

ADMINISTRATIVE PANEL DECISION

Summersalt, Inc. v. 杨智超 (Zhichao Yang)
Case No. D2022-2375

1. The Parties

The Complainant is Summersalt, Inc., United States of America (“United States”), represented by Dunlap Codding, P.C., United States.

The Respondent is 杨智超 (Zhichao Yang), China.

2. The Domain Names and Registrar

The disputed domain names <comsummersalt.com>, <mysummersalt.com>, <ssummersalt.com>, <summerrsalt.com>, <summerssalt.com>, and <wwwsummersalt.com> are registered with Alibaba Cloud Computing (Beijing) Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 27, 2022. On June 30, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On July 1, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

On July 1, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On July 1, 2022, 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 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 July 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 28, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 29, 2022.

The Center appointed Douglas Clark as the sole panelist in this matter on August 15, 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 direct-to-consumer apparel company selling swimwear, clothing, and pajamas. The Complainant started its business in 2013. It is the owner of several registered United States trademarks for SUMMERSALT for classes 18, 25, 35, 39, and 45, including trademark registration nos. 6147084, 6141658, 6003546, 5897117, 5939575, 5896934, 5891293, and 5448316. The marks were registered between 2018 and 2020. In its Complaint, the Complainant also stated it had international registrations but did not identify these. The Complainant sells its products at its website “www.summersalt.com”.

The Respondent is an individual based in China. The disputed domain names were all registered on June 18, 2021. At the time of filing the Complaint, the disputed domain names resolved to webpages in English containing a list of pay-per-click (“PPC”) links for swimsuits to unrelated third-party websites.

5. Parties’ Contentions

A. Complainant

The Complainant contends that:

- (a) The disputed domain names are confusingly similar to its trademarks for SUMMERSALT. The disputed domain names incorporate the SUMMERSALT marks in their entirety with some typos or the generic text.
- (b) The Respondent has no rights or legitimate interests in the disputed domain names. The Respondent is not affiliated with the Complainant in any way and the Complainant has never granted any authorization to the Respondent to use the Complainant’s trademark. The Respondent is not commonly known by the disputed domain names and has not made a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain names. The use of PPC links is not *bona fide*.
- (c) The disputed domain names were registered and are being used in bad faith. The Respondent is using the disputed domain names to attract Internet users for commercial gain, creating a likelihood of confusion with the Complainant’s trademark. The Respondent is a serial cybersquatter who has registered the domain names incorporating the trademarks of others and being the unsuccessful respondent to a number of UDRP complaints in 2021.

The Complainant requests the transfer of the disputed domain names.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue - Language of the Proceeding

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 names is Chinese. 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 the Complaint in English and has requested that English be the language of the proceeding under the following grounds:

- a) the disputed domain names contain English text;
- b) the websites the disputed domain names resolve to are in the English language;
- c) the disputed domain names are confusingly similar to the Complainant's United States trademark registrations which are in English; and
- d) the Complainant would have had to translate the Complaint that would cause delay to the proceeding.

In accordance with paragraph 11(a) of the Rules and taking into consideration paragraphs 10(b) and (c) of the Rules, the Panel hereby determines that the language of the proceeding shall be in English after considering the following circumstances:

- the Center has notified the Respondent in both English and Chinese of the proceeding;
- the Respondent has not commented on the language of the proceeding;
- the content on the Respondent's websites is entirely in English; and
- an order for the translation of the Complaint 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

The Complainant must satisfy all three elements of paragraph 4(a) of the Policy in order to succeed in its action:

- (i) the disputed domain names are identical or confusingly similar to a trademark in which the Complainant has rights to;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

A. Identical or Confusingly Similar

The Panel finds that the disputed domain names are confusingly similar to the Complainant's trademark. The disputed domain names incorporate the SUMMERSALT trademark in full with either obvious typos or additional letters/term. They are then accompanied with the generic Top-Level Domain ("gTLD") ".com". The typos or addition of letters/term does not prevent a finding of confusing similarity because the SUMMERSALT trademark is recognizable in the disputed domain names. The gTLD is generally disregarded when considering the first element. (See section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Panel notes that the Complainant did not rely on any registered trademarks in China where the Respondent is located. The ownership of a trademark is generally considered to be a threshold standing issue. The location of the trademark, its date of registration (or first use) and the goods and/or services for

which it is registered, are all irrelevant for the purpose of finding rights in a trademark under the first element of the UDRP. These factors may however bear on a panel's further substantive determination under the second and third elements. (See section 1.1.2 of the [WIPO Overview 3.0](#)).

The Complainant has therefore satisfied the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

The Complainant asserts that the Respondent is in no way affiliated with the Complainant. The Respondent is not authorized to use the Complainant's SUMMERSALT trademark or to apply for registration of the disputed domain names. There is no evidence that the Respondent is commonly known by the disputed domain names.

There is also no other evidence that the Respondent has used or is planning to use the disputed domain names for a *bona fide* offering of goods or services. In fact, the disputed domain names resolve to webpages with PPC links providing swimsuits that are also sold by the Complainant. In addition, the Respondent has not responded to any of the Complainant's contentions.

The Respondent has not asserted any rights or legitimate interests in relation to the disputed domain names.

Section 2.1 of the [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 Panel finds that the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests, which has not been rebutted by the Respondent. Accordingly, the Respondent has no rights or legitimate interests in regard to the disputed domain names.

C. Registered and Used in Bad Faith

Based on the evidence, the Panel has no hesitation in concluding the disputed domain names were registered and are being used in bad faith.

The disputed domain names were registered well after the Complainant registered the SUMMERSALT trademark. The confusing similarity of the disputed domain names with the Complainant's trademark and its own domain name <summersalt.com> cannot be a coincidence, particularly as the pages with PPC links promoted swimsuits, which are products sold by the Complainant. The Panel is satisfied that the Respondent was aware of the Complainant and its SUMMERSALT trademark when he registered the disputed domain names. It also appears to the Panel (1) that the Respondent has registered the disputed domain names for commercial gain in accordance with paragraph 4(b)(iv) of the Policy by the use of PPC sites, and (2) that the Respondent is a serial cybersquatter having being the unsuccessful respondent to a number of UDRP disputes in the past year.

For the above reasons, the Panel finds that the disputed domain names were registered and are being used in bad faith.

The Complainant has therefore satisfied the third element under 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 disputed domain names <comsummersalt.com>, <mysummersalt.com>, <ssummersalt.com>, <summerrsalt.com>, <summerssalt.com>, and <wwwsummersalt.com> be transferred to the Complainant.

/Douglas Clark/

Douglas Clark

Sole Panelist

Date: August 29, 2022