

ADMINISTRATIVE PANEL DECISION

Pink Floyd (1987) Limited v. wu xin jian
Case No. D2023-3374

1. The Parties

Complainant is Pink Floyd (1987) Limited, United Kingdom, represented by Boulton Wade Tennant LLP, United Kingdom.

Respondent is wu xin jian, China.

2. The Domain Name and Registrar

The disputed domain name <pinkfloyddrums.com> (the “Domain Name”) is registered with Gname 038 inc (the “Registrar”).

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 7, 2023. On August 7, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On August 8, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Redacted for privacy) and contact information in the Complaint. The Center sent an email communication to Complainant on August 9, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint in English on August 10, 2023.

On August 9, 2023, the Center informed the parties in Chinese and English, that the language of the registration agreement for the Domain Name is Chinese. On August 10, 2023, Complainant requested English to be the language of the proceeding. Respondent did not submit any comment on 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 Respondent in English and Chinese of the Complaint, and the proceedings commenced on August 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 4, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on September 6, 2023.

The Center appointed Kimberley Chen Nobles as the sole panelist in this matter on September 12, 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

Pink Floyd is an English rock band formed in 1965, having released many albums and sold merchandise associated with the name of the band, its associated records and image. To date, the band is estimated to have sold over 250 million albums worldwide and has a significant worldwide reputation, having been recognized by numerous awards in several countries.

Complainant is the owner of the band PINK FLOYD, including numerous trademark registrations worldwide for the mark PINK FLOYD, for example:

- United Kingdom trademark number 2066619 for the PINK FLOYD word mark, registered on October 18, 1996;
- United States of America trademark number 2194702 for the PINK FLOYD word mark, registered on October 13, 1998; and
- Chinese trademark number 54326700A for the PINK FLOYD word mark, registered on November 21, 2021.

According to Complainant, Complainant is also the owner of a numerous domain name registrations with the mark PINKFLOYD, including:

- <pinkfloyd.com>
- <thepinkfloyd.co.uk>
- <thepinkfloyd.uk>
- <pinkfloydrecords.com>
- <pinkfloydexhibition.com>
- <thepinkfloydexhibition.com>
- <pinkfloydpulselight.co.uk>
- <pinkfloydpulselight.com>
- <pinkfloydpulselight.net>
- <pinkfloydpulselight.org>
- <pinkfloydpulselight.uk>
- <themortalremains-pinkfloydexhibition.com>
- <themortalremains-thepinkfloydexhibition.com>
- <thepinkfloydexhibition-themortalremains.com>
- <pinkfloydexhibition-themortalremains.com>

The band's activities extend to China, where it had earned over USD 50,000 from streaming by Chinese consumers in 2022.

The Domain Name was registered on July 11, 2023 and at the time of filing of the Complaint, it reverted to a site that offered pornographic content and the download of an Android application. Once downloaded, the application contains further pornographic content and content that appears to be related to gambling.

A. Complainant

Complainant contends that (i) the Domain Name is identical or confusingly similar to Complainant's trademarks; (ii) Respondent has no rights or legitimate interests in the Domain Name; and (iii) Respondent registered and is using the Domain Name in bad faith.

In particular, Complainant contends that it has trademark registrations for PINK FLOYD and that Respondent registered and is using the Domain Name with the intention to confuse Internet users looking for *bona fide* and well-known PINK FLOYD products and services.

Complainant notes that it has no affiliation with Respondent, nor authorized Respondent to register or use a domain name, which includes Complainant's trademarks, and that Respondent has no rights or legitimate interests in the registration and use of the Domain Name. Rather, Complainant contends that Respondent has acted in bad faith in acquiring and setting up the Domain Name, when Respondent clearly knew of Complainant's rights.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

6.1. Preliminary Procedural Issue – Language of the Proceeding

The Rules, in paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement between the respondent and the registrar in relation to the disputed domain name, the language of the 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.

Complainant submitted its Complaint in English. In its email dated August 10, 2023, Complainant requested that the language of the proceeding be English. According to the information received from the Registrar, the language of the Registration Agreement for the Domain Name is Chinese.

Complainant contends that English is its main language as it is filing a large volume of evidence in English with the Complaint, it would be overly burdensome to file the Complaint in a language other than English. In addition, Complainant asserts that it would be unfairly disadvantaged if it had to translate the Complaint and evidence into Chinese, as that would incur a significant cost and result in a significant delay in the proceedings.

In exercising its discretion to use a language other than that of the Registration Agreement for the Domain Name, 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.

The Panel takes note of the fact that the Domain Name is registered in Latin characters, especially the addition of the English word "drums" to Complainant's trademark in the Domain Name. The Panel also notes that the Center notified the Parties in Chinese and English of the language of the proceeding as well as notified Respondent in Chinese and English of the Complaint. Respondent chose not to comment on the language of the proceeding nor did Respondent choose to file a Response.

The Panel is also mindful of the need to ensure that the proceeding is conducted in a timely and cost effective manner. Complainant may be unduly disadvantaged by having to translate the Complaint into Chinese and to conduct the proceeding in Chinese.

Having considered all the circumstances of this case, the Panel determines that English be the language of the proceeding.

