

ADMINISTRATIVE PANEL DECISION

Jollibee Foods Corporation v. yang fan chen
Case No. D2024-3247

1. The Parties

The Complainant is Jollibee Foods Corporation, Philippines, represented by Demys Limited, United Kingdom.

The Respondent is yang fan chen, China.

2. The Domain Name and Registrar

The disputed domain name <jollibee.shop> is registered with Gname.com Pte. Ltd. (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on August 7, 2024. On August 8, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 12, 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 (Redacted) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 19, 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 August 19, 2024.

On August 19, 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 August 19, 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 English and Chinese of the Complaint, and the proceedings commenced on August 27, 2024. In accordance with

the Rules, paragraph 5, the due date for Response was September 16, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 17, 2024.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on September 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

The Complainant was established in 1978, and is a multinational fast-food company headquartered in Manila, Philippines, and operates multiple restaurant brands, including JOLLIBEE. The Complainant currently also operates over 6,800 multi-brand stores across 33 countries, including in the Philippines, United States of America ("United States"), Canada, China, United Kingdom, Viet Nam, United Arab Emirates, and Australia. Over the past decade, the Complainant has received awards and accolades, and has, inter alia, been recognized as the Philippines' most admired company by the Asian Wall Street Journal.

The Complainant owns an international trademark portfolio for the JOLLIBEE marks in different jurisdictions, including, but not limited to, United States trademark registration No. 3196017 for JOLLIBEE, registered on January 09, 2007; Philippines trademark registration No. 7558 for JOLLIBEE, registered on February 19, 2007; and United Kingdom trademark registration No. 910610632 for JOLLIBEE, registered on May 24, 2012. The Complainant also has a strong online presence, including on social media platforms, and is the owner of various domain names including the abovementioned marks, including <jollibee.com.ph>, where it hosts its main website for the Philippines.

The disputed domain name was registered on October 2, 2023, and is therefore of a later date than the abovementioned trademarks of the Complainant. The Complainant submits evidence that the disputed domain name has directed to an inactive webpage (stating only "403 Forbidden nginx").

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.

Notably, the Complainant contends that the disputed domain name is identical to its registered trademarks as it incorporates the JOLLIBEE mark entirely, with no other additions or elements. The Complainant also claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name: the Respondent is not a licensee of the Complainant, and the Complainant has not given the Respondent any permission to register the trademark as a domain name, nor is there any evidence that the Respondent has been commonly known by the disputed domain name.

The Complainant states that the Respondent had actual or at least constructive knowledge of the Complainant's JOLLIBEE marks when registering the disputed domain name and that the registration was therefore conducted in bad faith. The Complainant adds that the disputed domain name is inherently confusing to Internet users. The Complainant claims that given that the disputed domain name is identical to the Complainant's name and JOLLIBEE mark, "initial interest confusion" is unavoidable. The Complainant particularly contends that customers and other Internet users encountering the disputed domain name, whether directly or through search engine results, would reasonably assume that it is operated by, affiliated with, or endorsed by the Complainant. Consequently, the Complainant asserts that the disputed domain name is inherently confusing and that its registration creates a presumption of bad faith on the part of the Respondent. Furthermore, the Complainant provides evidence that the disputed domain name is not in use.

The Complainant essentially argues that the passive holding of the disputed domain name by the Respondent constitutes use 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

The language of the Registration Agreement for the disputed domain name 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 disputed domain name is made up entirely of the Complainant's English language trademark, JOLLIBEE, which has no other meaning in Chinese, or indeed any other language; that the registration of the disputed domain name in the English-language Top-Level Domain ("TLD") ".shop" rather than ".cn" is indicative of the Respondent's intent to target English speaking Internet users; and that the Complainant's and the Complainant's authorized representative's working language is English and that given these elements, the Complainant would be put to great expense and inconvenience to translate its submissions into Chinese.

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.

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

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the Complainant's mark is reproduced within the disputed domain name with no additional elements. It is the settled view of panels applying the Policy that the TLD (here ".shop") should be disregarded under the first element test. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, 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 name. 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 name such as those enumerated in the Policy or otherwise.

Furthermore, the Panel notes that the disputed domain name directs to an inactive or error webpage and that the Respondent has apparently not used the disputed domain name in connection with a bona fide offering of goods or services, nor any credible preparations for that purpose. In this regard, the Panel finds that holding a domain name passively, without making any use of it, does not confer any rights or legitimate interests in the disputed domain name on the Respondent under the circumstances of this case (see in this regard earlier UDRP decisions such as *Bollore SE v. 赵竹飞 (Zhao Zhu Fei)*, WIPO Case No. [D2020-0691](#); and *Vente-Privee.Com and Vente-Privee.com IP S.à.r.l. v. 崔郡 (jun cui)*, WIPO Case No. [D2021-1685](#)).

Finally, the Panel also finds that the nature of the disputed domain name, being identical to the Complainant’s mark and merely combining it with the TLD “.shop”, carries a high risk of implied affiliation and cannot constitute fair use, as it effectively impersonates the Complainant and its products or suggests sponsorship or endorsement by the Complainant (see [WIPO Overview 3.0](#), section 2.5.1).

Based on the available record, 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 has registered a domain name which is identical to the Complainant’s intensely used and distinctive trademark for JOLLIBEE, and combined it with the TLD “.shop”, which clearly suggests an affiliation or other connection to the Complainant, or that the disputed domain name would be used by the Complainant for hosting its official online shop. Moreover, based on the evidence provided, the Panel recognizes the Complainant’s JOLLIBEE mark as well-known, given the size of the Complainant’s business, its longstanding use of these marks and the consumer recognition in the jurisdictions where the Complainant is active, which is evident from the evidence provided and the prizes and accolades which the Complainant won (e.g., Philippines’ most admired company by the Asian Wall Street Journal). In this context, the Panel refers to the [WIPO Overview 3.0](#), section 3.1.4, which states “[p]anels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith”.

Furthermore, the Panel also notes that the Complainant's trademarks were registered many years before the registration date of the disputed domain name. The Panel deducts from these elements that the Respondent knew, or at least should have known, of the existence of the Complainant's trademarks at the time of registering the disputed domain name. In the Panel's view, these elements indicate bad faith on the part of the Respondent, and the Panel therefore finds that it has been demonstrated that the Respondent registered the disputed domain name in bad faith.

As to use in bad faith, panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding, [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the longstanding and intensive use of the JOLLIBEE trademark by the Complainant; the failure of the Respondent to submit a response; and the unlikelihood of any good-faith use of the disputed domain name by the Respondent, considering the composition of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Based on the available record, 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 name <jollibee.shop> be transferred to the Complainant.

/Deanna Wong Wai Man/

Deanna Wong Wai Man

Sole Panelist

Date: September 30, 2024