

ADMINISTRATIVE PANEL DECISION

MrBallen, LLC v. 黄立东 (huanglidong), 竹海國際貿易有限公司 (huanglidong)
Case No. D2024-1738

1. The Parties

The Complainant is MrBallen, LLC, United States of America (“United States”), represented by Blake Legal Advisors, United States.

The Respondent is 黄立东 (huanglidong), 竹海國際貿易有限公司 (huanglidong), Hong Kong, China.

2. The Domain Names and Registrar

The disputed domain names <mrballenmerchandise.com>, <mrballenmerchandise.shop>, <mrballenmerchandise.store>, and <mrballenmerch.store> are registered with Xin Net Technology Corp. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on April 25, 2024. On April 26, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names <mrballenmerch.store>, <mrballenmerchandise.store> and <mrballenmerchandise.com>. On April 28, 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 Respondents (ZhuhaiGuoJiMaoyiYouxiangongsi and Name Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 30, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint.

On April 30, 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 May 5, 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 Complainant filed the first amended Complaint in English on May 5, 2024, and requested to add the disputed domain name <mrballenmerchandise.shop> into the proceeding. On May 10, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the newly added disputed domain name. On the same day, the Registrar transmitted by email to the Center its verification

response confirming that the Registrant of the disputed domain name <mrballenmerchandise.shop> is 竹海國際貿易有限公司 (huanglidong), 黃立东 (lidong), the same one as the underlying registrant of the other three disputed domain names. The Center sent an email communication to the Complainant on May 10, 2024, providing the registrant and contact information disclosed by the Registrar for the newly added disputed domain name, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed the second amended Complaint in English on May 11, 2024

The Center verified that the Complaint together with the amended Complaints 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 of the Complaint in Chinese and English, and the proceeding commenced on May 14, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 3, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 5, 2024.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on June 25, 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 Pennsylvania in the United States, providing social media and associated merchandising services and goods under the trade mark MRBALLEN (the “Trade Mark”).

The Trade Mark is the nom de plume of Jonathan B. Allen, a former United States Navy Seal, professional story teller and social media producer.

The Complainant is the owner of registrations in the United States for the Trade Mark, including United States registration No. 6,642,791, with a registration date of February 15, 2022.

B. Respondent

The Respondent is located in China.

C. The Disputed Domain Names

The disputed domain name <mrballenmerch.store> was registered on August 1, 2022.

The disputed domain names <mrballenmerchandise.com>, <mrballenmerchandise.shop>, and <mrballenmerchandise.store> were registered on the same date, January 4, 2024.

D. Use of the Disputed Domain Names

The disputed domain names, <mrballenmerchandise.com>, <mrballenmerchandise.store>, and <mrballenmerch.store>, have been used in respect of English language websites impersonating an official or authorised merchandising website of the Complainant (by prominently displaying the Complainant’s Trade Mark, and images), and purportedly offering for sale discounted merchandising under the Trade Mark (the “Websites”).

As at the date of this Decision, the disputed domain names <mrballenmerchandise.com>, <mrballenmerchandise.shop> and <mrballenmerchandise.store> are no longer resolved 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 names.

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 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 Websites are in English.

The Respondent 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.

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 Trade Mark is reproduced within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the Trade Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, “merchandise” and “merch”) 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 Trade 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.

Panels have held that the use of a domain name for illegal activity (as applicable to this case: 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.

Furthermore, the Panel notes 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 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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have held that the use of a domain name for illegal activity (as applicable to this case: impersonation/passing off, or other types of fraud) 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 names <mrballenmerchandise.com>, <mrballenmerchandise.store>, and <mrballenmerch.store> constitutes bad faith under the Policy.

As to the disputed domain name <mrballenmerchandise.shop>, the Panel considers that the passive holding of this disputed domain name does not prevent a finding of bad faith under the circumstances of this case. [WIPO Overview 3.0](#), section 3.3.

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 <mrballenmerchandise.com>, <mrballenmerchandise.shop>, <mrballenmerchandise.store>, and <mrballenmerch.store> be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Date: July 9, 2024