

ADMINISTRATIVE PANEL DECISION

Kylie Jenner, Inc. v. 杨智超 (Yang Zhi Chao)
Case No. D2022-1962

1. The Parties

The Complainant is Kylie Jenner, Inc., United States of America (“U.S.”), represented by Studio Barbero, Italy.

The Respondent is 杨智超 (Yang Zhi Chao), China.

2. The Domain Name and Registrar

The disputed domain names <jyliecosmetics.com>, <kyliceosmetics.com>, <kyliecosmeitcs.com>, <kyliecosmetisc.com>, <kyliecosmetlcs.com>, <kylieocsmetics.com>, and <kyliwcosmetics.com> are registered with DNSPod, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on May 30, 2022. On May 31, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 1, 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 June 1, 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 amendment to the Complaint in English on June 1, 2022.

On June 1, 2022, the Center transmitted another email communication to the Parties in English and Chinese regarding the language of the proceeding. On June 1, 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 amendment to 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 June 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 6, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 26, 2022.

The Center appointed Francine Tan as the sole panelist in this matter on August 2, 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, Kylie Jenner, Inc., is a U.S.-based cosmetics company founded in 2014 by a celebrity, Kylie Jenner, and acquired in 2019 by the American multinational beauty company, Coty Inc.

The "Kylie" line of cosmetics was started in 2014 when Kylie Jenner and her mother, Kris Jenner, founded the company and partnered with Seed Beauty, a retail and product development company. The company's first product, "Kylie Lip Kits", was launched on November 30, 2015. Subsequently, the Complainant launched the brand "Kylie Cosmetics" and expanded its beauty product range beyond lip products to include other beauty products. By the end of 2016, the Complainant was selling over 50 products, which generated significant revenues. In May 2019, the Complainant's founder introduced a range of skincare products named "Kylie Skin".

The Complainant states that "Kylie Cosmetics By Kylie Jenner" is one of the fastest growing beauty brands in the world. Forbes valued the Complainant at USD 800 million in 2018 and USD 900 million in March 2019. In November 2019, the Complainant entered into a partnership with Coty Inc. to jointly build and further develop the Complainant's existing beauty business into a global brand.

The Complainant states that its KYLIE trade marks have been supported by global advertising campaigns. The Complainant's founder has collaborated with several celebrities including Kim Kardashian West, Khloe Kardashian, Kourtney Kardashian, and Oliver Rousteing, on "Kylie Cosmetics" collections. The KYLIE trade mark and products have been widely promoted through traditional advertising channels and via the Internet such as through social media (e.g. Facebook, Instagram, Twitter, TikTok and YouTube). The KYLIE COSMETICS and KYLIE SKIN brands have, respectively, roughly 32 million and 6 million followers. The Complainant's founder is also one of the world's most-followed people on social media, with a combined following of over 330 million users, and was featured as the youngest self-made billionaire by Forbes in August 2018.

The Complainant is the owner of trade mark registrations worldwide for KYLIE and variations thereof, including the following:

- International Trademark Registration No. 1366642 for KYLIE, registered on August 7, 2017;
- International Trademark Registration No. 1397203 for KYLIE COSMETICS BY KYLIE JENNER, registered on January 18, 2018;
- European Union Trademark Registration No. 017002916, for KYLIE COSMETICS BY KYLIE JENNER, registered on November 17, 2017;
- Chinese Trademark Registration No. 39791825 for KYLIE COSMETICS BY KYLIE JENNER, registered on November 7, 2020;
- U.S. Trademark Registration No. 5246500 for KYLIE, registered on July 18, 2017; and

- U.S. Trademark Registration No. 5536206 for KYLIE COSMETICS, registered on August 7, 2018.

The Complainant also states that it has registered numerous domain names consisting of or comprising the trade mark KYLIE. The domain name <kyliecosmetics.com> was registered on September 3, 2015.

The disputed domain names were registered on June 29, 2021, and at the time of the filing of the Complaint, resolve to webpages with sponsored links related to the KYLIE and KYLIE COSMETICS trade marks and the Complainant's products. The links redirect Internet users to internal pages of websites which display additional links to other third-party websites offering for sale products of the Complainant and of its competitors.

The Complainant sent a trade mark infringement notice to the Respondent through the Registrar as well as a cease-and-desist letter to the Respondent by email. Reminders were sent on a few occasions thereafter but no response from the Respondent was received.

5. Parties' Contentions

A. Complainant

1. The disputed domain names are confusingly similar to the KYLIE and KYLIE COSMETICS trade marks in which the Complainant has rights. The disputed domain names all incorporate the Complainant's KYLIE trade mark or clear misspellings of such trade mark, in combination with the descriptive term "cosmetics", which is also misspelt in some of the disputed domain names. The addition of the term "cosmetics", or misspelt versions thereof, to the KYLIE trade mark is not sufficient to distinguish the disputed domain names from the Complainant's KYLIE trade mark. In the present case, the term "cosmetics" which the Respondent selected for the disputed domain names increases the likelihood of confusion and induces Internet users to believe that there is an association between the disputed domain names and the Complainant since the term describes the field of business associated with the KYLIE trade mark.

