

ADMINISTRATIVE PANEL DECISION

Hamilton Beach Brands, Inc. v. 喻艳艳 (yuyanyan)
Case No. DCC2022-0008

1. The Parties

The Complainant is Hamilton Beach Brands, Inc., United States of America (“United States”), represented by Stobbs (IP) Ltd, United Kingdom.

The Respondent is 喻艳艳 (yuyanyan), China.

2. The Domain Name and Registrar

The disputed domain name <hamiltonbeach.cc> 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 August 8, 2022. On August 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 10, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on August 11, 2022, 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 12, 2022.

On August 11, 2022, the Center transmitted another email communication to the Parties in English and Chinese regarding the language of the proceeding. On August 12, 2022, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not comment 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 proceedings commenced on August 17, 2022. In accordance with

the Rules, paragraph 5, the due date for Response was September 6, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 7, 2022.

The Center appointed Sok Ling MOI as the sole panelist in this matter on September 26, 2022. 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 a manufacturer and distributor of kitchen appliances (such as blenders, mixers, toasters, slow cookers, and air purifiers) for consumers and corporations in the United States and internationally. The Complainant's name can be traced back to 1904 and was named after the initial partners L.H. Hamilton and Chester Beach. The Complainant currently employs more than 500 employees worldwide and sells over 30 million kitchen appliances every year. The Complainant currently has an international presence in many markets, including in Australia, Brazil, Canada, China, India, and Mexico.

The Complainant is the proprietor of numerous trade mark registrations worldwide for HAMILTON BEACH (the first of which was registered as early as 1949 in the United States), including the following:

Jurisdiction	Mark	Registration No.	Class No.	Registration Date
United States	HAMILTON BEACH	0512451	7, 9, 11, 12, 15	July 19, 1949
United States	HAMILTON BEACH	5733102	7, 9, 11, 21	April 23, 2019
European Union	HAMILTON BEACH	009616831	7, 8, 9, 11, 21	June 16, 2011
China	HAMILTON BEACH	19191122	7, 8, 9, 11, 21	June 14, 2017

Since 1998, the Complainant has developed an Internet presence via the websites "www.hamiltonbeach.com" and "www.hamiltonbeachcommercial.com", as well as on social media platforms, for promoting its Hamilton Beach branded products.

The disputed domain name was registered on August 3, 2021. According to the evidence submitted by the Complainant, the disputed domain name previously resolved to a website which reproduced the Complainant's HAMILTON BEACH trade mark and copyrighted product images, and purported to offer for sale goods identical to those offered by the Complainant. The Complainant's legal representative filed a takedown request with the hosting provider on June 6, 2022. As at the date of the Complaint, the disputed domain name did not resolve to any active website.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical to its HAMILTON BEACH trade mark as it incorporates the term in its entirety.

The Complainant claims that as the Complainant has not licensed or otherwise authorized the Respondent to use its trade mark, the Respondent's use of the disputed domain name to publish a website purported to imitate the Complainant's official website and purportedly offering for sale identical goods to those offered by the Complainant, was not *bona fide*. The Complainant claims that the Respondent has been using the disputed domain name for the purpose of luring consumers in to purchase unauthorized products from its website, placing the public at significant risk of phishing and cybercrime. The Complainant contends that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Complainant claims that the disputed domain name is used to mislead Internet users into believing that

the said website is operated by the Complainant or with the Complainant's consent. The Complainant claims that even if the goods offered for sale by the Respondent on its website are genuine, the Respondent did not accurately disclose her lack of affiliation with the Complainant. The Complainant contends that the Respondent has registered and is using the disputed domain name in bad faith.

For all of the above reasons, the Complainant requests for the transfer of the disputed domain name to the Complainant.

B. Respondent

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

6. Discussion and Findings

6.1 Language of the Proceeding

Pursuant to paragraph 11(a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, 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.

Paragraphs 10(b) and (c) of the Rules require the Panel to ensure that the proceeding takes place with due expedition and that the Parties are treated equitably and given a fair opportunity to present their respective cases.

The language of the Registration Agreement for the disputed domain name is Chinese. From the evidence on record, no agreement appears to have been entered into between the Complainant and the Respondent regarding the language issue. The Complainant filed its Complaint in English and has requested that English be the language of the proceeding.

The Panel finds persuasive evidence in the present proceeding to suggest that the Respondent has sufficient knowledge of English. In particular, the Panel notes that:

- (a) the disputed domain name is registered in Latin characters, rather than Chinese script;
- (b) the disputed domain name comprises the English word "beach"; and
- (c) according to the evidence submitted by the Complainant, the contents of the website to which the disputed domain name resolved were entirely in English.

Additionally, the Panel notes that:

- (a) the Center has notified the Respondent of the proceeding in both Chinese and English;
- (b) the Respondent has been given the opportunity to present her case in this proceeding and to respond to the issue of the language of the proceeding but has chosen not to do so; and
- (c) the Center has informed the Respondent that it would accept a Response in either English or Chinese.

Considering the above circumstances, the Panel finds that the choice of English as the language of the present proceeding is fair to all Parties and is not prejudicial to any of the Parties in their ability to articulate the arguments for this case. The Panel has taken into consideration the fact that to require the Complaint to be translated into Chinese would, in the circumstances of this case, cause an unnecessary cost burden to the Complainant and would unnecessarily delay the proceeding.

In view of all the above, the Panel determines under paragraph 11(a) of the Rules that it shall accept the Complaint as filed in English, that English shall be the language of the proceeding, and that the decision will be rendered in English.

