

ADMINISTRATIVE PANEL DECISION

The NOCO Company v. 周磊 (zhou lei)
Case No. D2022-2703

1. The Parties

The Complainant is The NOCO Company, United States of America (“United States”), represented by Jones Day, United States.

The Respondent is 周磊 (zhou lei), China.

2. The Domain Name and Registrar

The disputed domain name <nocobatterychargers.com> is 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 July 25, 2022. On July 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 27, 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 July 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 amendment to the Complaint in English on July 29, 2022.

On July 29, 2022, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant confirmed its request that English be the language of the proceeding on July 29, 2022. The Respondent did not comment on the language of the proceeding.

The Center verified that the Complaint together with the amendment to 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 proceeding commenced on August 4, 2022. In accordance with the

Rules, paragraph 5, the due date for Response was August 24, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 25, 2022.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on August 30, 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

A. Complainant

The Complainant is a company established in the State Ohio in the United States in 1914 and a manufacturer of automobile battery chargers, jump starters, batteries and related accessories, marketed and sold in the United States and worldwide under the trade mark NOCO (the "Trade Mark").

The Complainant is the owner of numerous registrations in jurisdictions worldwide for the Trade Mark, including United States registration No. 1,165,271, with a registration date of August 18, 1981.

The Complainant promotes and sells its goods under the Trade Mark via its website at "www.no.co".

B. Respondent

The Respondent is apparently an individual resident in China.

C. The Disputed Domain Name

The disputed domain name was registered on September 30, 2020.

D. The Website at the Disputed Domain Name

The disputed domain name was previously resolved to an English language website which at first blush appeared to be a website of or authorised by the Complainant – featuring the word and logo versions of the Complainant's Trade Mark and images of the Complainant's products, a copyright notice referring to the Trade Mark, and apparently offering the Complainant's range of automobile battery chargers under the Trade Mark – but in fact seeking to monetize the Respondent's registration of the disputed domain name using the Amazon Services LLC affiliate advertising programme (the "Website").

The Website footer stated as follows:

"©2021 Noco® All rights reserved.

The site is a participant in the Amazon Services LLC Associates Program, an affiliate advertising program designed to provide a means for sites to earn advertising fees by advertising and linking to Amazon.com."

The Website was taken down on July 21, 2022, three days after the Complainant sent a letter of demand to the Respondent via the Registrar, on July 18, 2022.

As at the date of this Decision, the disputed domain name is still not being used.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to the Trade Mark; the Respondent has no rights or legitimate interests in respect of the disputed domain name; and the disputed domain name has been registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Issue: 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 unless specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement.

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 order to ensure fairness to the Parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. Language requirements should not lead to undue burdens being placed on the Parties and undue delay to the proceeding (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

The Complainant has requested that the language of the proceeding be English, for the following reasons:

- (i) the Respondent is familiar with the English language, because the Website contained English language content only;
- (ii) the disputed domain name is comprised of Latin characters and not Chinese characters;
- (iii) it would be unfair to require the Complainant to translate into Chinese because it would result in additional expenses and cause unnecessary delay; and
- (iv) in light of the above, proceeding in English comports with the spirit of fairness and justice of the UDRP.

The Respondent did not file a response and did not file any submissions with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the Registration Agreement, 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 finds there is sufficient evidence to suggest the likely possibility that the Respondent is conversant in the English language. The Panel is also mindful of the need to ensure the proceeding is conducted in a timely and cost effective manner.

In all the circumstances, the Panel therefore finds it is not foreseeable that the Respondent would be prejudiced, should English be adopted as the language of the proceeding.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.2. Substantive Elements of the Policy

The Complainant must prove each of the three elements in paragraph 4(a) of the Policy in order to prevail.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has rights in the Trade Mark acquired through use and registration.

The disputed domain name incorporates the entirety of the Trade Mark (see [WIPO Overview 3.0](#), section 1.7), followed by the words “battery chargers” – the goods manufactured, marketed and sold by the Complainant for many years under the Trade Mark.

Where a relevant trade mark is recognisable within a disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element (see [WIPO Overview 3.0](#), section 1.8).

The Panel therefore finds that the disputed domain name is confusingly similar to the Trade Mark.

B. Rights or Legitimate Interests

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

- (i) before any notice to the respondent of the dispute, the respondent’s use 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 (as an individual, business, or other organization) has been commonly known by the disputed domain name even if the respondent has acquired no trade mark 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 trade mark or service mark at issue.

The Complainant has not authorised, licensed, or permitted the Respondent to register or use the disputed domain name or to use the Trade Mark. The Panel finds on the record that there is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and the burden is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that he has acquired any trade mark rights in respect of the disputed domain name or that the disputed domain name has been used in connection with a *bona fide* offering of goods or services. To the contrary, the Respondent previously used the disputed domain name, without the authorisation or approval of the Complainant, in order to pass off the Website as an official website of or approved by the Complainant (including using the word and logo versions of the Trade Mark, unauthorised images of the Complainant’s products, and the false copyright notice referred in in Section 4.D. above), for commercial gain by way of the Amazon affiliate advertising program.

The Panel further finds that the Respondent's act of taking down the Website, shortly after the receipt of the Complainant's letter of demand (and without otherwise responding to the Complainant) underscores the Respondent's lack of rights or legitimate interests in the disputed domain name.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain name.

There has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

In all the circumstances, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

In light of the evidence of the Respondent's use of the Website in the manner described above, the Panel finds the requisite element of bad faith has been satisfied, under paragraph 4(b)(iv) of the Policy.

The Panel also finds that the Respondent's act of taking down the Website in the manner described above provides further support for a finding of bad faith.

For all the foregoing reasons, the Panel concludes that the disputed domain name has been registered and is being used in bad faith.

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 <nocobatterychargers.com> be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Dated: September 13, 2022