2. The disputed domain names differ from the KYLIE COSMETICS trade mark and from the Complainant's domain name <kyliecosmetics.com> (which is used for the Complainant's official website for KYLIE products) by misspellings of the trade mark KYLIE (e.g. "jylie", "kyliv" and "kylil" respectively) and of the word "cosmetics" (e.g. "cosmetisc", "ocsmetics", "cosmeitcs", "ceosmetics" and "cosmetlcs"). These misspellings in the disputed domain names do not affect confusing similarity with the Complainant's KYLIE COSMETICS trade mark.

3. The Respondent has no rights or legitimate interests in respect of the disputed domain names. The Respondent is not a licensee or an authorized agent of the Complainant or authorized in any other way to use the Complainant's KYLIE, KYLIE COSMETICS, or KYLIE COSMETICS BY KYLIE JENNER trade marks. The Respondent is not commonly known by the disputed domain names as an individual, business or other organization. The Respondent has not provided any evidence of his use of, or demonstrable preparations to use, the disputed domain names in connection with a *bona fide* offering of goods or services before any notice of the dispute. The disputed domain names have been redirected to webpages displaying sponsored links, which generate revenue for the Respondent via the pay-per-click ("PPC") system. The sponsored links published on the said webpages are related to the Complainant's registered trade marks and products and redirect Internet users to third-party websites offering the Complainant's and its competitors' products for sale.

4. Such use of the disputed domain names does not amount to a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain names without intent of commercial gain. The Respondent also did not respond to the Complainant's cease-and-desist letter and subsequent reminders.

5. The disputed domain names were registered and are being used in bad faith. As the KYLIE and KYLIE COSMETICS trade marks are well known worldwide, the Respondent was undoubtedly aware of the existence of the Complainant's trade marks. The KYLIE and KYLIE COSMETICS trade marks have been recognized as well-known trade marks in earlier UDRP domain name disputes. Given the distinctiveness and reputation of the Complainant's trade marks, the Respondent clearly acted in opportunistic bad faith, by registering the disputed domain names with full knowledge of the Complainant's trade marks for the purpose of taking commercial advantage of the Complainant's trade marks. The Respondent's use of the disputed domain names to redirect Internet users through sponsored links to competitors' products constitutes bad faith conduct. The use of a website incorporating another party's trade mark to also display links to goods which compete with those sold under the Complainant's mark demonstrates a deliberate effort to trade off the goodwill associated with the mark. The Respondent's use of the disputed domain names also diverts traffic away from the Complainant's website, which also demonstrates the Respondent's intention to attract Internet users for commercial gain to his websites by creating a likelihood of confusion with the Complainant's trade marks as to the source, sponsorship, affiliation, or endorsement of the Respondent's websites.

6. The Respondent registered the disputed domain names to prevent the Complainant from reflecting its trade marks in corresponding domain names and it has been engaged in a pattern of such conduct. The disputed domain names are clear typosquatting registrations and the Respondent's failure to respond to the Complainant's cease-and-desist letter is a further indication of bad faith conduct.

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. The Complainant requested that the language of the proceeding be English. The reasons are that:

- (i) The Complainant communicates in English and would be disadvantaged, should it be required to translate the Complaint into Chinese.
- (ii) Requiring the Complainant to translate the Complaint and documents into Chinese would cause delay to the proceeding.
- (iii) The Complainant sent a cease-and-desist letter to the Respondent prior to the proceeding and the Respondent never responded or raised any issue related to the language adopted in the letter.
- (iv) The following circumstances demonstrate that the Respondent has sufficient command of the English language:
 - a. the disputed domain names are registered in Latin characters;
 - b. the disputed domain names encompass the English word "cosmetics" and/or misspelt versions thereof;
 - c. the Respondent secured the disputed domain names in the generic Top-Level Domain ("gTLD") ".com", which demonstrates the Respondent's intention to target an audience of English-speaking users; and

d. the disputed domain names resolved to PPC pages displaying links in the English language, further evincing the Respondent's intention to target an audience of English-speaking users.

The Respondent did not comment on the language of the proceeding.

Paragraph 11(a) of the Rules provides that:

“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.”

The intention of paragraph 11(a) is to allow panels some measure of flexibility and discretion to consider the entire circumstances of each case, to ensure fairness between the parties, while at the same time not undermining the mandate for the proceeding to be administered in an expeditious manner. The relevant circumstances for consideration would include considerations of the parties' level of familiarity with the respective languages, the expenses to be incurred, the possibility of delay in the proceeding if translations are required, as well as the language of the domain name(s) in dispute and of the resolving websites.

