

ADMINISTRATIVE PANEL DECISION

Fat Face Holdings Limited v. 夏云飞

Case No. D2024-2958

1. The Parties

The Complainant is Fat Face Holdings Limited, United Kingdom, represented by SafeNames Ltd, United Kingdom.

The Respondent is 夏云飞, China.

2. The Domain Names and Registrar

The disputed domain names <fat-faces.shop> and <fattface.shop> are registered with Zhengzhou Century Connect Electronic Technology Development Co., Ltd (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on July 23, 2024. On July 24, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On July 25, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 26, 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 in English on July 26, 2024.

On July 26, 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 July 26, 2024, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not make any submissions on the language of the proceeding.

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 proceeding commenced on August 2, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 22, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 23, 2024.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on August 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 British fashion company founded in 1988, marketing and selling its products under the trade mark FAT FACE (the "Trade Mark").

The Complainant is the owner of registrations in several jurisdictions for the Trade Mark, including International registration No. 848966, with a registration date of December 15, 2004.

B. Respondent

The Respondent is an individual located in China.

C. The Disputed Domain Names

The disputed domain names were both registered on April 29, 2024.

D. Use of the Disputed Domain Names

The disputed domain name <fatface.shop> is resolved to an English language website, offering for sale fashion clothing, accessories and hand bags under the name 1130 happy (the "Website").

The disputed domain name <fat-faces.shop> was previously resolved to the same Website. As at the date of this Decision, the disputed domain name <fat-faces.shop> is 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.

Notably, the Complainant contends that, in registering and using the disputed domain names in respect of the Website, to sell goods in competition with those sold by the Complainant for many years under the Trade Mark, the Respondent has targeted the Complainant and its Trade Mark for commercial gain.

B. Respondent

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

6. Discussion and Findings

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 is an English language website.

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.

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 names. [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 name <fat-faces.shop>. Accordingly, the disputed domain name <fat-faces.shop> is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the mark is recognizable within the disputed domain name <fatface.shop> - comprising a misspelling of the Complainant's mark. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), sections 1.7 and 1.9.

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. To the contrary, the disputed domain names have been used in respect of the Website, to market and sell products in competition with those marketed and sold by the Complainant under the Trade Mark for many years.

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 light of the manner of use of the disputed domain names in respect of the Website, the Panel finds that the Respondent has registered and used the disputed domain names in bad faith under paragraph 4(b)(iv) of 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 <fat-faces.shop> and <fatface.shop> be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Date: September 10, 2024