

ADMINISTRATIVE PANEL DECISION

ZeniMax Media Inc. v. 黄立东 (huanglidong), 竹海國際貿易有限公司 (huanglidong)

Case No. D2024-0753

1. The Parties

Complainant is ZeniMax Media Inc., United States of America (“U.S.”), represented by Kisch Global Limited, United Kingdom (“UK”).

Respondent is 黄立东 (huanglidong), 竹海國際貿易有限公司 (huanglidong), Hong Kong, China.

2. The Domain Names and Registrar

The disputed domain names <doommerch.com>, <falloutmerch.com> and <skyrimmerch.store> are registered with Xin Net Technology Corp. (北京新网数码信息技术有限公司) (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on February 19, 2024. On February 19, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name <doommerch.com>. On February 21, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name <doommerch.com> which differed from the named Respondent (Private Registration) and contact information in the Complaint. The Center sent an email communication to Complainant on February 21, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed the first amended Complaint in English on the same day.

On February 21, 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 the same day, Complainant confirmed its request that English be the language of the proceeding. Respondent did not submit any comment on Complainant’s submission.

Complainant filed the second amended Complaint in English on February 26, 2024, requesting the addition of new disputed domain names <skyrimmerch.store> and <falloutmerch.com>. On February 27, 2024, the Center sent by email to the Registrar requesting Registrar Verification in connection with the two newly added disputed domain names. On February 28, 2024, the Registrar transmitted by email to the Center its

verification response disclosing the same registrant and contact information for the two newly added disputed domain names as being the same as the registrant contact details of the first disputed domain name. On the same day, the Center sent an email communication to Complainant, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed the third amended Complaint in English on March 4, 2024.

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 Respondent of the Complaint in English and in Chinese, and the proceedings commenced on March 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 25, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on March 26, 2024.

The Center appointed Yijun Tian as the sole panelist in this matter on April 4, 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

A. Complainant

Complainant is a company incorporated in the U.S. It is an award-winning interactive entertainment creator and publisher. Complainant is part of the Microsoft Corporation, a global leader in software development, cloud computing, and video games. Microsoft acquired Complainant and its subsidiaries in September 2020, now part of its Microsoft Gaming division.

Complainant has rights in the DOOM, SKYRIM, and FALLOUT marks. Complainant is the owner of numerous DOOM, SKYRIM, and FALLOUT trademarks worldwide, including:

- the U.S. trademark registration for DOOM, registered on April 8, 1997 (registration number: 2050083); the International trademark registration for DOOM ETERNAL, registered on September 12, 2018 (registration number: 1430331), which contains China as one of the designated countries;
- the International trademark registration for FALLOUT, registered on November 2, 2018 (registration number: 1488042);
- the Chinese trademark registration for SKYRIM, registered on March 21, 2011 (registration number: 8088863); and the U.S. trademark registration for SKYRIM, registered on January 22, 2013 (registration number: 4280859) (Annexes 6 – 7 to the Complaint).

B. Respondent

The disputed domain names <doommerch.com>, <falloutmerch.com> and <skyrimmerch.store> were registered by Respondent on September 16, 2022, August 19, 2022, and October 20, 2022, respectively.

According to the Complaint and relevant evidence provided by Complainant, the disputed domain names were used to direct Internet users to websites, which purportedly offered unauthorised products competing with those branded under Complainant’s trademarks and logo(s), namely DOOM, SKYRIM, and FALLOUT. There is not any disclaimer disclosing the (lack of) relationship between the Parties. These websites were in the English language and contained contents copied from the original website of Complainant (Annex 5.1 – 5.6 and Annexes 8.1 – 8.3. to the Complaint).

5. Parties' Contentions

A. Complainant

Complainant contends that the disputed domain names are confusingly similar to Complainant's trademark. The disputed domain names identically adopt Complainant's DOOM, SKYRIM, and FALLOUT trademarks, respectively. The mere addition of terms such as "merch" does not provide adequate distinction to negate the conclusion that the disputed domain names are confusingly similar to Complainant's trademarks.

Complainant contends that Respondent lacks any rights or legitimate interests in the disputed domain names.

Complainant contends that the disputed domain names were registered and are being used in bad faith.

Complainant requests that the disputed domain names be transferred to it.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

6.1. Language of the Proceeding

The language of the Registration Agreements 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.

From the evidence presented on the record, no agreement appears to have been entered into between Complainant and Respondent to the effect that the language of the proceeding should be English. Complainant filed initially its Complaint and amended Complaints in English, and has requested that English be the language of the proceeding for the following reasons:

- (a) There is ample evidence indicating Respondent's proficiency in English communication.
- (b) The disputed domain names employ Latin script rather than Chinese, implying their targeting of an English-speaking audience.
- (c) This is reinforced by the English content on websites associated with the disputed domain names, suggesting Respondent's understanding of English.
- (d) As Complainant is an American entity with no knowledge of Chinese, and considering Respondent's apparent familiarity with English, the decision was made to submit the Complaint in English - a widely used language in global business and likely the language of Respondent's business operations.

Respondent did not make any submissions with respect to the language of the proceeding despite being duly notified by the Center in both English and Chinese of the Language of the Proceeding and of the Commencement 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).

