

ADMINISTRATIVE PANEL DECISION

Dasty Italy S.p.A. v. BEATS / Asiagroup
Case No. D2022-2295

1. The Parties

The Complainant is Dasty Italy S.p.A., Italy, represented by Bugnion S.p.A., Italy.

The Respondents are BEATS, Republic of Korea (“Previous Respondent”), and Asiagroup, Republic of Korea (“Subsequent Respondent”).

2. The Domain Name and Registrar

The disputed domain name <dasty.com> is registered with Megazone Corp., dba HOSTING.KR (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on June 24, 2022 with the Previous Respondent as the sole respondent. On June 24, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 29, 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 29, 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 on July 4, 2022, adding the Subsequent Respondent to the Complaint.

On June 29, 2022, the Center notified the Parties in both English and Korean that the language of the registration agreement for the disputed domain name is Korean. On July 1, 2022, the Complainant requested for English to be the language of the proceeding. Neither Respondent commented 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 Respondents of the Complaint, and the proceedings commenced on July 5, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 25, 2022. On July 25, 2022, the Subsequent Respondent requested for an extension to file a response. Subsequently, the due date to file a response was extended through July 29, 2022, but neither Respondent submitted any response. On August 2, 2022, the Center informed the Parties of the Commencement of Panel Appointment Process.

The Center appointed Kathryn Lee as the sole panelist in this matter on August 23, 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.

Due to unforeseen circumstances, the Panel found it necessary to extend the due date for the decision to at least September 13, 2022, and the Parties were so notified.

4. Factual Background

The Complainant is an Italian manufacturer of cleaning products. The Complainant was established in 1970 and began selling Dasty branded goods in 1980s. In 1996, the Complainant began selling Dasty branded degreasing products in a number of countries around the world. In 1997, the Complainant entered into a distribution agreement to sell Dasty branded products at the Wibra retail chain which had at the time 250 store locations in Belgium and the Netherlands and propelled Dasty products to become one of the market leaders in the field of cleaning products in both countries. The Complainant currently sells around 20 million units of Dasty branded products per year in countries like Austria, France, Germany, Tunisia, Jordan, Saudi Arabia, and Ghana. In 2020, the Complainant had annual turnover of approx. EUR 20 million, and net profits of approximately EUR 1.5 million. The Complainant owns a trademark registration for DASTY in Turkey (Reg. No. 2008 39591 registered on August 21, 2009) and trademark registrations for DASTY ITALIA in the European Union (Trademark Number 003121696 registered on April 18, 2005) and the United Kingdom (Trademark Number UK00903121696 registered on April 18, 2005).

The Previous Respondent appears to be an entity with an address in the Republic of Korea. The Subsequent Respondent also appears to be an entity with an address in the Republic of Korea.

The disputed domain name was first registered on December 6, 2010, and resolves to a website with pay-per-click links to professional cleaning and detergent products.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical to the DASTY trademark in which the Complainant has rights.

The Complainant also contends that the Respondents have no rights or legitimate interests in the disputed domain name and confirms that it has not authorized or licensed rights to the Respondents in any respect.

Finally, the Complainant contends that the disputed domain name was registered and is used in bad faith. The Complainant explains that DASTY became a household name brand in a number of countries well before the registration of the disputed domain name and given the Previous Respondent history of registering domain names incorporating famous trademarks, it no doubt registered the disputed domain name in order to benefit from the fame of the mark in some way. Specifically, the Complainant explains that it made offers to buy the disputed domain name from the Previous Respondent and the Previous Respondent's counteroffer was USD 33,000 which is well in excess of the out of pocket costs involved with keeping the disputed domain name and demonstrates that it registered the disputed domain name in order to

profit from the sale of the disputed domain name to the Complainant. The Complainant also contends that the disputed domain name displays pay-per-click links to goods similar to the goods of the Complainant and that such use is evidence of the Respondent's use of the disputed domain name in bad faith to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of such website.

B. Respondents

The Respondents did not formally reply to the Complainant's contentions.

6. Discussion and Findings

A. Cyberflight

The Complaint was submitted to the Center via email on Friday afternoon, June 24, 2022. The Previous Respondent was copied on the email which allowed it to learn of the impending domain name proceeding. The Center processed the Complaint and sent a notification of the case to the Registrar less than two hours later. This was on Saturday, June 25, 2022, and outside business hours, and by the time the Registrar resumed work the following week, the disputed domain name had already been transferred to the Subsequent Respondent.

