

ADMINISTRATIVE PANEL DECISION

Trojan Technologies Group ULC v. 孟福桂 (fugui meng aka meng fugui)
Case No. D2022-4893

1. The Parties

The Complainant is Trojan Technologies Group ULC, Canada, represented by Hahn Loeser & Parks LLP, United States of America (“United States”).

The Respondent is 孟福桂 (fugui meng aka meng fugui), China.

2. The Domain Names and Registrar

The disputed domain names <sterilight-uv.com> and <viqua-uv.com> are registered with Xin Net Technology Corporation (the “Registrar”).

3. Procedural History

The Complaint and amended Complainant were filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on December 20 and 22, 2022, respectively. On December 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On December 23, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on December 23, 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 December 23, 2022.

On December 23, 2022, the Center transmitted another email communication to the Parties in English and Chinese regarding the language of the proceeding. On the same day, 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 and 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 proceeding commenced, on December 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 18, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 19, 2023.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on January 31, 2023. 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

A. Complainant

The Complainant is a company incorporated in Canada and a manufacturer of equipment utilising ultra violet technology for the treatment of water, marketed and sold in numerous countries under the trade marks STERILIGHT (since 1987) and VIQUA (since 2006), (the "Trade Mark(s)"). The Complainant is the owner of numerous registrations for the Trade Marks in jurisdictions worldwide, including United States registration No. 1548019 for the Trade Mark STERILIGHT, with a registration date of July 18, 1989; and United States registration No. 3610438 for the Trade Mark VIQUA, with a registration date of April 21, 2009.

B. Respondents

The Respondent is apparently an individual based in China.

C. The Disputed Domain Names

The disputed domain names <sterilight-uv.com> and <viqua-uv.com> were each registered on the same date, November 30, 2016.

D. The Websites at the Disputed Domain Names

The disputed domain names previously resolved to websites which appeared to be websites of or authorised by the Complainant, reproduced the word and logo versions of the Trade Marks, and purportedly offered for sale a wide range of ultra violet water treatment products of both the Complainant and its competitors (the "Website(s)"). As at the date of this Decision, both of the Websites have been taken down, and the Respondent is no longer using the disputed domain names in respect of any active websites.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain names are identical or confusingly similar to the Trade Marks, the Respondents have no rights or legitimate interests in respect of the disputed domain names, and the disputed domain names were registered and are being used in bad faith.

B. Respondent

The Respondents did not respond to the Complainant's contentions.

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

The language of the Registration Agreements 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.

Paragraph 11(a) of the Rules allows the Panel to determine the language of the proceeding having regard to all the circumstances. In particular, it is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding, in order to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. Language requirements should not lead to undue burden being placed on the parties and undue delay to the proceeding (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

The Complainant has requested that the language of the proceeding be English, for several reasons, including the fact the Websites are in English only, with a contact address in the United States.

The Respondent did not make any submissions regarding the language of the proceeding, and did not file any response.

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.

In light of the content of the Websites, the Panel finds there is sufficient evidence that the Respondent is conversant in English.

The Panel is also mindful of the need to ensure the proceeding is conducted in a timely and cost effective manner.

In all the circumstances, the Panel therefore finds it is not foreseeable that the Respondent would be prejudiced, should English be adopted as the language of the proceeding.

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 Elements of the Policy

The Complainant must prove each of the three elements in paragraph 4(a) of the Policy in order to prevail.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has rights in the Trade Marks acquired through use and registration.

The disputed domain names incorporate the entirety of either the STERILIGHT or the VIQUA Trade Mark (see [WIPO Overview 3.0](#), section 1.7) followed by a hyphen and the letters "uv", the commonly used abbreviation for "ultra violet" (which is descriptive of the products manufactured and sold by the Complainant under the Trade Marks).

Where a relevant trade mark is recognisable within a disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element (see [WIPO Overview 3.0](#), section 1.8).

The Panel therefore finds that the disputed domain names are confusingly similar to the relevant Trade Marks.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in the disputed domain names:

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

The Complainant has not authorised, licensed, or permitted the Respondent to register or use the disputed domain names or to use the Trade Marks. The Panel finds on the record that there is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain names, and the burden is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that he has acquired any trade mark rights in respect of the disputed domain names or that the disputed domain names have been used in connection with a *bona fide* offering of goods or services. To the contrary, the Respondent has used the disputed domain names in order to purportedly offer for sale a wide range of ultra violet water treatment products of both the Complainant and its competitors via the Websites, under the Trade Marks; and to falsely represent the Websites as websites of, or approved by, the Complainant.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain names.

There has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain names.

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

C. Registered and Used in Bad Faith

In light of the Complainant's prior registered Trade Marks, and the manner of use of the Websites set out in section 6.2B. above, and the Respondent's conduct in taking down the Websites following the filing of the Complaint herein, the Panel finds that bad faith has been established under paragraph 4(b)(iv) of the Policy.

The Panel further notes that the Complainant has provided evidence showing that the company listed on the Websites have been associated with some other websites at the domain names incorporating third party trade marks.

For all the foregoing reasons, the Panel concludes that the disputed domain names have been registered and are being 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 names <sterilight-uv.com> and <viqua-uv.com> be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Date: February 14, 2023