

ADMINISTRATIVE PANEL DECISION

The Burt's Bees Products Company v. 张青 (Qing Zhang), 金林山 (LinShan Jin)

Case No. D2024-1568

1. The Parties

The Complainant is The Burt's Bees Products Company, United States of America ("United States"), represented by Verso Law Group LLP, United States.

The Respondents are 张青 (Qing Zhang), China, and 金林山 (LinShan Jin), China.

2. The Domain Names and Registrar

The disputed domain names <burtsbeesusa.com> and <burtsbeesus.com> are registered with Chengdu West Dimension Digital Technology Co., Ltd. (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on April 13, 2024. On April 15, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On April 16, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Unknown Registrant) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 17, 2024 with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrar, requesting the Complainant to either file a separate complaint for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity and/or that all domain names are under common control. The Complainant filed an amended Complaint in English on April 23, 2024.

On April 17, 2024, the Center informed the parties in Chinese and English, that the language of the registration agreement for the disputed domain names is Chinese. On April 17, 2024, the Complainant confirmed its request that English be the language of the proceeding. The Respondents 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 Respondents in English and Chinese of the Complaint, and the proceeding commenced on April 25, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 15, 2024. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on May 18, 2024.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on May 27, 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

The Complainant is a company headquartered in California in the United States and a producer since the 1980s of a range of cosmetic products under the trade mark BURT’S BEES (the “Trade Mark”).

The Complainant is the owner of numerous registrations for the Trade Mark, including United States registration No. 2171302, with a registration date of July 7, 1998; and Chinese registration No. 21584019, with a registration date of November 28, 2017.

B. Respondent

The Respondents are located in China.

C. The Disputed Domain Names

The disputed domain names were registered on December 5, 2023, and December 15, 2023.

D. Use of the Disputed Domain Names

The disputed domain <burtsbeesusa.com> was previously resolved to an English language website impersonating the Complainant’s official website by prominently displaying the Complainant’s Trade Mark, and purportedly offering for sale discounted cosmetic products under the Trade Mark (the “Website”). There is not any disclaimer explaining the (lack of) relationship between the Parties.

As at the date of this Decision, the disputed domain name <burtsbeesusa.com> is no longer resolved to any active website.

The disputed domain name <burtsbeesus.com> has not been resolved to an 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 names.

B. Respondents

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

6. Discussion and Findings

6.1 Preliminary Issues

A. Language of the Proceeding

The language of the Registration Agreement 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.

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 Website was in English language.

The Respondents did not file any response in this proceeding; and 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.

B. Consolidation: Multiple Respondents

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the domain name registrants are the same entity or mere alter egos of each other, or under common control. The Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The disputed domain name registrants did not comment on the Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See [WIPO Overview 3.0](#), section 4.11.2.

As regards common control, the Panel notes the close similarity between the disputed domain names, that they were registered on the close dates, and they share the same name server, identical email and almost identical phone number in respect of their registration details.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as “the Respondent”) in a single proceeding.

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 trade mark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trade mark 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 names. Accordingly, the disputed domain names are 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, respectively, “usa” and “us”) 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 names 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 names. 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 names such as those enumerated in the Policy or otherwise.

The Panel considers that the composition of the disputed domain names carries a risk of implied affiliation with the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

The disputed domain name <burtsbeesus.com> has not been used.

Panels have held that the use of a domain name for illegal activity (here, in the case of the disputed domain name <burtsbeesusa.com>, impersonation/passing off, or other types of fraud) 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's use of the disputed domain name <burtsbeesusa.com> in respect of the Website clearly amounts to bad faith registration and use under paragraph 4(b)(iv) of the Policy.

In addition, Panels have held that the use of a domain name for illegal activity (here, in the case of the disputed domain name <burtsbeesusa.com> impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

The Panel finds that, in the circumstances of this case, the continuous passive holding of the disputed domain name <burtsbeesus.com>, and the more recent passive holding of the disputed domain name <burtsbeesusa.com>, does not prevent a finding of 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 names <burtsbeesusa.com> and <burtsbeesus.com> be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Date: June 10, 2024