

ADMINISTRATIVE PANEL DECISION

Fat Face Holdings Limited v. 周佳雯 (zhou jia wen)

Case No. D2024-3092

1. The Parties

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

The Respondent is 周佳雯 (zhou jia wen), China.

2. The Domain Name and Registrar

The disputed domain name <fatfacesale.online> is 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 29, 2024. On July 29, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 30, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. The Center sent an email communication to the Complainant on July 30, 2024, providing the additional registrant and contact information disclosed by the Registrar.

On July 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 the same day, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not submit any comment on the Complainant's submission.

The Center verified that the 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 August 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 25, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 27, 2024.

The Center appointed Joseph Simone as the sole panelist in this matter on August 29, 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, Fat Face Holdings Limited, is a British clothing, accessories, and lifestyle brand founded in 1988.

The Complainant opened 50 FAT FACE retail stores before 2002, and grew to over 200 stores in the United Kingdom and Ireland by 2012. In 2022, the Complainant also opened stores in the United States of America and Canada. The Complainant had revenues of GBP 270.9 million in 2023.

The Complainant has an extensive global portfolio of trade marks incorporating FAT FACE:

- European Union Trade Mark Registration No. 001764760 for FAT FACE, in Classes 9, 18, and 25, registered on October 16, 2001;
- European Union Trade Mark Registration No. 004152005 for FAT FACE, in Classes 14 and 35, registered on January 5, 2006;
- International Trade Mark Registration No. 848966 for FAT FACE, in Class 35, designating inter alia Australia, Norway, Russian Federation, and the United States of America, registered on December 15, 2004; and
- United Kingdom Trade Mark Registration No. UK00002448877 for FAT FACE, in Class 12, 22, and 28, registered on August 31, 2007.

The disputed domain name was registered on May 11, 2024.

According to evidence provided by the Complainant, at the time of filing the Complaint, the disputed domain name resolved to a website featuring an online store advertising and selling competing products. At the time of issuance of this Decision, the disputed domain name resolved to an inactive page.

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 name.

The Complainant also contends that the disputed domain name registered by the Respondent is identical or confusingly similar to the Complainant's FAT FACE trade marks, and that the addition of the generic Top-Level Domain ("gTLD") ".online" does not affect the analysis as to whether the disputed domain name is identical or confusingly similar to the Complainant's trade marks.

Furthermore, the Complainant argues that the addition of the term "sale" does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's FAT FACE mark.

The Complainant asserts that it has not authorized the Respondent to use the FAT FACE mark, and there is no evidence to suggest that the Respondent has used, or undertaken any demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services.

The Complainant also claims there is no evidence indicating that the Respondent has any connection to the FAT FACE mark in any way, and that there is no plausible good-faith reason for the Respondent to have registered the disputed domain name. The Complainant therefore concludes that the registration and any use of the disputed domain name whatsoever must be in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

In accordance with paragraph 11(a) of the Rules:

"[...] the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding."

In this case, the language of the Registration Agreement for the disputed domain name is Chinese. Hence, the default language of the proceeding should be Chinese.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for the following reasons:

- The disputed domain name previously resolved to a website featuring text written entirely in English;
- The disputed domain name is composed of Latin characters; and
- The Complainant's representatives are based in the United Kingdom, and requiring a translation would lead to significant additional expenses and unnecessary delays.

The Respondent was notified in both Chinese and English of the language of the proceeding and the commencement of the proceeding and did not comment on the language of the proceeding or submit any response in either Chinese or English.

In exercising its discretion to use a language other than that of the registration agreement, the Panel must judiciously and in the spirit of fairness take into account all relevant circumstances of the case, including 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).

Considering the circumstances of this case, the Panel determines that the language of the proceeding shall be English, and as such, the Panel has issued this decision in English. The Panel further finds that such determination should not create any prejudice to either Party and should ensure that the proceeding takes place with due expedition.

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 Panel acknowledges that the Complainant has established rights in the FAT FACE trade marks in many jurisdictions around the world.

