

## **ADMINISTRATIVE PANEL DECISION**

Fiskars UK Limited and Fiskars Oyj Abp v. 朱莲梅 (zhu lian mei)  
Case No. D2023-1021

### **1. The Parties**

Complainants are Fiskars UK Limited (“Complainant 1”), United Kingdom (“UK”), and Fiskars Oyj Abp (“Complainant 2”), Finland, represented by Corsearch, Inc., United States of America (“USA”).

Respondent is 朱莲梅 (zhu lian mei), China.

### **2. The Domain Name and Registrar**

The disputed domain name <wedgwood.top> 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 March 7, 2023. On March 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 9, 2023, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details. The Center sent an email communication to Complainant on March 9, 2023, providing the registrant and further contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint in English on March 13, 2023.

On March 9, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On March 11, 2023, Complainant submitted a request that English be the language of the proceeding. 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 Respondent in Chinese and English of the Complaint, and the proceedings commenced on March 16, 2023. In accordance with the

Rules, paragraph 5, the due date for Response was April 5, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on April 6, 2023.

The Center appointed Yijun Tian as the sole panelist in this matter on April 18, 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**

Complainant 1, Fiskars UK Limited, is a company incorporated in the UK, and Complainant 2, Fiskars Oyj Abp, is a company incorporated in Finland. Complainant 2 and its subsidiaries together form the Fiskars Group. Complainant 1 is part of the Fiskars Group (Exhibit G to the Complaint). Founded in 1649, the Fiskars Group is one of the oldest companies in Finland. In 2015, it acquired the WWRD group of companies and its portfolio of iconic luxury home and lifestyle brands which include Waterford, Wedgwood, Royal Doulton, Royal Albert and Rogaška. In 2019, WWRD UK Limited changed its name to Fiskars UK Limited (Complainant 1). The Fiskars Group's brands are available in more than 100 countries across Europe, Asia and the Americas, with 350 global retail stores. It employs approximately 6,595 people in 30 countries and reported revenue of EUR 1.25 billion in 2021 (Exhibit G to the Complaint). Complainants are hereinafter collectively called "Complainant".

Complainant has exclusive rights in numerous WEDGWOOD marks which have been registered worldwide, including a Chinese trademark registration for WEDGWOOD registered on June 30, 1986 (the Chinese trademark registration number 253581); a UK trademark registration for WEDGWOOD registered on February 28, 1876 (the UK trademark registration number UK00000002823); and a European Union trademark registration for WEDGWOOD registered on May 31, 1999 (the European Union trademark registration number 000502898).

##### **B. Respondent**

Respondent is 朱蓮梅 (zhu lian mei), China. The disputed domain name was registered on September 20, 2022, long after the WEDGWOOD marks were registered (since 1876). The disputed domain name used to resolve to a website bearing Complainant's mark and images of Complainant's products and requesting Internet users to insert a verification code (Exhibit H to the Complaint). The disputed domain name currently resolves to an inactive website.

#### **5. Parties' Contentions**

##### **A. Complainant**

Complainant contends that the disputed domain name is confusingly similar to the WEDGWOOD trademark because it incorporates the trademark in its entirety merely adding the generic Top-Level Domain ("gTLD") ".top". Such changes do not negate confusing similarity between a domain name and a mark under the Policy, paragraph 4(a)(i).

Complainant contends that Respondent has no rights or legitimate interests in the disputed domain name.

Complainant contends that Respondent has registered and used the disputed domain name in bad faith.

Complainant requests that the disputed domain name be transferred to Complainant.

## B. Respondent

Respondent did not reply to Complainant's contentions.

## 6. Discussion and Findings

### 6.1. 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 specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement. From the evidence presented on the record, no agreement appears to have been entered into between Complainant and Respondent to the effect that the language of the proceeding should be English. Complainant filed initially its Complaint in English, and has requested that English be the language of the proceeding for the following main reasons:

- a) the evidence suggests the likely possibility that Respondent is conversant and proficient in the English language;
- b) the disputed domain name is in Latin script and not in Chinese script, indicating that the website is directed to, at the very least, an English-speaking public;
- c) the resolving website contains the English words "Welcome to Wedgwood J Wedgwood 1759";
- d) Complainant 1 being a UK entity has no knowledge of Chinese;
- e) If required to submit the Complaint and Annexes in Chinese, Complainant would incur substantial translation costs and the proceeding would be delayed;
- f) The disputed domain name is offered for sale on a platform which resolves to a website in English.

Respondent did not make any submissions with respect to the language of the proceeding and did not object to the use of English as the language of the proceeding.

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 other words, it is important to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes (*Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. ltd.*, WIPO Case No. [D2008-0293](#); *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#)). The language finally decided by the panel for the proceeding should not be prejudicial to either one of the parties in its abilities to articulate the arguments for the case (*Groupe Auchan v. xmxzl*, WIPO Case No. [DCC2006-0004](#)). Section 4.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") further states:

"Noting the aim of conducting the proceedings with due expedition, paragraph 10 of the UDRP Rules vests a panel with authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case.

