

ADMINISTRATIVE PANEL DECISION

Mud Wtr, Inc. v. Guo Rui Yuan, 武汉煌行网络科技有限公司 (Wu Han Huang Hang Wang Luo Ke Ji You Xian Gong Si)

Case No. D2024-1254

1. The Parties

The Complainant is Mud Wtr, Inc., United States of America (“United States”), represented by Wargo French Singer, United States.

The Respondent is Guo Rui Yuan, 武汉煌行网络科技有限公司 (Wu Han Huang Hang Wang Luo Ke Ji You Xian Gong Si), China.

2. The Domain Name and Registrar

The disputed domain name <mudwtrs.com> is registered with Jiangsu Bangning Science & technology Co. Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on March 22, 2024. On March 25, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 26, 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 28, 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 April 3, 2024.

On March 28, 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 April 3, 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 April 3, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 23, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 1, 2024.

The Center appointed Jonathan Agmon as the sole panelist in this matter on May 6, 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 that sells mushroom-based beverage mixes located in Santa Monica, California.

The Complainant is the owner of various MUD\WTR trademarks, including the following:-

- United States trademark registration no. 6098630 for MUD\WTR, registered on July 14, 2020;
- United States trademark registration no. 6809561 for MUD\WTR, registered on August 2, 2022; and
- United States trademark registration no. 7288687 for MUD\WTR, registered on January 23, 2024;

The Complainant owns and operates its domain name <mudwtr.com>, which was registered on March 28, 2018.

The disputed domain name was registered on January 3, 2024, and resolves to a webpage that closely resembles the Complainant’s own website, and purports to sell the Complainant’s products.

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 the Complainant’s MUD\WTR trademark in which it has rights. The disputed domain name incorporates the Complainant’s MUD\WTR trademark in its entirety with the addition of the letter “s”. Further, the disputed domain name resolves to a website that is practically identical to the Complainant’s own website, which is evidence of the Respondent’s intent to confuse the Complainant’s customers.
- The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has not authorized, licensed, or otherwise permitted the Respondent to use its MUD\WTR trademark, including in the manner used by the Respondent. Further, the Respondent is offering for sale, products that infringe on its trademark, on a website that also infringes on its trademark. This is evidence that the Respondent is using the disputed domain name for the purpose of perpetrating a fraudulent scheme on the Complainant’s unwitting customers by impersonating the Complainant and/or selling counterfeit goods. This cannot be interpreted to be a legitimate use of the disputed domain name.

- The disputed domain name was registered and is being used in bad faith. The Complainant's MUD\WTR trademark is well known in the mushroom-beverage industry. The Respondent has only registered the disputed domain name recently. Further, the Respondent's website is virtually identical to the Complainant's website, and also contains the Complainant's trademark. This demonstrates that the Respondent's bad faith in attempting to perpetuate a fraudulent phishing scheme and/or scam against the Complainant's customers. This is also evidence that the Respondent had knowledge of the Complainant's business and trademark, and intended to attract Internet users to the Respondent's website, and to disrupt the Complainant's business, deceive individuals, and trade off of the Complainant's goodwill by creating an unauthorized association between the disputed domain name and the Complainant's trademark.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

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 pre-suit correspondence between the Complainant and the Registrar has been in English; and
- The Respondent's website is in English, which is evidence that the Respondent is familiar with the English language.

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.

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, the letter “s”, may bear on assessment of the second and third elements, the Panel finds the addition of such a 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.

Further, it is well-accepted that the omission of the backslash from the Complainant’s MUD\WTR trademark generally has no bearing on, and does not prevent, a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy.

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 is not commonly known by the disputed domain name. The Respondent is not affiliated with the Complainant. He was also not authorized or licensed by the Complainant to use the MUD\WTR trademark in any way, including registering the disputed domain name. The disputed domain name resolves to a website displaying the Complainant’s MUD\WTR trademark and is offering for sale at a steep discount of 60%, goods bearing, or sold under the Complainant’s MUD\WTR trademark. This is strong evidence that the goods sold on the Respondent’s website are counterfeit goods. Even if they were goods allegedly offered were to be genuine goods from the Complainant, the website fails to disclose its (lack of) relationship to the Complainant and thus essentially engages in impersonation of the Complainant, which cannot vest in the Respondent rights or legitimate interests.

Panels have held that the use of a domain name for illegal activity, here, claimed as applicable to this case: sale of counterfeit goods or impersonation can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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 Respondent registered the disputed domain name long after the Complainant registered its MUDWTR trademark. Given the distinctive nature of the Complainant's trademarks and the website to which the disputed domain name resolves to, it is highly unlikely that the Respondent did not know of the Complainant and its trademark prior to the registration of the disputed domain name. The disputed domain name resolves to a website designed to be virtually identical to the Complainant's own website, and selling what appears to be counterfeit goods at a steep discount. This is strong evidence of bad faith. It is also a typical case of cybersquatting. This is exacerbated by the fact that the disputed domain name differs from the Complainant's trademark by the addition of a single letter, and the omission of a back slash, which cannot technically be part of a domain name. In fact, the addition of the letter "s", not only does nothing to differentiate the disputed domain name from the Complainant's mark, but it enhances it, as "wtrs" resembles "waters" even more than "wtr", which is suggestive of the Complainant's beverage business. There is therefore an increased risk of confusion between the disputed domain name and the Complainant's own website.

Panels have held that the use of a domain name for illegal activity, here, claimed as applicable to this case: sale of counterfeit goods or impersonation, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, 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 <mudwtrs.com> be transferred to the Complainant.

/Jonathan Agmon/

Jonathan Agmon

Sole Panelist

Date: May 20, 2024