

ADMINISTRATIVE PANEL DECISION

HESTRA-Handsken AB v. yangZhan Ou

Case No. D2024-1135

1. The Parties

The Complainant is HESTRA-Handsken AB, Sweden, represented by Advokatbyrån Gulliksson AB, Sweden.

The Respondent is yangZhan Ou, China.

2. The Domain Name and Registrar

The disputed domain name <hestraglovesales.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 March 15, 2024. On March 15, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 18, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 19, 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 amendment to the Complaint in English on March 20, 2024.

On March 19, 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 March 20, 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 amendment to the 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 March 27, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 16, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 17, 2024.

The Center appointed Rachel Tan as the sole panelist in this matter on April 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 was a company founded in 1936 in Sweden. The Complainant is a developer and manufacturer of gloves and accessories for skiing, recreation and leisure. In 2021, the Complainant produced over 2 million pairs of gloves. The Complainant established its presence through its subsidiaries, agents, distributors and retailers in over 40 countries, including in Europe, North America and Asia.

The Complainant is the owner of the HESTRA mark in various jurisdictions. For example, International Registration No. 928592 for HESTRA registered on January 23, 2007 in Classes 9, 18, 25, and 28 designating, inter alia, China, Chinese Trade Mark Registration No. 979947 for HESTRA registered on April 14, 1997 in Class 28 and European Union Trade Mark Registration No. 000364828 for HESTRA registered on April 07, 1999 in Classes 9, 18, 25, and 28 designating, inter alia, Sweden.

The Complainant is the registrant of numerous domain names incorporating the HESTRA mark, for example <hestragloves.se>, <hestragloves.com> and <hestragloves.us>. The Complainant has used its HESTRA mark on the websites and conducted sales and marketing thereon.

The disputed domain name was registered on January 3, 2024. Based on the evidence submitted by the Complainant, the disputed domain name previously resolved to a website in English which allegedly imitated the Complainant's official website. In particular, it was alleged to offer the Complainant's gloves for sale at heavily reduced prices by prominently displaying the Complainant's HESTRA mark with the Complainant's original promotion texts, products descriptions as well as products images. On March 8, 2024, the Complainant filed an abuse complaint with the Registrar. On March 11, 2024, the Registrar placed the disputed domain name on "ClientHold" status. At the time of this Decision, the disputed domain name does not resolve to any active 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 identical or confusingly similar to the Complainant's HESTRA mark. The Complainant's HESTRA mark is incorporated in the disputed domain name in its entirety. The additional descriptive terms "glove" and "sales" do not prevent a finding of confusing similarity.

The Complainant further alleges that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The disputed domain name resolved to a website offering for sale the Complainant's gloves marketed under the Complainant's HESTRA mark. However, there is no genuine affiliation, association or other commercial connection whatsoever between the Complainant on one hand and the Respondent and the disputed domain name on the other hand.

Finally, the Complainant argues that the disputed domain name was registered and used in bad faith. The disputed domain name previously resolved to a website that uses the Complainant's products photos, descriptions and promotion text which are either identical, or substantially similar, to those used by the Complainant on its official websites. The Respondent is attempting to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's HESTRA mark as to the source, affiliation, and endorsement of the Respondent's website. The disputed domain name is also used in the course of illegal activity by infringing the intellectual property rights of the Complainant.

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 (i) the disputed domain name previously resolved to a website displaying content entirely in English; (ii) English is an internationally recognized language; and (iii) the Complainant is a Swedish Company and conducting proceedings in Chinese would add significant additional cost to the Complainant and delay in the proceedings.

The Respondent did not object to the Complainant's request or 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 entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here, i.e., “glove” and “sales” may bear on assessment of the second and third elements, the Panel finds the addition of such terms 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.

Lastly, it is permissible for the Panel to ignore the generic Top-Level Domain (“gTLD”), in this case “.com”, under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11.1.

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.

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.

The Respondent has not provided evidence of a legitimate or non-commercial use of the disputed domain name or reasons to justify the choice of the disputed domain name that is confusingly similar to the Complainant’s HESTRA mark. There is also no indication to show that the Respondent is commonly known by the disputed domain name or otherwise has rights or legitimate interests in it. Moreover, the Complainant has not granted the Respondent any license or authorization to use the Complainant’s HESTRA mark or register the disputed domain name.

At the time of this Decision, the disputed domain name does not resolve to an active website. Based on the undisputed submission and evidence provided by the Complainant, the disputed domain name previously resolved to a website which allegedly imitated the Complainant’s official website. In particular, it was alleged to offer the Complainant’s gloves for sale at a reduced price by displaying the Complainant’s HESTRA mark and using the same product photos and descriptions. The website did not accurately and prominently disclose the lack of a relationship between the Complainant and the Respondent. Therefore, the facts do not support a claim of fair use under the “Oki Data test”. See *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#).

Furthermore, the nature of the disputed domain name, comprising the Complainant’s HESTRA mark with the addition of the descriptive terms “glove” and “sales”, indicates an awareness of the Complainant and its mark and intent to take unfair advantage of such, which does not support a finding of any rights or legitimate interests in these circumstances.

None of the circumstances in paragraph 4(c) of the Policy are present in this case. For these reasons, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

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 Complainant's HESTRA mark was registered well before the registration of the disputed domain name. Through use and advertising, the Complainant's HESTRA mark is known throughout the world, including in China. Search results using the terms "hestra" on the Internet search engines direct Internet users to the Complainant and its products, which indicates that an exclusive connection between the HESTRA mark and the Complainant has been established. The Panel further notes that the disputed domain name previously resolved to a website displaying the Complainant's HESTRA mark and allegedly offering the Complainant's products for sale without any disclaimer disclosing the lack of relationship between the Complainant and the Respondent. As such, the Respondent clearly knew the Complainant's HESTRA mark when registering the disputed domain name. [WIPO Overview 3.0](#), section 3.2.2.

The Panel is of the view that the Respondent intentionally created a likelihood of confusion with the Complainant's HESTRA mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. This demonstrates bad faith registration and use of the disputed domain name, as provided in paragraph 4(b)(iv) of the Policy.

Furthermore, under the circumstances of the case, the Panel considers that the current non-use of the disputed domain name does not prevent a finding of bad faith. [WIPO Overview 3.0](#), section 3.3.

The Respondent has kept silent in the face of the Complainant's allegations of bad faith. Further, the Respondent has taken active steps to hide its identity using a privacy service. Taking into account these circumstances, the Panel finds that the Respondent must have known of the Complainant before registering the disputed domain name and, considering the Respondent's lack of rights or legitimate interests, and by registering and using the disputed domain name as discussed above, the Panel is led to conclude that the disputed domain name was registered and is being used in bad faith.

Based on the available record, 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 <hestraglovesales.com> be transferred to the Complainant.

/Rachel Tan/

Rachel Tan

Sole Panelist

Date: May 7, 2024