On the record, Respondent appears to be located in China and thus presumably not a native English speaker, but considering the following aspects, the Panel has decided that the language of the proceeding shall be English: (a) the disputed domain names are registered in Latin characters, particularly in English (e.g., English words “doom”, “merch”, “fallout”, “skyrim”, and “store” rather than Chinese script; (b) the generic Top-Level Domain (“gTLD”) of the disputed domain names are “.com” and “.store”, so the disputed domains names seem to be prepared for Internet users worldwide, particularly English speaking countries; (c) the webpages which the disputed domain names resolved to are in the English language (Annexes 8.1 – 8.3 to the Complaint); (d) the Center has notified Respondent of the language of the proceeding in both Chinese and English, and Respondent has indicated no objection to Complainant’s request that English be the language of the proceeding; (e) the Center also notified Respondent in both Chinese and English of the Complaint, and informed Respondent that it would accept a response in either English or Chinese, but Respondent chose not to file any response.

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: Three Elements

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

Based on the available record, the Panel finds 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 the entirety of the DOOM, FALLOUT, or SKYRIM marks is reproduced within each disputed domain name <doommerch.com>, <falloutmerch.com> or <skyrimmerch.store> respectively. More specifically, accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of the other term “merch” as a suffix may bear on the assessment of the second and third elements, the Panel finds the addition of such characters does not prevent a finding of confusing similarity between the disputed domain names and the 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 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 recognised 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 disputed 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 Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain names. Respondent has not rebutted

Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

More specifically,

(i) there has been no evidence adduced to show that Respondent used the disputed domain names in connection with a bona fide offering of goods or services. Respondent has not provided evidence of reasons to justify the choice of the terms "doom", "fallout", or "skyrim", Complainant's DOOM, FALLOUT, or SKYRIM trademarks, in each disputed domain name, respectively. There has been no evidence to show that Complainant has licensed or otherwise permitted Respondent to use the DOOM, FALLOUT, or SKYRIM trademarks or to apply for or use any domain name incorporating the DOOM, FALLOUT, or SKYRIM marks;

(ii) there has been no evidence adduced to show that Respondent has been commonly known by the disputed domain names. There has been no evidence adduced to show that Respondent has any registered trademark rights with respect to the disputed domain names. Respondent registered the disputed domain names in August, September, and October 2024, long after the DOOM, FALLOUT, or SKYRIM marks became widely known. Each disputed domain name is confusingly similar to Complainant's DOOM, FALLOUT, or SKYRIM marks respectively; and

(iii) there has been no evidence adduced to show that Respondent was making a legitimate noncommercial or fair use of the disputed domain names. By contrast, the disputed domain names all resolved to websites purporting to be authorised online stores for Complainant's products, contained content presumably copied from the original website of Complainant, and purport to offer Complainant's goods for sale without any disclaimer disclosing the (lack of) relationship between the Parties. It seems likely that Respondent was making profits through the Internet traffic attracted to the websites under the disputed domain names. See *BKS Bank AG v. Jianwei Guo*, WIPO Case No. [D2017-1041](#); and *Pet Plan Ltd. v. 权中俊 and 李金梁 (Li Jin Liang)*, WIPO Case No. [D2020-3358](#).

UDRP panels have held that the use of a domain name for illegal activity (e.g., impersonation/passing off, or the sale of presumably counterfeit goods as this is the case here) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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 Respondent has registered and used the disputed domain names in bad faith.

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.

Based on the information provided by Complainant, the Panel finds that Complainant has a widespread reputation in the DOOM, FALLOUT, or SKYRIM marks with regard to its products and services. It is not conceivable that Respondent would not have had Complainant's trademarks in mind at the time of the registration of the disputed domain names. This has been reinforced by the fact that each disputed domain name incorporates Complainant's DOOM, FALLOUT, or SKYRIM trademark respectively.

Respondent has used the disputed domain names to resolve to websites purportedly offering products competing with those branded under Complainant's trademarks and logo(s), namely DOOM, SKYRIM, and FALLOUT. The Panel notes that the contents of the websites appear to be copied from the original website of Complainant, and purports to offer Complainant's goods for sale without any disclaimer disclosing the (lack of) relationship between the Parties.

UDRP panels have held that the use of a domain name for illegal activity (e.g., impersonation/passing off, or the sale of presumably counterfeit goods as this is the case here) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds Respondent's registration and use of the disputed domain names constitute bad faith under the Policy.

Thus, the Panel concludes that Respondent is using confusingly similar disputed domain names with the intention to attract, for commercial gain, Internet users to Respondent's websites by creating a likelihood of confusion with Complainant. Such use constitutes bad faith pursuant to paragraph 4(b)(iv) of the Policy.

Furthermore, Respondent appears to have provided incomplete contact details, the Center being unable to send its written communication to the postal address disclosed, and such provision of false contact information further reinforces the Panel's finding that Respondent has engaged in bad faith conduct.

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 names <doommerch.com>, <falloutmerch.com> and <skyrimmerch.store> be transferred to Complainant.

/Yijun Tian/

Yijun Tian

Sole Panelist

Date: April 23, 2024