Against this background, panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios include (i) evidence showing that the respondent can understand the language of the complaint, (ii) the language/script of the domain name particularly where the same as that of Complainant's mark, (iii) any content on the webpage under the disputed domain name, (iv) prior cases involving the respondent in a particular language, (v) prior

correspondence between the parties, (vi) potential unfairness or unwarranted delay in ordering Complainant to translate the complaint, (vii) evidence of other respondent-controlled domain names registered, used, or corresponding to a particular language, (viii) in cases involving multiple domain names, the use of a particular language agreement for some (but not all) of the disputed domain names, (ix) currencies accepted on the webpage under the disputed domain names, or (x) other indicia tending to show that it would not be unfair to proceed in a language other than that of the registration agreement.” ([WIPO Overview 3.0](#), section 4.5.1; see also *L’Oreal S.A. v. MUNHYUNJA*, WIPO Case No. [D2003-0585](#)).

On the record, Respondent appears to be a Chinese resident and is thus presumably not a native English speaker. However, considering the following, the Panel has decided that English should be the language of the proceeding: (a) the disputed domain name includes Latin characters rather than Chinese scripts; (b) the gTLD of the disputed domain name is the English word “top”. So the disputed domain name seems to be prepared for users worldwide, including English-speaking countries; (c) the website resolved by the disputed domain name was a website in both Chinese and English which brandished confusingly similar variations of Complainant’s distinctive WEDGWOOD logo surrounding with the English words “Welcome to Wedgwood”; (d) the Center has notified Respondent of the proceeding in both Chinese and English, and Respondent has indicated no objection to Complainant’s request that English be the language of the proceeding; (e) the Center informed the Parties, in English and Chinese, that it would accept a Response in either English or Chinese. The Panel would have accepted a response in either English or Chinese but none was filed; and (f) Complainant will be spared the burden of working in Chinese as the language of the proceeding.

Accordingly, the Panel finds the choice of English as the language of the present proceeding is fair to both Parties and is not prejudicial to either one of the Parties in its ability to articulate the arguments for this case. Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that English shall be the language of the proceeding, and the decision will be rendered in English.

## 6.2. Substantive Issues

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

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

On the basis of the evidence introduced by Complainant and in particular with regard to the content of the relevant provisions of the Policy (paragraphs 4(a)-(c)), the Panel concludes as follows:

### A. Identical or Confusingly Similar

The Panel finds that Complainant has rights in the WEDGWOOD marks. The disputed domain name comprise the WEDGWOOD mark in its entirety. The disputed domain name only differs from Complainant’s trademarks by the gTLD suffix “.top”.

Previous UDRP panels have consistently held that a domain name is identical or confusingly similar to a trademark for purposes of the Policy “when the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name”. (*Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale*, WIPO Case No. [D2000-0662](#)).

Further, in relation to the gTLD suffix, [WIPO Overview 3.0](#) further states: “The applicable Top Level Domain (‘TLD’) in a domain name (e.g., ‘.com’, ‘.club’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.” ([WIPO Overview 3.0](#), section 1.11.1.)

The Panel therefore holds that the disputed domain name is identical to Complainant's marks, and the Complaint fulfils the first condition of paragraph 4(a) of the Policy.

## **B. Rights or Legitimate Interests**

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

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

The overall burden of proof on this element rests with Complainant. However, it is well established by previous UDRP panel decisions that once a complainant establishes a *prima facie* case that a respondent lacks rights or legitimate interests in a domain name, the burden of production shifts to the respondent to rebut the complainant's contentions. If the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. (*Danzas Holding AG, DHL Operations B.V. v. Ma Shikai*, WIPO Case No. [D2008-0441](#); [WIPO Overview 3.0](#), section 2.1 and cases cited therein).

The WEDGWOOD marks have been registered internationally, including a UK trademark registration for WEDGWOOD registered since 1876; and a Chinese trademark registration for WEDGWOOD registered since 1986, which long precede Respondent's registration of the disputed domain name (in 2022). According to Complainant, the Fiskars Group was founded in 1649 and is one of the oldest companies in Finland. The Fiskars Group's brands are available in more than 100 countries across Europe, Asia and the Americas, with 350 global retail stores. It employs approximately 6,595 people in 30 countries and reported revenue of EUR 1.25 billion in 2021.

Moreover, Respondent is not an authorized dealer of WEDGWOOD branded products or services. Complainant has therefore established a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name and thereby shifted the burden to Respondent to produce evidence to rebut this presumption (*The Argento Wine Company Limited v. Argento Beijing Trading Company*, WIPO Case No. [D2009-0610](#); *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

Based on the following reasons, the Panel finds that Respondent has no rights or legitimate interests in the disputed domain name:

- (a) there has been no evidence adduced to show that Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services. Respondent has not provided evidence of any legitimate use of the disputed domain name or reasons to justify the choice of the term "wedgwood" in the disputed domain name and in its business operations. There has been no evidence to show that Complainant has licensed or otherwise permitted Respondent to use the WEDGWOOD marks or to apply for or use any domain name incorporating the WEDGWOOD marks.
- (b) there has been no evidence adduced to show that Respondent has been commonly known by the disputed domain name. There has been no evidence adduced to show that Respondent has any registered trademark rights with respect to the disputed domain name. Respondent registered the disputed domain name in 2022, long after the WEDGWOOD marks became internationally known.

