

ADMINISTRATIVE PANEL DECISION

L'Oréal v. 王先生 (Wang Xian Sheng)

Case No. D2022-0717

1. The Parties

The Complainant is L'Oréal, France, represented by Dreyfus & associés, France.

The Respondent is 王先生 (Wang Xian Sheng), China.

2. The Domain Name and Registrar

The disputed domain name <3cebuy.com> is registered with Hongkong Domain Name Information Management Co., Limited (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on March 2, 2022. On March 2, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 22, 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 March 22, 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 March 22, 2022.

On March 22, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On March 22, 2022, the Complainant submitted a 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 March 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 17, 2022. The Respondent did not submit any

response. Accordingly, the Center notified the Respondent's default on April 18, 2022.

The Center appointed Douglas Clark as the sole panelist in this matter on May 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 is a French industrial group specialized in the field of cosmetics. It has a portfolio of 36 brands, organised as four complementary Divisions (Professional Products Division, Consumer Products Division, L'Oréal Luxe and the Active Cosmetics Division), employs 86,000 employees, and is present in 150 countries.

The Complainant is the registered proprietor of an international registration No. 1165458, registered on May 28, 2013 for the semi-figurative trademark 3CE, covering goods in class 21 and designating, *inter alia*, China, Viet Nam, Japan and United States of America.

The Complainant also holds figurative trademarks for 3CE in France and the United States of America.

The disputed domain name <3cebuy.com> was registered on September 11, 2021.

The website to which the disputed domain name previously resolved is a page advertising gambling services in Macau, China. This featured a picture of a scantily clad woman and a statement that "beautiful women would accompany gamblers to play".

At the date of this decision the disputed domain name did not resolve to any active webpage.

5. Parties' Contentions

A. Complainant

The Complainant argues that the disputed domain name <3cebuy.com> is made entirely up of the registered trademark 3CE and the word "buy" to which the generic Top-Level Domain ("gTLD") ".com" has been added. It is therefore confusingly similar to the Complainant's registered trademark 3CE.

The Complainant submits that the Respondent has no rights or legitimate interests in the disputed domain name. 3CE is not related in any way to the gambling related content of the website.

The Complainant submits that the Respondent must have known of the Complainant's 3CE trademark (which was registered prior to the registration of the disputed domain name) when registering the disputed domain name. The use the Respondent has made on its website advertising gambling or adult services shows the Respondent's bad faith and tarnishes the Complainant's trademark. By the use of the disputed domain name, the Respondent is attempting to divert traffic to the website under the disputed domain name.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue: Language of Proceedings

According 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.

In this case, the language of the Registration Agreement for the disputed domain name is in Chinese. Based on the given evidence, there is no agreement between the Complainant and the Respondent regarding the language of the proceeding. The Respondent did not respond as to the language of the proceeding. The Complainant has filed its Complaint in English and has requested that English be the language for the proceeding under, *inter alia*, the following grounds:

- a) The Complainant is located in France and has no knowledge of Chinese
- b) the disputed domain name is formed by Latin characters and not Chinese script; and
- c) in order to proceed in Chinese, the Complainant would have had to retain specialised translation services that would cause an unnecessary burden to the Complainant and delay the proceeding;
- d) English is the primary language for international relations and it is one of the working languages of the Center.

In accordance with paragraph 11(a) of the Rules, the Panel hereby determines that the language of the proceeding shall be in English after considering the above matters and the following circumstances:

- the Center has notified the Respondent of the proceeding in both English and Chinese;
- the Respondent has not commented on the language of the proceeding;
- an order for the translation of the Complaint and other supporting documents will result in significant expenses for the Complainant and a delay in the proceeding.

Further, this Panel decided in *Zappos.com, Inc. v. Zufu aka Huahaotrade*, WIPO Case No. [D2008-1191](#), that a respondent's failure to respond to a preliminary determination by the Center as to the language of the proceeding "should, in general, be a strong factor to allow the Panel to decide to proceed in favour of the language of the Complaint".

6.2 Substantive Issues

A. Identical or Confusingly Similar

The disputed domain name <3cebuy.com> is made up of the registered trademark 3CE, the term "buy" and the gTLD ".com". The addition of the term "buy" does not prevent a finding of confusing similarity and the gTLD is normally not taken into account. The disputed domain name is confusingly similar to the registered trademark 3CE.

The first part of paragraph 4(a) of the Policy is therefore satisfied.

B. Rights or Legitimate Interests

The Respondent has not responded to the Complaint to assert any rights or legitimate interests. Section 2.1 of the WIPO Overview of WIPO Panel views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") provides:

“While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of ‘proving a negative’, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.”

The Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. None of the circumstances in paragraph 4(c) of the Policy, which sets out how a respondent can prove its rights or legitimate interests, are present in this case. The use of the disputed domain name promoting online gambling content (accompanied by pictures of scantily clad women who “will accompany the gambler”) cannot be considered to be in good faith. Furthermore, the Panel notes that there is no evident connection between the terms “3CE buy” and a gambling website.

The second part of paragraph 4(a) of the Policy is therefore satisfied.

C. Registered and Used in Bad Faith

For the same reasons as those above, the Panel has no hesitation in finding that the disputed domain name <3cebuy.com> was registered in bad faith and is being used in bad faith. The use promoting gambling where “gamblers would be accompanied by beautiful women” clearly establishes a risk of tarnishment of the 3CE trademark which has been found to be registration and use in bad faith. (See [WIPO Overview 3.0](#), section 3.12).

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 <3cebuy.com> be transferred to the Complainant.

/Douglas Clark/

Douglas Clark

Sole Panelist

Date: May 20, 2022