.

The Panel is persuaded that this is a blatant case of cybersquatting, and also draws an adverse inference from the Respondent’s failure to file a formal Response and pattern of registering domain names associated with third-party trade marks.

The Panel finds that the Complainants have 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 names <balvenie.online>, <grantswhisky.online>, <hendricksgin.online>, <monkeyshoulder.online>, and <sailorjerry.online> be transferred to the First Complainant, William Grant & Sons Limited.

/Francine Tan/

Francine Tan

Sole Panelist

Date: April 10, 2024