- (c) there has been no evidence adduced to show that Respondent is making a legitimate noncommercial or fair use of the disputed domain name. By contrast, as mentioned above, the disputed domain name previously resolved to a website brandishing confusingly similar variations of Complainant's distinctive WEDGWOOD logo, and requesting Internet users to insert a verification code which poses a risk of fraud or phishing because consumers were encouraged to "scan or input the verification code" possibly tricking visitors into giving the anti-counterfeiting codes that consumers receive with original Wedgwood products, and after entering a verification code, consumers might possibly be given further access to the website, which might lead unsuspecting Internet users to share sensitive information with Respondent. The disputed domain name currently resolves to an inactive website.

The Panel notes that Respondent has not produced any evidence to establish her rights or legitimate interests in the disputed domain name. Accordingly, Complainant has established that Respondent has no rights or legitimate interests in the disputed domain name. The Panel therefore holds that the Complaint fulfils the second condition of 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 disputed domain name in bad faith, namely:

- (i) circumstances indicating that the respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the complainant who is the owner of the trademark 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 disputed domain name; or
- (ii) the respondent has registered the disputed domain name in order to prevent the owner of the trademark 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 disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the disputed 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 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 website or location.

The Panel concludes that based on the evidence of the circumstances of this case, it is adequate to conclude that Respondent has registered and used the disputed domain name in bad faith.

#### **(a) Registration in Bad Faith**

The Panel finds that Complainant has established that its WEDGWOOD marks have a widespread reputation as a leading producer of luxury home and lifestyle brands products. As mentioned above, the Fiskars Group's brands are available in more than 100 countries across Europe, Asia and the Americas, with 350 global retail stores. It employs approximately 6,595 people in 30 countries and reported revenue of EUR 1.25 billion in 2021. The WEDGWOOD marks are registered internationally, including a UK trademark registration for WEDGWOOD registered since 1876; and a Chinese trademark registration for WEDGWOOD registered since 1986. The disputed domain name used to resolve to a website bearing Complainant's mark and images of Complainant's products. It is not conceivable that Respondent would not have had actual knowledge of the WEDGWOOD marks at the time of the registration of the disputed domain name (in 2022). The Panel therefore finds that the WEDGWOOD mark is not one that Respondent could legitimately adopt

other than for the purpose of creating an impression of an association with Complainant (*The Argento Wine Company Limited v. Argento Beijing Trading Company, supra*).

Moreover, Respondent has chosen not to respond to Complainant's allegations. According to the UDRP decision in *The Argento Wine Company Limited v. Argento Beijing Trading Company, supra*, "the failure of Respondent to respond to the Complaint further supports an inference of bad faith". See also *Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. [D2002-0787](#).

Thus, the Panel concludes that the disputed domain name was registered in bad faith.

#### (b) Use in Bad Faith

As mentioned above, Respondent previously used the disputed domain name to resolve to a website bearing Complainant's mark and images of Complainant's products, and requesting Internet users to insert a verification code which poses a risk of fraud or phishing. Thus, the Panel concludes that Respondent used the confusingly similar disputed domain name with the intention to attract, possibly for commercial gain, Internet users to Respondent's website. The Panel therefore concludes that the disputed domain name was also used by Respondent in bad faith. Such use of the disputed domain name is also disruptive in relation to the interests of Complainant. The fact that it currently resolves to an inactive website does not affect the finding of bad faith for the reasons given below.

In terms of inactive domain name, section 3.3 of the [WIPO Overview 3.0](#) provides: "From the inception of the UDRP, panelists 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." It further states: "While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put."

As discussed above, Complainant's WEDGWOOD marks are widely known particularly in the international luxury home and lifestyle brands product market. Given the reputation of the WEDGWOOD marks, the Panel finds that the public is likely to be confused into thinking that the disputed domain name has a connection with Complainant, contrary to the fact. Therefore, the Panel finds that it is implausible that Respondent may use the disputed domain name in good faith. Taking into account all the circumstances of this case, the Panel concludes that the current non-use of the disputed domain name by Respondent is in bad faith.

In summary, in the absence of evidence to the contrary from Respondent, Respondent has registered and used the disputed domain name that is identical to Complainant's well-known trademarks in bad faith. The Panel therefore holds that the Complaint fulfils the third condition of paragraph 4(a) of the Policy.

## 7. Decision

For all 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 <wedgwood.top> be transferred to Complainant.

/Yijun Tian/

**Yijun Tian**

Sole Panelist

Dated: May 4, 2023