Paragraph 8 of the Policy prohibits the transfer of the domain name to another registrant during a pending administrative proceeding as cyberflight. The term "pending" is not defined, but the Rule, paragraph 3(a) provides that "[a]ny person or entity may initiate an administrative proceeding by submitting a complaint in accordance with the Policy and these Rules to any Provider," and based on this language, the administrative proceeding is considered to commence with the submission of the complaint to the provider (WIPO Case No. [D2010-0387](#), *LPG SYSTEMS v. Jerry / Mr. Jeff Yan*). Here, it is very unlikely for the disputed domain name to have been transferred during the small window of time between the filing of the Complaint with the Previous Respondent on copy and the lock simply by chance. Rather, in all likelihood, the Previous Respondent took advantage of the situation and attempted to circumvent the domain name proceeding by transferring the disputed domain name to the Subsequent Respondent before the Registrar placed a lock on the disputed domain name. It is also possible that the Subsequent Respondent is not an altogether different entity, but just a different name that the Previous Respondent is using for the purpose of its domain name registration activities.

The Previous Respondent's transfer of the disputed domain name is in violation of paragraph 8 of the Policy and constitutes cyberflight. Likewise, the Subsequent Respondent's acceptance of the disputed domain name also constitutes a violation of paragraph 8 of the Policy. Based on these circumstances, the Panel finds that the transfer of the disputed domain name should not have occurred and that the Previous Respondent remains a respondent for the purpose of this domain name proceeding.

B. Language of Proceedings

Paragraph 11(a) of the Rules provides that the language of the proceeding shall be the language of the registration agreement, unless otherwise agreed to by the parties, subject to the authority of the panel to determine otherwise. In this case, the language of the Registration Agreement is Korean, and both Parties have had an opportunity to argue their positions on this point. The Center issued a notice in Korean and English stating that it would accept the Complaint filed in English, and that the Response would be accepted in either Korean or English. The Respondents chose not to submit a Response.

The Panel finds it proper and fair to render this decision in English. Given the fact that the Complainant is based in Italy and the Respondents are based in the Republic of Korea, English would appear to be a fair neutral language for rendering this decision. Besides, both parties were given the opportunity to submit arguments in the language of their preference, and the language in which to render the decision is reserved

for the Panel. The Panel would have considered a Response in Korean, but no Response was submitted. In addition, according to WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1, the Panel can take into consideration prior cases involving the respondent in a particular language. In this regard, there are 19 prior WIPO UDRP decisions involving a respondent in the Republic of Korea whose name is "beats", and the panels in all the cases rendered decisions in English, deciding that the respondent has sufficient knowledge of English to be able to understand the decision in English, or that it would not be unduly prejudiced by rendering the decision in English. Accordingly, the Panel determines that rendering this decision in English is fair and procedurally efficient given the circumstances of this case.

C. Identical or Confusingly Similar

The Complainant owns a trademark registration for single term mark DASTY as well as registrations for the mark DASTY ITALIA (which were all registered prior to the registration of the disputed domain name). The disputed domain name solely consists of the term "dasty", and is therefore, identical or similar to the Complainant's trademarks.

For the reasons mentioned above, the Panel finds that the first element has been established.

D. Rights or Legitimate Interests

On the basis of the present record, the Panel finds that the Complainant has made the required allegations to support a *prima facie* showing that the Respondent has no rights or legitimate interests in the disputed domain name. Once such a *prima facie* basis has been established, the Respondent carries the burden of demonstrating its rights or legitimate interests in the disputed domain name. However, the Respondent in this case has chosen to file no response to these assertions by the Complainant, and there is no evidence or allegation in the records that would warrant a finding in favor of the Respondent on this point.

Above all, the Panel finds the cyberflight that has occurred in this case does not correspond with a claim to rights or legitimate interests. Further, the Respondent's use of the disputed domain name for a domain parking page does not in the circumstances represent a *bona fide* offering of goods or services given that the disputed domain name is identical to the Complainant's trademark and such use trades on the reputation and goodwill associated with the mark. See [WIPO Overview 3.0](#), section 2.9.

For the reasons provided above, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name, and that the second element has been established.

E. Registered and Used in Bad Faith

The Panel finds that there is sufficient evidence to find bad faith in this case.

Firstly, the term "dasty" is a coined term with no particular meaning, and the Respondents gave no explanation for having registered this particular term which consists exactly of the Complainant's trademark.

This, coupled with the Respondents' cyberflight and lack of any legitimate use of the disputed domain name suggests that the disputed domain name was registered primarily for the purpose of selling it to the Complainant or profiting from the likelihood of association with the Complainant's trademark.

In fact, the Respondents linked the disputed domain name with a parking page displaying pay-per-click links to cleaning products which is the business sector in which the Complainant's trademark is used. In this way, the Respondents benefited commercially from the confusion of Internet users that visited the site by mistake as per paragraph 4(b)(iv) of the Policy.

Moreover, the Previous Respondent was the respondent in 19 prior WIPO UDRP decisions and the panels in 18 out of 19 cases ordered the transfer of the disputed domain names, which the Panel finds constitutes a

pattern of conduct of preventing trademark holders from reflecting their marks in domain names. Not only that, the Respondents engaged in cyberflight which in itself constitutes bad faith.

For the reasons given above, the Panel finds that the third and final element has been established.

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, <dasty.com>, be transferred to the Complainant.

/Kathryn Lee/

Kathryn Lee

Sole Panelist

Date: September 13, 2022