

## ADMINISTRATIVE PANEL DECISION

F21 IPCO, LLC v. 毕彩荣 (bi cai rong)

Case No. D2024-1410

### 1. The Parties

The Complainant is F21 IPCO, LLC, United States of America (“United States”), represented by Authentic Brands Group LLC, United States.

The Respondent is 毕彩荣 (bi cai rong), China.

### 2. The Domain Name and Registrar

The disputed domain name <forever21usa.com> is 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 April 1, 2024. On April 3, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 7, 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 (John Doe) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 15, 2024 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On the same day, the Center informed the Parties in Chinese and English, that the language of the registration agreement for the disputed domain name is Chinese. The Complainant filed an amended Complaint in English on April 18, 2024 including a request for 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 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 April 22, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 12, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 13, 2024.

The Center appointed Jonathan Agmon as the sole panelist in this matter on May 15, 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 established in 1984 in Los Angeles, United States. It is a global retail brand and caters to customers seeking an accessible runway style. It operates around 600 locations in North and South America, the Middle East, and Asia. Its products include apparel and accessories for women, men, and girls.

The Complainant owns various FOREVER 21 trademarks, including the following:

- United States trademark registration no. 2583457 for FOREVER 21, registered on June 18, 2002;
- United States trademark registration no. 2913132 for FOREVER 21, registered on December 21, 2004;
- United States trademark registration no. 6557011 for FOREVER 21, registered on November 9, 2021;
- United States trademark registration no. 6991038 for FOREVER 21, registered on February 28, 2023;

The Complainant owns and operates its primary domain name <forever21.com>.

The disputed domain name was registered on April 20, 2023. It currently resolves to a website prominently displaying the Complainant's FOREVER 21 trademark and purported selling goods under the Complainant's trademark.

#### **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 FOREVER 21 trademark. The disputed domain name contains the Complainant's FOREVER 21 trademark with the addition of the geographical term "USA", and the generic Top-Level Domain ("gTLD") ".com".
- The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not licensed, contracted, or permitted by the Complainant to use the FOREVER 21 trademark in anyway, including applying for the disputed domain name. The Complainant has not acquiesced in any way to such use or application of the FOREVER 21 trademark by the Respondent. The Respondent is not commonly known by the disputed domain name. There is also no evidence that the Respondent is using or plans to use the FOREVER 21 trademark or disputed domain name for a bona fide offering of goods or services. The Respondent has been using the disputed domain name to promote its website for illegitimate commercial

gains. Such unauthorized use is likely to trick consumers into believing that the Complainant and the Respondent are affiliated, or that the Complainant endorses the Respondent's commercial activities.

- The disputed domain name was registered and is being used in bad faith. The Complainant's FOREVER 21 trademark is well known around the world. A simple Google search would have revealed the Complainant's mark and business to the Respondent. The disputed domain name was registered over 30 years after the Complainant first registered its FOREVER 21 trademark. The disputed domain name resolves to a website that is being passed off by the Respondent as the Complainant's legitimate website. The Respondent is also using the disputed domain name to sell goods that are competing with the Complainant's own goods, and the said goods are being sold under the Complainant's FOREVER 21 trademark without authorization. The Respondent has no reason to use the Complainant's trademark in the disputed domain name other than to attract Internet users to the disputed domain name for commercial gain. The Respondent is intentionally trying to create a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the disputed domain name.

## **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:

- The disputed domain name is not in the Chinese script, indicating that the disputed domain name is directed to an English speaking public;
- The content of the disputed domain name is in English, which suggests that the Respondent understands English;
- The Complainant is from the United States, and has no knowledge of the Chinese language, and English is a common language in global business and a language in which the Respondent is doing business; and
- The Registrar also conducts their business in English.

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.

## 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, "usa" 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.

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 FOREVER 21 trademark in any way, including registering the disputed domain name. The disputed domain name resolves to a website prominently displaying the Complainant's FOREVER 21 trademark and is purportedly offering for sale at a steep discount of 50% without the need for a promo code, goods bearing, or sold under the Complainant's FOREVER 21 trademark. There is not any disclaimer on the website disclosing the (lack of) relationship between the Parties. This is strong indication that the goods sold on the Respondent's website are likely to be counterfeit goods.

Panels have held that the use of a domain name for illegal activity, here, claimed as applicable to this case: sale of counterfeit goods 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 FOREVER 21 trademark. Given the reputation and goodwill of the Complainant's trademark, 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 fact that the disputed domain name resolves to a website designed to resemble and pass off as the Complainant's own website, and selling purportedly counterfeit goods at a steep discount, is strong indication of bad faith, and is a typical case of cybersquatting. This is exacerbated by the fact that the chosen suffix, "usa", has the connotation that the disputed domain name is the legitimate United States website belonging to the Complainant. This is also in light of the fact that the Complainant is a United States entity. There is therefore an increased risk of confusion between the disputed domain name and the Complainant's own website at "www.forever21.com".

Panels have held that the use of a domain name for illegal activity, here, claimed as applicable to this case: sale of counterfeit goods 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 also notes that the Respondent declined to accept delivery of the documents from the Center, and did not reply to the Complainant's contentions, and draws an adverse inference accordingly.

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 <forever21usa.com> be transferred to the Complainant.

*/Jonathan Agmon/*

**Jonathan Agmon**

Sole Panelist

Date: May 28, 2024