

## **ADMINISTRATIVE PANEL DECISION**

Chronodrive S.A.S. v. 徐帅伟 (Xu Shuai Wei aka Shuai Wei Xu)  
Case No. DCO2022-0024

### **1. The Parties**

Complainant is Chronodrive S.A.S., France, represented by CSC Digital Brand Services Group AB, Sweden.

Respondent is 徐帅伟 (Xu Shuai Wei aka Shuai Wei Xu), China.

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

The disputed domain name <chronodrive.co> (the “Domain Name”) is registered with Chengdu West Dimension Digital Technology Co., Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on March 25, 2022. On March 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On March 28, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from named Respondent and contact information in the Complaint. The Center sent an email communication to Complainant on March 28, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint in English on March 28, 2022.

On March 28, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On March 28, 2022, Complainant submitted its request that English be the language of the proceeding. 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 Respondent in English and Chinese of the Complaint, and the proceedings commenced on April 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 26, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on April 27, 2022.

The Center appointed Kimberley Chen Nobles as the sole panelist in this matter on May 4, 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

Complainant Chronodrive S.A.S. is a French retail company that offers food delivery services, sale of food and mass consumption products, including ordering products via Internet or mobile device, having the consumer arrive at a pre-determined location and having the purchased items loaded into the car without the consumer leaving the vehicle. Complainant is part of the Auchan Retail group ("Auchan"), a multinational retail group headquartered in Croix, France, which is an international food retailer operating in 17 countries, across Europe, Africa, and Asia. In addition, Auchan has about 354,851 employees worldwide, and as of December 2020, its consolidated revenue was about EUR 32 billion.

Complainant's customers may order products 24 hours a day on Complainant's website or via their mobile app. Complainant maintains an online presence through the use of its primary website and domain name <chronodrive.com>, registered on June 29, 2002, and through its various social media profiles. According to Similarweb.com, Complainant's domain name ranks as the 49,169th most popular website globally and the 1,572nd most popular website in France. In the three-month period ranging November 2021 – January 2022, Complainant's website noted an average of 636.1K visitors per month.

Complainant owns registered trademarks in numerous jurisdictions with the CHRONODRIVE mark, including:

- French trademark number 3177258 for CHRONODRIVE word mark, registered on July 30, 2002;
- International trademark number 930432 for CHRONODRIVE word mark, registered on April 2, 2007;
- European Union Trade Mark number 008899247 for CHRONODRIVE.COM figurative mark, registered on August 10, 2010;
- United Kingdom trademark number UK00908899247 for CHRONODRIVE.COM figurative mark, registered on August 10, 2010;
- French trademark number 3769961 for CHRONODRIVE word mark, registered on September 28, 2010;
- French trademark number 4023874 for CHRONODRIVE word and figurative mark, registered on July 31, 2013; and
- United Kingdom trademark number UK00801178098 for CHRONODRIVE figurative mark, registered on August 19, 2014.

The Domain Name was registered on July 5, 2021 and resolves to a parked website with Pay-Per-Click ("PPC") links to third party websites, while offering the Domain Name for sale. In particular, at the time of filing the Complaint, the Domain Name resolved to a parked page featuring PPC links including "Course En Ligne", "Meijer Grocery Pickup", and "Courses En Drive"; at the top of the parked page is a link indicating that the Domain Name may be for sale. At the time of the Decision, the Domain Name resolved to a parked page featuring PPC links including "Course En Ligne", "Course Ligne", and "Aaronrents"; while also

featuring a link at the top of the page indicating that the Domain Name may be for sale. The link indicating offering the Domain Name for sale redirects to a page that indicates the Domain Name is offered for sale by the Domain Seller and prompts the Internet user to make an offer.

Complainant sent a cease and desist letter to Respondent on February 7, 2022, with follow up letters sent on February 14 and 21, 2022. In its letters, Complainant explained its ownership of the mark CHRONODRIVE and offered to resolve the dispute. Respondent did not reply.

## **5. Parties' Contentions**

### **A. Complainant**

Complainant contends that (i) the Domain Name is identical to Complainant's trademarks; (ii) Respondent has no rights or legitimate interests in the Domain Name; and (iii) Respondent registered and is using the Domain Name in bad faith.

In particular, Complainant contends that it has trademark rights in the registrations for CHRONODRIVE and owns domain names incorporating the CHRONODRIVE trademarks. Complainant contends that Respondent registered and is using the Domain Name to confuse Internet users looking for Complainant's products and services.

Complainant notes that it has no affiliation with Respondent, nor authorized Respondent to register or use the Domain Name, which includes Complainant's trademarks, and that Respondent has no rights or legitimate interests in the Domain Name. Rather, Complainant contends that Respondent has acted in bad faith in registering the Domain Name and setting up the corresponding website, when Respondent clearly knew of Complainant's rights.

### **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

### **6.1. Preliminary Procedural Issue – Language of the Proceeding**

The Rules, in paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement between the respondent and the registrar in relation to the disputed domain name, 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.

Complainant submitted its Complaint in English. On March 28, 2022, Complainant requested that the language of the proceeding should be English. According to the information received from the Registrar, the language of the Registration Agreement for the Domain Name is Chinese.

