

## **ADMINISTRATIVE PANEL DECISION**

U10 v. Zirui Wang

Case No. D2022-4715

### **1. The Parties**

The Complainant is U10, France, represented by Ibbari, France.

The Respondent is Zirui Wang, China.

### **2. The Domain Name and Registrar**

The disputed domain name <douceur-dinterieur.com> (the “Domain Name”) is registered with Gname.com Pte. Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on December 7, 2022. On December 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On December 12, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on December 14, 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 December 15, 2022.

On December 14, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On December 15, 2022, the Complainant submitted 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 together with the amendment to the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the RuName 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 December 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 11, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 12, 2023.

The Center appointed Karen Fong as the sole panelist in this matter on January 27, 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**

The Complainant, a French company, is a supplier of interior decoration and home furnishings. One of its brands is DOUCEUR D'INTÉRIEUR. The DOUCEUR D'INTÉRIEUR trade mark is registered in a number of jurisdictions including France under Trade Mark Number 3937401 since July 27, 2012 (the "Trade Mark").

The Domain Name was registered on November 19, 2022. The Domain Name resolved to a website which purports to sell products under the Trade Mark (the "Website"). The products offered for sale on the Website are the images that appear on the Complainant's website. These products offered for sale on the Website are discounted and likely to be counterfeit products. At the time of drafting the decision, the Domain Name is inactive.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that the Domain Name is confusingly similar to the Trade Mark, that the Respondent has no rights or legitimate interests with respect to the Domain Name, and that the Domain Name was registered and is being used in bad faith. The Complainant requests transfer of the Domain Name to the Complainant.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

##### **A. General**

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the Domain Name, the Complainant must prove each of the following, namely that:

- (i) the Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- (ii) the 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.

##### **B. Language of the Proceeding**

The Rules, paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement, 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. According to the information received from the Registrar, the language of the Registration Agreement for the Domain Name is Chinese.

The Complainant submits that the language of the proceeding should be English as the Website is in English and the contact address on the Website is in the United States of America, and the Respondent therefore must be conversant in English.

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 accepts the Complainant's submission regarding the language of the proceeding. The Respondent has not challenged the Complainant's request and in fact has failed to file a response. The Panel is also mindful of the need to ensure the proceeding is conducted in a timely and cost effective manner. In this case, the Complainant may be unduly disadvantaged by having to conduct the proceeding in Chinese. The Panel notes that all of the communications from the Center to the Parties were transmitted in both Chinese and English. In all the circumstances, the Panel determines that English be the language of the proceeding.

### **C. Identical or Confusingly Similar**

The Panel is satisfied that the Complainant has established that it has registered rights to the Trade Mark.

The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the trade mark and the domain name to determine whether the domain name is confusingly similar to the trade mark. The test involves a side-by-side comparison of the domain name and the textual components of the relevant trade mark to assess whether the mark is recognizable within the domain name.

In this case, the Domain Name contains the Complainant's Trade Mark in its entirety except for the apostrophe and the addition of a hyphen between the two words. The lack of the apostrophe and addition of the hyphen do not prevent a finding of confusing similarity between the Complainant's Trade Mark and the Domain Name. For the purposes of assessing identity or confusing similarity under paragraph 4(a)(i) of the Policy, it is permissible for the Panel to ignore the generic Top-Level Domain which in this case is ".com". It is viewed as a standard registration requirement (section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)")).

The Panel finds that the Domain Name is confusingly similar to the Trade Mark in which the Complainant has rights, and that the requirements of paragraph 4(a)(i) of the Policy therefore are fulfilled.

### **D. Rights or Legitimate Interests**

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights or legitimate interests in the domain name by demonstrating any of the following:

- (i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name, even if it has acquired no trade mark or service mark rights; or

- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers, or to tarnish the trade mark or service mark at issue.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a domain name, it is well established that, as it is put in section 2.1 of [WIPO Overview 3.0](#), a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. Once such *prima facie* case is made out, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent does come forward with relevant evidence of rights or legitimate interests, the panel weighs all the evidence, with the burden of proof always remaining on the complainant.

The Complainant contends that the Respondent has not been authorised to use the Trade Mark as a domain name or in any other way. The goods which are offered for sale under the Trade Mark on the Website appear to be counterfeit goods, and as such cannot be considered legitimate noncommercial use or fair use.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not responded and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the Domain Name.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name. The fact that the Domain Name does not currently resolve to active websites does not obviate the Panel's finding of lack of rights or legitimate interests.

The requirements of paragraph 4(a)(ii) of the Policy therefore are fulfilled.

#### **E. Registered and Used in Bad Faith**

To succeed under the Policy, the Complainant must show that the Domain Name has been both registered and used in bad faith. It is a double requirement.

The Panel is satisfied that the Respondent was aware of the Trade Mark when it registered the Domain Name, given the Trade Mark was registered substantially prior to the registration of the Domain Name. The very incorporation of the Trade Mark in the Domain Name, use of images bearing the Complainant's goods and the offer for sale of most likely non-genuine products of the Complainant on the Website, confirm the Respondent's awareness of the Trade Mark. It is therefore implausible that the Respondent was unaware of the Complainant when it registered the Domain Name.

[WIPO Overview 3.0](#), section 3.2.2, states as follows:

"Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant's mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant's mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent's claim not to have been aware of the complainant's mark."

The above together with the fact that there is a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent's choice of the Domain Name are also significant factors to consider. The Panel finds that the Respondent's registration is in bad faith.

The Panel also finds that the use of the Domain Name is in bad faith. The products offered for sale on the Website are likely to be counterfeit products of the Complainant considering that they are heavily discounted and the fact that there is no relationship between the Parties. The use by a respondent of a domain name which resolves to a website which offers and sells counterfeit products under that trade mark is evidence of bad faith registration and use.

The content of the Website is calculated to give the impression that it has been authorised by or connected to the Complainant when this is not the case. The Website was set up to deliberately mislead Internet users that it is connected to, authorised by, or affiliated with the Complainant. From the above, the Panel concludes that the Respondent intentionally attempted to attract, for commercial gain, by misleading Internet users into believing that the Respondent's Website is and the products sold on it are those of or authorised or endorsed by the Complainant.

The Panel therefore concludes that the Domain Name was registered and has been used in bad faith under paragraph 4(b)(iv) of the Policy. The current non-use of the Domain Name does not change the Panel's finding of the Respondent's bad faith.

The requirements of paragraph 4(a)(iii) of the Policy therefore are fulfilled.

## **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, <douceur-dinterieur.com>, be transferred to the Complainant.

*/Karen Fong/*

**Karen Fong**

Sole Panelist

Date: February 23, 2023