6.2 Substantive Findings

Paragraph 4(a) of the Policy directs that a complainant must prove each of the following three elements to obtain an order for the domain name to be cancelled or transferred:

- (i) the domain name is identical or confusingly similar to a trade mark or service mark in which the complainant has rights;
- (ii) the respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) the domain name has been registered and is being used in bad faith.

On the basis of the arguments and evidence introduced by the Complainant, the Panel concludes as follows:

A. Identical or Confusingly Similar

The Panel accepts that the Complainant has rights in HAMILTON BEACH by virtue of its use and registration of the same as a trade mark.

The disputed domain name effectively incorporates the Complainant's HAMILTON BEACH trade mark in its entirety. The addition of the country code Top-Level Domain ("ccTLD") ".cc" is generally disregarded for the purpose of the similarity assessment.

Consequently, the Panel finds that the disputed domain name is identical to the Complainant's HAMILTON BEACH trade mark.

Accordingly, the Complainant has satisfied the requirements of the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant bears the burden of establishing that the respondent lacks rights or legitimate interests in the domain name. However, once the complainant makes a *prima facie* showing under paragraph 4(a)(ii) of the Policy, the burden of production shifts to the respondent to establish its rights or legitimate interests in the domain name by demonstrating any of the following, without limitation, under paragraph 4(c) of the Policy:

- (i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name, even if it has acquired no trade mark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

(See *Taylor Wimpey PLC, Taylor Wimpey Holdings Limited v. honghao Internet foshan co, ltd*, WIPO Case No. [D2013-0974](#).)

The Complainant has confirmed that the Respondent is not in any way affiliated with the Complainant or

otherwise authorized or licensed to use the HAMILTON BEACH trade mark or to seek registration of any domain name incorporating the trade mark. The Respondent appears to be an individual by the name of “喻艳艳 (yuyanyan)”. There is no evidence suggesting that the Respondent is commonly known by the disputed domain name or that the Respondent has any rights in the term “hamilton” or “Hamilton beach”.

According to the evidence submitted by the Complainant, the Respondent was previously using the disputed domain name to publish a website which reproduced the Complainant’s HAMILTON BEACH trade mark and copyrighted product images, and purported to offer for sale goods identical to those offered by the Complainant, without any disclaimer of non-affiliation. This does not suggest that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services. As the Respondent appears to be using the disputed domain name to mislead Internet users by creating an affiliation with the Complainant where there is none, she would not be able to avail herself of the safe harbour defence established by the Oki Data case (*Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#)).

The Panel is satisfied that the Complainant has made out a *prima facie* showing that the Respondent lacks rights or legitimate interests in the disputed domain name. The burden of production thus shifts to the Respondent to establish her rights or legitimate interests in the disputed domain name. Since the Respondent has failed to respond, the *prima facie* case has not been rebutted.

Moreover, the nature of the disputed domain name, which is identical to the Complainant’s HAMILTON BEACH trade mark, carries a high risk of implied affiliation. See section 2.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

Consequently, the Panel finds that the Respondent lacks rights or legitimate interests in the disputed domain name.

Accordingly, the Complainant has satisfied the requirements of the second element under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out four circumstances which, without limitation, shall be evidence of the registration and use of the domain name in bad faith, namely:

(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trade mark or service mark or to a competitor of the complainant, for valuable consideration in excess of the respondent’s documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent has 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) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent’s 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 the respondent’s website or location.

The Complainant and its affiliated companies have used HAMILTON BEACH as a trade mark for more than 100 years. The Panel accepts that the Complainant’s HAMILTON BEACH trade mark enjoys an Internet presence. There is no doubt that the Respondent was aware of the Complainant’s trade mark when she registered the disputed domain name on August 3, 2021, given that she was using the disputed domain

name to publish a website which reproduced the Complainant's HAMILTON BEACH trade mark and copyrighted product images, and purported to offer for sale goods identical to those offered by the Complainant. Irrespective of whether the goods offered on the Respondent's website are genuine, the reproduction of the Complainant's trade mark on the Respondent's website without displaying a clear and accurate disclaimer of a lack of relationship between the Respondent and the Complainant, is indicative of bad faith. (See *Oki Data Americas, Inc. v. ASD, Inc.*, *supra*).

The Panel is satisfied that the Respondent's purpose of registering the disputed domain name was to trade on the reputation of the Complainant and its trade mark by diverting Internet users seeking the Complainant's products to her own website for financial gain. The Panel therefore determines that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to her website by creating a likelihood of confusion with the Complainant's mark as to source, sponsorship, affiliation, or endorsement of the Respondent's website. As such, the Panel finds that the circumstances referred in paragraph 4(b)(iv) of the Policy are applicable to the present case.

Furthermore, efforts to send the Written Notice to the Respondent at the physical address provided by the Respondent to the Registrar (and in turn to the Center) failed which suggests that the Respondent had provided false or incomplete contact details at the time of registering the disputed domain name. This further suggests the Respondent's bad faith.

The Respondent has not filed a response to deny the Complainant's allegations of bad faith. Taking into account all the circumstances, the Panel concludes that the Respondent has registered and is using the disputed domain name in bad faith.

Accordingly, the Complainant has satisfied the requirements of the third element under 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 <hamiltonbeach.cc> be transferred to the Complainant.

/Sok Ling MOI/

Sok Ling MOI

Sole Panelist

Date: October 15, 2022