

ADMINISTRATIVE PANEL DECISION

Ark Technologies Pty Ltd v. 瞿国风 (qu guo feng)
Case No. D2024-2716

1. The Parties

The Complainant is Ark Technologies Pty Ltd, Australia, represented by King & Wood Mallesons, Australia.

The Respondent is 瞿国风 (qu guo feng), China.

2. The Domain Name and Registrar

The disputed domain name <cettirestore.com> (“Disputed Domain Name”) 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 July 3, 2024. On July 3, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On July 4, 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 (Cettire Inc / Cettire LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 4, 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 amended Complaint on July 5, 2024.

On July 4, 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 July 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 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 Chinese and English of the Complaint, and the proceedings commenced on July 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 5, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 6, 2024.

The Center appointed Kar Liang Soh as the sole panelist in this matter on August 12, 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 an Australian company incorporated in 2014 and has been operating an online luxury retail platform from its website at "www.cettire.com" since 2017. The Complainant operates the website with its associated company, Cettire Limited, which has been listed on the Australian Stock Exchange since December 2020 and has a market capitalization of over AUD 888 million as of June 3, 2004. The Complainant has over 640,000 customers in 53 markets.

The Complainant holds multiple trademark registrations around the world incorporating the word CETTIRE (the "CETTIRE Trademark"), including:

Jurisdiction	Registration No.	Registration Date
Australia	2039312	September 24, 2019
Australia	2190369	June 29, 2021
Australia	2238453	December 22, 2021
United States of America ("United States")	6708945	April 26, 2022
New Zealand	1167756	October 4, 2022

The website at "www.cettire.com" adopts a minimalist design scheme which displays the CETTIRE Trademark prominently near the top center of the homepage. The website receives over 11 million visits a month.

The Respondent appears to be an individual based in China. Beyond the Whois information of the Disputed Domain Name and Registrar verification, very little information about the Respondent is available.

The Disputed Domain Name was registered on December 21, 2023. As of about May 22, 2024, the Disputed Domain Name resolved to a website purporting to offer clothes, shoes and accessories for sale online via shopping cart facilities. The Respondent's website prominently featured the mark CETTIRE. One part of the Respondent's website stated that the founders were a group of fashion enthusiasts but also stated at another part that the founder was an individual named Sarah from Los Angeles, United States. The Respondent's website also provided a contact address in Los Angeles, United States, in its privacy policy.

5. Parties' Contentions

A. Complainant

The Complainant contends that:

a) The Disputed Domain Name is almost identical or confusingly similar to the trademark in which the Complainant has rights. The Disputed Domain Name incorporates as its dominant feature the distinctive CETTIRE Trademark, together with the secondary and descriptive word "store". The addition of the descriptor "store" does no more than directly describe part of the Complainant's offering under the CETTIRE brand.

b) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Complainant has not authorised the Respondent to use the CETTIRE Trademark in the Disputed Domain Name or on the Respondent's website. The Respondent is not a licensee or reseller of the Complainant. The Respondent is not otherwise connected to, affiliated with or endorsed by the Complainant. The Respondent is using the Disputed Domain Name without a bona fide offering of goods or services. The Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name. The Respondent is not commonly known by the Disputed Domain Name.

c) The Disputed Domain Name was registered and is being used in bad faith. The Respondent has registered the Disputed Domain Name primarily for the purpose of disrupting the business of the Complainant. The Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the CETTIRE Trademark. The Respondent has sought to take unfair advantage of, abuse, and otherwise engage in behaviour detrimental to the CETTIRE Trademark.

B. Respondent

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

6. Discussion and Findings

6.1. Language of the Proceeding

The language of the Registration Agreement of the Disputed Domain Name is Chinese. Accordingly, the default language of the proceeding should be Chinese. However, under paragraph 11(a) of the Rules, the Panel is empowered to determine a different language of proceeding having regard to the circumstances. Pursuant to the Complainant's request, the Panel determines that English shall be the language of the proceeding having considered the following factors:

- a) The Respondent has chosen not to participate in the proceeding by not filing a Response;
- b) The Respondent's website is entirely in the English language;
- c) The Respondent's founder is purportedly from Los Angeles, United States, and would in all likelihood be competent in English;
- d) The Complainant has already been submitted in English and no obvious procedural benefit would arise should the Panel insist on Chinese being the language of the proceeding. On the contrary, doing so at such an advanced stage of the proceeding would in all likelihood delay the proceeding unnecessarily; and
- e) The Panel is bilingual in English and Chinese, and is well-equipped to deal with submissions by the Parties in either language.

6.2. Discussion

The Complainant must establish all three limbs of paragraph 4(a) of the Policy on the facts in order to succeed in this proceeding:

- a) The Disputed Domain Name is identical or confusingly similar to a trademark in which the Complainant has rights;
- b) The Respondent has no rights or legitimate interests in the Disputed Domain Name; and
- c) The Disputed Domain Name was registered and used in bad faith.