Having considered the relevant factors and interests of the respective parties, the Panel determines that it is appropriate for English to be the language of the proceeding. The Panel is persuaded that the Respondent is more likely than not familiar with and conversant in the English language, taking into account his selection of the disputed domain names which comprise English words (deliberately misspelt in some) and letters of the English alphabet. The Respondent had, moreover, been notified by the Center, in both Chinese and English language, of the commencement of the proceeding, the language of the Registration Agreement, and deadline for filing a Response. The Respondent therefore had ample opportunity to raise any objection or propose to submit his Response in Chinese, but he did not do so. In the absence of any objection and justification therefor by the Respondent, the Panel does not find it procedurally efficient to have the Complainant translate the Complaint into Chinese.

6.2 Substantive Issues

A. Identical or Confusingly Similar

The Complainant has established it has rights in the KYLIE and KYLIE COSMETICS trade marks. The Panel agrees that the incorporation of the Complainant's trade mark KYLIE (or misspelt versions thereof) in combination with the term “cosmetics”, which is also misspelt in several of the disputed domain names, does not prevent a finding of confusing similarity with the Complainant's KYLIE trade mark. The disputed domain names are also confusingly similar with the Complainant's trade mark KYLIE COSMETICS as they comprise the said trade marks (or the misspelt versions thereof). (See section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)).)

The gTLD “.com” is a technical requirement for domain name registrations and does not have any impact on the issue of the identity or confusing similarity between the disputed domain names and the Complainant's trade marks.

The Panel accordingly finds that the first element of paragraph 4(a) of the Policy has been satisfied.

B. Rights or Legitimate Interests

The Panel finds that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain names. The Complainant's extensive use and registrations of the KYLIE and KYLIE COSMETICS trade marks predate the registration date of the disputed domain names. The Complainant did not license nor authorize the Respondent to use KYLIE and KYLIE COSMETICS as a trade mark or in a domain name. Neither is there any evidence that the Respondent is commonly known by

the names “jyliecosmetics”, “kyliecosmetics”, “kyliecosmeitics”, “kyliecosmetisc”, “kyliecosmetlcs”, “kylieocsmetics” or “kyliwcosmetics”. The use of the disputed domain names which incorporate the Complainant’s reputable trade marks and the term “cosmetics” (or the misspelt versions thereof) to webpages hosting sponsored or PPC links to third-party websites selling the Complainant’s and/or its competitors’ goods does not constitute a *bona fide* offering of goods and services nor a legitimate noncommercial or fair use of the disputed domain names within the meaning of paragraphs 4(c)(i) and (iii) of the Policy. The Respondent’s choice of these high profile trade marks and incorporation of the word “cosmetics” (or the misspelt versions thereof) in the disputed domain names shows a clear intent to obtain an unfair commercial gain, with a view to misleadingly divert consumers.

Having established a *prima facie* case, the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain names. The Respondent did not file a Response in the present case to rebut the Complainant’s assertions and evidence.

In the circumstances, the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain names.

The Panel therefore finds that the second element of paragraph 4(a) of the Policy has been satisfied.

C. Registered and Used in Bad Faith

The Panel is persuaded in the circumstances of this case that the Respondent targeted the Complainant and its highly popular KYLIE and KYLIE COSMETICS brands. There is no other reason for the Respondent to have registered the disputed domain names, all being a series of misspellings for the words “Kylie Cosmetics”, except for the sole purpose of riding off the reputation and goodwill in the Complainant’s KYLIE and KYLIE COSMETICS trade marks and to create confusion with the Complainant’s KYLIE and KYLIE COSMETICS trade marks and business associated with the trade marks. 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 trade mark by an unaffiliated entity can by itself create a presumption of bad faith” (see section 3.1.4 of the [“WIPO Overview 3.0”](#)).

Applying the relevant factors set out in section 3.3 of the [WIPO Overview 3.0](#), the Panel finds that there has been bad faith registration and use. The said factors include:

- (i) the degree of distinctiveness or reputation of the Complainant’s marks;
- (ii) the failure of the Respondent to submit a Response or provide any evidence of actual or contemplated good-faith use;
- (iii) the implausibility of any good faith use to which the disputed domain names may be put.

It can be surmised that the Respondent fully appreciated the value associated with the KYLIE and KYLIE COSMETICS trade marks, which is why he registered variations of misspellings of the latter, in the hope of drawing Internet traffic through typographical errors made by Internet users who may be searching for the Complainant’s products. Additionally, taking into account the Respondent’s absence of rights or legitimate interests in the disputed domain names, as well as his pattern of abusive domain name registration as evidenced by his registration of multiple disputed domain names confusingly similar to the Complainant’s trade marks and his involvement in other UDRP cases which ended with the transfer of the domain names, the Panel can only conclude that the Respondent has registered and is using the disputed domain names in bad faith.

The Panel therefore finds that the third element of paragraph 4(a) of the Policy has been satisfied.

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 <jyliecosmetics.com>, <kyliceosmetics.com>, <kyliecosmeitcs.com>, <kyliecosmetisc.com>, <kyliecosmetlcs.com>, <kylieocsmetics.com>, and <kyliwcosmetics.com> be transferred to the Complainant.

/Francine Tan/

Francine Tan

Sole Panelist

Date: August 9, 2022