Disregarding the gTLD “.online”, the disputed domain name incorporates the Complainant’s trade mark FAT FACE in its entirety. Thus, the disputed domain name should be regarded as confusingly similar to the Complainant’s FAT FACE trade mark. The inclusion of the additional term “sale” does not prevent a finding of confusing similarity. [WIPO Overview 3.0](#), sections 1.7 and 1.8.

The Panel therefore finds that the Complainant satisfies the requirements of paragraph 4(a)(i) of the Policy in establishing its rights in the FAT FACE trade mark and in showing that the disputed domain name is confusingly similar to its mark.

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 challenging 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 evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

The Complainant asserts that it has not authorized the Respondent to use its trade marks and there is no evidence to suggest that the Respondent has used, or undertaken any demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services. Having reviewed the available record, the Panel finds that the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent did not file a response and has therefore failed to assert factors or put forth evidence to establish that he enjoys rights or legitimate interests in the disputed domain name. Meanwhile, no evidence has been adduced to demonstrate that the Respondent, prior to the notice of the dispute, had used or demonstrated its preparation to use the disputed domain name in connection with a bona fide offering of goods or services. At the time the Complaint was filed, the disputed domain name resolved to a website allegedly offering various apparel items which is in a same industry as the Complainant. However, the website failed to disclose any relationship with the Complainant. Given the composition of the disputed domain name and its previous use, it is clear the Respondent sought to create a misleading inference of association or ownership by the Complainant for its commercial advantage.

There is also no evidence adduced to show that the Respondent has been commonly known by the disputed domain name or the Respondent is making a legitimate noncommercial or fair use of the disputed domain name. As such, the Panel concludes that the Respondent has failed to rebut the Complainant’s prima facie showing of the Respondent’s lack of rights or legitimate interests in the disputed domain name, and that none of the circumstances of paragraph 4(c) of the Policy is applicable in this case.

Accordingly, and based on the Panel’s findings below, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name pursuant to paragraph 4(a)(ii) of the Policy.

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 states that any of the following circumstances, in particular but without limitation, shall be considered as evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant (the owner of the trade mark or service mark) or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the respondent registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) circumstances indicating that the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its website or other online location, 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 its website or location.

The examples of bad faith registration and use set forth in paragraph 4(b) of the Policy are not meant to be exhaustive of all circumstances in which bad faith may be found. Other circumstances may also 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.)

For reasons discussed under this and the preceding heading, the Panel believes that the Respondent's conduct in this case constitutes bad faith registration and use of the disputed domain name.

When the Respondent registered the disputed domain name, the FAT FACE trade marks were already widely known and directly associated with the Complainant's activities. UDRP panels have consistently found that the mere registration of a domain name that is confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely known trade mark by an unaffiliated entity can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

Given the extensive prior use and fame of the Complainant's marks, in the Panel's view, the Respondent should have been aware of the Complainant's marks when registering the disputed domain name.

The Respondent has provided no evidence to justify his choice of the term "fat face" in the disputed domain name.

The Complainant's registered trade mark rights in FAT FACE for its products and services predate the registration date of the disputed domain name. A simple online search (via services such as Baidu or Google) for the term "fat face" would have revealed that it is an established brand. [WIPO Overview 3.0](#), section 4.8.

The Panel takes particular note of the fact that the Respondent used the disputed domain name for a website promoting apparel that directly competes with the Complainant's products.

The Panel is therefore of the view that the Respondent registered the disputed domain name with full knowledge of the Complainant's trade mark rights.

In light of the foregoing, there are no plausible good faith reasons for the Respondent to have registered and used the disputed domain name. The Panel finds in the circumstances that, by registering and using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet

users to its website by creating a likelihood of confusion with the Complainant's trade marks as to the source, sponsorship, affiliation, or endorsement of its website or of a product or service on its website (paragraph 4(b)(iv) of the Policy).

While the disputed domain name does not currently resolve to an active website, having reviewed the available record, the Panel finds the current non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. See [WIPO Overview 3.0](#), section 3.3.

Accordingly, the Panel finds that the disputed domain name was registered and used in bad faith.

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 <fatfacesale.online> be transferred to the Complainant.

/Joseph Simone/

Joseph Simone

Sole Panelist

Date: September 12, 2024