

## ADMINISTRATIVE PANEL DECISION

Harry Winston SA, Harry Winston Inc. v. asd dsa, NIL  
Case No. D2024-4272

### 1. The Parties

The Complainants are Harry Winston SA, Switzerland and Harry Winston Inc., United States of America (“United States”), represented by The Swatch Group AG, Switzerland.

The Respondent is asd dsa, NIL, China.

### 2. The Domain Name and Registrar

The disputed domain names <harywinston.cc> and <harywinston.shop> are 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 October 16, 2024. On October 17, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On October 18, 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 (Redacted for privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 21, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On the same day, the Center informed the parties in Chinese and English, that the language of the registration agreement for the disputed domain name is Chinese. The Complainant filed an amended Complaint in English, including 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 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 October 28, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 17, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 18, 2024.

The Center appointed Karen Fong as the sole panelist in this matter on November 21, 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 First Complainant, Harry Winston Inc., was founded in 1932 in New York City, United States by the American jeweler, Mr. Harry Winston. The HARRY WINSTON brand is a world-renowned jewelry brand with many celebrities wearing its pieces at high profile events like the Academy Awards. The First Complainant was acquired by The Swatch Group AG in 2013 and established the Second Complainant, Harry Winston S.A., in Switzerland. The Complainants are both wholly owned subsidiaries of The Swatch Group AG and the HARRY WINSTON trade marks are owned by the First Complainant in some jurisdictions and the Second Complainant in others. For the purposes of the Complaint, the First Complainant and Second Complainant will individually and collectively be known as the Complainant.

The Complainant operates salons and numerous retail affiliates all over the world including the United States, China, Japan, Singapore, Hong Kong, China, Germany, the United Kingdom, and Argentina.

The Complainant owns trade mark registrations for the brand HARRY WINSTON in many jurisdictions worldwide, including:

- European Union Trade Mark Registration No. 003276151 for HARRY WINSTON registered on February 1, 2005;
- United States Trade Mark Registration No. 3355622 for HARRY WINSTON registered on December 18, 2007; and
- China Trade Mark Registration No. 6380734 for HARRY WINSTON registered on August 14, 2015 (individually and collectively, the "Trade Mark").

The Complainant owns and uses a logo which comprises its initials "HW" in a stylized form with the "H" directly above the "W" (the "Logo"). The Complainant's main website is found at the domain name <harrywinston.com>.

The Respondent appears to be based in China. Both the disputed domain names were registered on September 27, 2024. The disputed domain names are connected to websites which display the Trade Mark and the Logo and mimicked the Complainant's own website including using its copyright images of its jewelry and purport to offer HARRY WINSTON jewelry for sale. It also purports to have a membership program requiring payments to achieve a certain balance of monetary value to qualify for different tiers of membership (the "Websites").

At the time of writing this decision, the Panel notes that the Websites currently resolve to a page bearing the Trade Mark which requires a user to enter login details or to register to be a user which requires providing personal details. There is a dropdown menu for different language choices including English. It is not clear whether entering login details will take a user to the Websites described above.

#### **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 the disputed domain names are confusingly similar to the Trade Mark, that the Respondent has no rights or legitimate interests with respect to the disputed domain names, and that the disputed domain names were registered and are being used 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 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 the following main reasons:

- the Websites are in the English language, which indicates that the Respondent has the ability to communicate in English;
- the time and expense required for the Complainant to have to translate the Complainant would not be fair and equitable considering the illegitimate activities of the Respondent.

The Respondent has not challenged the Complainant's language request and in fact has failed to file a response in either English or Chinese despite being duly notified by the Center in both English and Chinese of the language of the proceeding and of the commencement 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.

Based on the available record, the Panel finds 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 disputed domain names consist of a misspelling of the Trade Mark with one of the letters "r" missing from the word "HARRY". Common, obvious, or intentional misspellings of a trade mark are considered by panels to be confusingly similar to the relevant mark for the purposes of the first element. [WIPO Overview 3.0](#), section 1.9 The Panel finds the Trade Mark is recognizable within the disputed domain names.

Accordingly, the disputed domain names are confusingly similar 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.

While 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 often impossible 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. 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 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.

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 must have been aware of the Trade Mark when it registered the disputed domain names given the fame of the Trade Mark and the use of the Trade Mark and Logo on the Websites with the Trade Mark spelt correctly unlike the misspelling in the disputed domain names. It is therefore implausible that the Respondent was unaware of the Complainant when it registered the disputed domain names.

In the [WIPO Overview 3.0](#), section 3.2.2 states as follows:

“Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant’s mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant’s mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent’s claim not to have been aware of the complainant’s mark.”

The fact that there is a clear absence of rights or legitimate interests coupled with the Respondent’s choice of the disputed domain names without any explanation is also a significant factor to consider (as stated in [WIPO Overview 3.0](#), section 3.2.1). The disputed domain names fall into the category stated above and the Panel finds that registration is in bad faith.

The disputed domain names are also being used in bad faith. The unauthorised use of images from the Complainant's website, the Trade Mark, the Logo, and the membership, payment, and personal information requirements are clear indications of use for illegitimate activity.

The Websites prominently display the Trade Mark, without any disclaimer disclosing (the lack of) relationship between the Parties. The content of the Websites is calculated to give the impression it have been authorized by or connected to the Complainant when this is not the case. The Websites were set up to deliberately mislead Internet users into believing that they are connected to, authorised by, or affiliated with the Complainant. From the above, the Panel concludes that the Respondent has intentionally attempted to attract, for commercial gain, by misleading Internet users into believing that the Respondent's Websites and the products offered on them are those of or authorised or endorsed by the Complainant.

It is highly likely that Internet users when typing the disputed domain names into their browsers or finding them through a search engine would have been looking for a site operated by the Complainant rather than the Respondent. The disputed domain names are likely to confuse Internet users trying to find the Complainant's official website. Such confusion will inevitably result due to the fact that the disputed domain names comprise a misspelling of the Trade Mark.

The Panel therefore finds that the disputed domain names have been registered and are being used in bad faith under paragraph 4(b)(iv) of the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

## **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 <harywinston.cc> and <harywinston.shop> be transferred to the Complainant.

*/Karen Fong/*

**Karen Fong**

Sole Panelist

Date: November 26, 2024