

ADMINISTRATIVE PANEL DECISION

Giant Europe B.V. and Giant Manufacturing Co. Ltd. v. He Junke
Case No. D2024-1512

1. The Parties

The Complainants are Giant Manufacturing Co. Ltd. (the “First Complainant”), Taiwan Province of China, and Giant Europe B.V. (the “Second Complainant”), Netherlands (Kingdom of the), represented by NLO Shieldmark B.V., Netherlands (Kingdom of the).

The Respondent is He Junke, China.

2. The Domain Name and Registrar

The disputed domain name <giant-nl.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 April 10, 2024. On April 10, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 11, 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 (Private Person) and contact information in the Complaint. The Center sent an email communication to the Complainants on April 12, 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 April 15, 2024.

On April 12, 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 15, 2024, the Complainants requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainants’ 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 19, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 9, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 10, 2024.

The Center appointed Linda Chang as the sole panelist in this matter on May 16, 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, established in 1972, manufactures high-end professional bicycles, and sponsors many cycling events like Tour de France. The Second Complainant is a subsidiary of the First Complainant in the Netherlands (Kingdom of the).

The First Complainant is the owner of the following GIANT trademark registrations:

(i) China Trademark Registration No. 59233686A, registered on May 14, 2022, in Classes 9, 11, and 25; and

(ii) European Union Trademark Registration No. 018602684, registered on April 19, 2022, in Classes 9, 11, 12, 18, 25, and 35.

The disputed domain name was registered on March 6, 2024. Presently, it does not resolve to an active webpage as it has been shut down by the Registrar upon notice from the Complainants, but before the notice, it resolved to an online shopping website purportedly providing GIANT-branded products.

5. Parties' Contentions

A. Complainants

The Complainants contend that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainants contend that the disputed domain name is confusingly similar to the GIANT trademark.

The Complainants further contend that the Respondent has not been commonly known by the disputed domain name. The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, as the associated website is a fraudulent and trying to mislead customers by pretending to be an official website of the Complainants.

The Complainants finally contend that the disputed domain name was registered primarily for the purpose of disrupting the business of the Complainants, and is being fraudulently used by the Respondent.

B. Respondent

The Respondent did not reply to the Complainants' contentions.

6. Discussion and Findings

6.1. Procedural Issues: 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 Complainants requested that the language of the proceeding be English for several reasons, including (i) translation would prolong the proceeding and result in unfair delay; (ii) the language of the website associated with the disputed domain name is in Dutch; and (iii) English is a more accessible language for the Parties from diverse linguistic backgrounds to understand.

The Respondent did not make any 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 Complainants' trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainants have 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.

With regard to the "-" and the term "nl", 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.

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 Complainants have established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has 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 name such as those enumerated in the Policy or otherwise.

Before being taken down by the Complainants, the disputed domain name was resolving to a purported GIANT online shop displaying the Complainants' trademark together with a logo similar to that of the Complainants, and providing GIANT-branded products, without a prominent and accurate disclaimer regarding the lack of relationship between the Complainant and the Respondent. The Complainants allege that the Respondent was copying without authorization photos from the Complainants' website and using the website for the purpose of fraud. The Respondent, however, did not respond to such allegations and explain why it chose to register and use the disputed domain name.

Under the overall circumstances of this case, the Panel finds it on the balance of probabilities that the Respondent's intention was to impersonate the Complainants and divert traffic to its own website. The Panel determines that the Respondent's use of the disputed domain name does not amount to a bona fide offering of goods or services, or a legitimate noncommercial or fair use of the disputed domain name.

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.

The Panel holds that the Respondent must have been aware of the Complainants at the time of registering the disputed domain name but deliberately chose it considering the previous use of the disputed domain name. By dominantly displaying the GIANT trademark on the website and using the Complainants' official product photos, the Respondent has attempted to pass off as the Complainants' authorized online shop and cause confusion among Internet visitors. The Respondent has intentionally attempted to attract, for commercial gain, Internet users to its own website by creating a likelihood of confusion with the GIANT trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. Bad faith can be inferred from the Respondent's registration and use of the disputed domain name. The current non-use of the disputed domain name does not change the Panel's finding on the Respondent's bad faith.

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 name <giant-nl.com> be transferred to the Complainants.

/Linda Chang/

Linda Chang

Sole Panelist

Date: May 30, 2024