6.2. Substantive Issues

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name was registered and is being used in bad faith.

Section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) states that failure to respond to the complainant’s contentions would not by itself mean that the complainant is deemed to have prevailed; a respondent’s default is not necessarily an admission that the complainant’s claims are true.

Thus, although in this case Respondent has failed to respond to the Complaint, the burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence. See, e.g., *The Knot, Inc. v. In Knot We Trust LTD*, WIPO Case No. [D2006-0340](#).

A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See [WIPO Overview 3.0](#), section 1.2.1. Complainant provided evidence of its rights in the PINK FLOYD trademarks, as noted above. Complainant has therefore proven that it has the requisite rights in the PINK FLOYD trademarks. With Complainant’s rights in the PINK FLOYD trademark established, the remaining question under the first element of the Policy is whether the Domain Name, typically disregarding the Top-Level Domain (“TLD”) in which it is registered (in this case, “.com”), is identical or confusingly similar to Complainant’s trademark. See, e.g., *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#).

Here, the Domain Name is confusingly similar to Complainant’s PINK FLOYD trademarks. The addition of the word “drums” does not prevent a finding of confusing similarity between the Domain Name and the PINK FLOYD trademark as it is recognizable in the Domain Name.

Thus, the Panel finds that Complainant has satisfied the first element of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make a *prima facie* showing that a respondent possesses no rights or legitimate interests in a disputed domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with relevant evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

From the record in this case, it is evident that Respondent was, and is, aware of Complainant and its PINK FLOYD trademarks, and does not have any rights or legitimate interests in the Domain Name. Complainant has confirmed that Respondent is not authorized or licensed to use the PINK FLOYD trademarks or to seek registration of any domain name incorporating the trademarks. Respondent is also not known to be associated with the PINK FLOYD trademarks and there is no evidence showing that Respondent has been commonly known by the Domain Name.

In addition, Respondent has not used the Domain Name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. Rather, the evidence demonstrates that the Domain Name resolves to a page featuring adult or pornographic content, and online gambling advertisements, which has no connection with “Pink Floyd”. Such use does not constitute a *bona fide* offering of goods or services or a legitimate noncommercial or fair use and cannot under the circumstances confer on Respondent any rights or legitimate interests in the Domain Name. See, e.g., *Intesa Sanpaolo S.p.A. v. Charles Duke / Oneandone Private Registration*, WIPO Case No. [D2013-0875](#).

Accordingly, Complainant has provided evidence supporting its *prima facie* claim that Respondent lacks any rights or legitimate interests in the Domain Name. Respondent has failed to produce countervailing evidence of any rights or legitimate interests in the Domain Name.

Moreover, the composition of the Domain Name is inherently misleading as it effectively impersonates or suggests sponsorship or endorsement by Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

Thus, the Panel concludes that Respondent does not have any rights or legitimate interests in the Domain Name and Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that Respondent’s actions indicate that Respondent registered and is using the Domain Name in bad faith.

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances indicating bad faith registration and use on the part of a domain name registrant, namely:

“(i) circumstances indicating that you have registered or you have 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 trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.”

The Panel finds that the available evidence on record shows that registration and use of the PINK FLOYD trademarks predate the registration of the Domain Name. Complainant is also well established and known in the music and entertainment industry. Indeed, Complainant’s PINK FLOYD trademarks and related products and services are widely known and recognized. Moreover, the addition of the term “drums” to Complainant’s trademark in the Domain Name is directly related to Complainant’s industry and activities. Therefore, Respondent was aware of the PINK FLOYD trademarks when he registered the Domain Name, or knew or should have known that the Domain Name was confusingly similar to Complainant’s trademarks. See [WIPO Overview 3.0](#), section 3.2.2; see also *TTT Moneycorp Limited v. Privacy Gods / Privacy Gods Limited*, WIPO Case No. [D2016-1973](#).

The Panel therefore finds that Respondent’s awareness of Complainant’s trademark rights at the time of registration suggests bad faith. See *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO

Case No. [D2011-2209](#); *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite*, WIPO Case No. [D2001-1070](#); *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#).

Further, UDRP panels have consistently found that 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 trademark by an unaffiliated entity can by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

Moreover, Respondent registered and is using the Domain Name to confuse and mislead consumers looking for well-known PINK FLOYD products and services of Complainant or authorized partners of Complainant. The use of the PINK FLOYD trademarks in the Domain Name is intended to capture Internet traffic from Internet users who are looking for Complainant's products and services. The use of the Domain Name to divert users to the webpage with adult or pornographic content, and online gambling advertisements, for commercial gain, by creating a likelihood of confusion with Complainant's mark is in bad faith. Furthermore, the content provided on the website the Domain Name reverted to, may result in tarnishing Complainant's reputation.

Finally, the Panel also notes the failure of Respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and the implausibility of any good-faith use to which the Domain Name may be put.

Accordingly, the Panel finds that Respondent has registered and is using the Domain Name in bad faith and Complainant succeeds under the third element of 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 Domain Name <pinkfloyddrums.com> be transferred to Complainant.

/Kimberley Chen Nobles/

Kimberley Chen Nobles

Sole Panelist

Date: September 25, 2023