A. Identical or Confusingly Similar

The Panel accepts that the Complainant has rights in the CETTIRE Trademark by virtue of their trademark registrations. The Disputed Domain Name <cettirestore.com> incorporates the CETTIRE Trademark in its entirety suffixed by the word “store”.

According to sections 1.7 and 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), UDRP panels have established that, in cases where a domain name incorporates the entirety of a trademark, the domain name will normally be considered confusingly similar to that mark for the purposes of UDRP standing and the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The present case does not present any unusual circumstances which require the Panel to depart from this guideline. The Panel is of the view that the addition of the term “store” does not prevent a finding of confusing similarity between the Disputed Domain Name and the CETTIRE Trademark

As such, the Panel is satisfied that the Disputed Domain Name is confusingly similar to the CETTIRE Trademark. The first limb of paragraph 4(a) of the Policy is thus established.

B. Rights or Legitimate Interests

There is no evidence before the Panel to suggest that the Respondent is commonly known by the Disputed Domain Name or that the Respondent holds any rights to the term “cettirestore”. The Complainant has confirmed that the Respondent is not authorized to use the CETTIRE Trademark in the Disputed Domain Name or on the Respondent’s website. The Complainant has also confirmed that the Respondent is not a licensee, reseller or affiliate of the Complainant.

There is no evidence that the Disputed Domain Name is being used in a noncommercial or fair manner. In fact, the Panel notes that the suffix “store” to the CETTIRE Trademark in the Disputed Domain Name is descriptive of online retail services offered by the Complainant and communicates a false affiliation with the Complainant which cannot be reasonably regarded as fair use of the Disputed Domain Name (see [WIPO Overview 3.0](#), section 2.5.1). In addition, the Respondent’s website prominently displayed the Complainant’s Trademark. In view of the Complainant’s rights to the CETTIRE Trademark, the Panel is not persuaded that the Respondent, in purporting to offer fashion products under the CETTIRE Trademark on the website, is making a bona fide offering of goods or services with using the Disputed Domain Name. As such, the Panel is satisfied that the facts present a prima facie case that the Respondent does not have rights or legitimate interests in the Disputed Domain Name. Since the Respondent did not file a response, the prima facie case has not been rebutted. Therefore, the Complainant has successfully established the second limb of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that certain circumstances, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. In particular, paragraph 4(b)(iv) of the Policy states:

“by using the domain, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent’s] website or other online source, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of [the respondent’s] website or location or of a product or service on [the complainant’s] website or location.”

The Disputed Domain Name was registered over four years after the earliest registration of the CETTIRE Trademark. The Respondent’s website features the CETTIRE Trademark prominently and heavily. There is no noticeable instance of the use of the combined words “cettirestore” or “cettire store” on the Respondent’s website. The Respondent’s selection of the Disputed Domain Name is strongly suggestive of the fact that

the Respondent knew of and targeted the Complainant. The layout and design of the Respondent's website appears emulative of the Complainant's website at "www.cettire.com".

In the circumstances, the Panel finds it most implausible that the Respondent could not have known of the Complainant and its CETTIRE Trademark when the Respondent registered the Disputed Domain Name. The offering of sale of products on the Respondent's website must clearly have been intended for commercial gain. The Panel has no doubt that the Respondent had intentionally referenced the CETTIRE Trademark and website design to attract, for commercial gain, Internet users to the website resolved from the Disputed Domain Name. Accordingly, the Panel finds that the Disputed Domain Name was indeed registered and is being used in bad faith in accordance with the circumstances outlined in paragraph 4(b)(iv) of the Policy.

The Complainant has further raised very serious allegations of the Respondent attempting to impersonate and misrepresent the Complainant on the Respondent's website, including the fabrication of origin and the featuring of direct links to the Complainant's own Facebook, Instagram, and Pinterest social media accounts. An ordinary reasonable respondent would have responded strongly against such allegations if they were untrue. The Respondent's lack of response strongly suggests that the Respondent is unable to deny any of these allegations.

In addition, the Panel also notes the Center's failed attempt to contact the Respondent via courier service due to incorrect contact information associated with the Disputed Domain Name. In accordance with paragraph 2 of the Policy, an applicant for the registration of a domain name represents and warrants, among others, that its contact details are complete and accurate. The deliberate use of incorrect information in relation to a domain name is contrary to the Policy, further supporting the finding of bad faith in the present case.

In light of the above, the Panel holds that the Disputed Domain Name was registered and is being used in bad faith. Therefore, the Complainant has successfully established the third limb of paragraph 4(a) 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 <cettirestore.com> be transferred to the Complainant.

/Kar Liang Soh/

Kar Liang Soh

Sole Panelist

Date: August 26, 2024