Complainant contends that: Complainant is unable to communicate in Chinese, and translation of the Complaint would unfairly disadvantage and burden the Complainant and delay the proceedings and adjudication of this matter. Complainant also contends that: the Domain Name is registered in Latin characters and is identical to Complainant's CHRONODRIVE trademark; and the term "chronodrive" does not carry any specific meaning in the Chinese language. In addition, Complainant contends that Complainant had previously sent a cease-and-desist letter to Respondent, and Respondent had ample time and opportunity to respond to such letter and request that communications continue in Chinese, or respond to Complainant. Complainant further contends that Respondent's behavior by registering a domain name

identical to Complainant's CHRONODRIVE trademark poses continuing risk to Complainant and unsuspecting consumers seeking Complainant or its products. Complainant noted that it would be expensive, untimely, and unduly burdensome for it to have to arrange and pay for translation where Respondent has demonstrated behavior that disrupts Complainant's business and has already required Complainant to devote significant time and resources to addressing this instance of abuse.

In exercising its discretion to use a language other than that of the Registration Agreements for the Domain Name, 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 Complainant's submissions regarding the language of the proceeding. The Panel notes that the Center notified the Parties in Chinese and English of the language of the proceeding as well as notified Respondent in Chinese and English of the Complaint. Respondent chose not to comment on the language of the proceeding nor did Respondent choose to file a Response.

The Panel is also mindful of the need to ensure that the proceeding is conducted in a timely and cost-effective manner. Complainant may be unduly disadvantaged by having to translate the Complaint into Chinese and to conduct the proceeding in Chinese.

Having considered all the circumstances of this case, the Panel determines that English be the language of the proceeding.

## **6.2. Substantive Issues**

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

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

Section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") states that failure to respond to the complainant's contentions would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true.

Thus, although in this case Respondent has failed to respond to the Complaint, the burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence.

### **A. Identical or Confusingly Similar**

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See [WIPO Overview 3.0](#), section 1.2.1. Complainant provided evidence of its rights in the trademark, as noted above. Complainant has also submitted evidence, which supports that the CHRONODRIVE trademark is widely known and a distinctive identifier of Complainant's products and services. Complainant has therefore proven that it has the requisite rights in the CHRONODRIVE trademark.

With Complainant's rights in the CHRONODRIVE trademark established, the remaining question under the first element of the Policy is whether the Domain Name, typically disregarding the Top-Level Domain ("TLD") in which it is registered (in this case, ".co"), is identical or confusingly similar to Complainant's

trademark. See, e.g., *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc.* / Joseph Gross, WIPO Case No. [D2010-0842](#).

Here, the Domain Name is identical to Complainant's CHRONODRIVE trademarks. This trademark, which is fanciful and inherently distinctive, is included in the Domain Name in its entirety.

Thus, the Panel finds that Complainant has satisfied the first element of the Policy.

## **B. Rights or Legitimate Interests**

Under paragraph 4(a)(ii) of the Policy, a complainant must make a *prima facie* showing that a respondent possesses no rights or legitimate interests in a disputed domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes out such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with relevant evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

From the record in this case, it is evident that Respondent was, and is, aware of Complainant and the CHRONODRIVE trademarks, and does not have any rights or legitimate interests in the Domain Name.

Complainant has confirmed that Respondent is not affiliated with Complainant, or otherwise authorized or licensed to use the CHRONODRIVE trademark or to seek registration of any domain name incorporating the CHRONODRIVE trademark. Respondent is also not known to be associated with or commonly known by the CHRONODRIVE trademark.

In addition, Respondent has not used the Domain Name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. Rather, the evidence demonstrates that the Domain Name resolves to a parked page offering the Domain Name for sale and featuring PPC links to third party websites. Such use does not constitute a *bona fide* offering of goods or services or a legitimate noncommercial or fair use, and cannot under the circumstances confer on Respondent any rights or legitimate interests in the Domain Name.

Moreover, there is no evidence showing that Respondent has been commonly known by the Domain Name. The Domain Name includes the entirety of Complainant's trademark, and renders the Domain Name identical to Complainant's trademark and to Complainant's domain name <chronodrive.com>, carrying a high risk of implied affiliation to Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

Accordingly, Complainant has established its *prima facie* case that Respondent lacks any rights or legitimate interests in the Domain Name. Respondent has failed to produce countervailing evidence of any rights or legitimate interests in the Domain Name. Thus, the Panel concludes that Respondent does not have any rights or legitimate interests in the Domain Name and Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

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

The Panel finds that Respondent's actions indicate that Respondent registered and is using the Domain Name in bad faith.

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances indicating bad faith registration and use of a domain name, namely:

"(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that

complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location."

The Panel finds that Complainant provided ample evidence to show that registration and use of the CHRONODRIVE trademarks predate the registration of the Domain Name. Complainant's reputation is also well established and known. Indeed, the record shows that Complainant's CHRONODRIVE trademark and related products and services are widely known and recognized. Therefore, and also noting the composition of the Domain Name is identical to Complainant's trademark and Complainant's domain name <chronodrive.com>. Respondent was likely aware of the CHRONODRIVE trademark when it registered the Domain Name, or knew or should have known that the Domain Name was identical to Complainant's trademark. See [WIPO Overview 3.0](#), section 3.2.2; see also *TTT Moneycorp Limited v. Privacy Gods / Privacy Gods Limited*, WIPO Case No. [D2016-1973](#).

The Panel therefore finds that Respondent's awareness of Complainant's trademark rights at the time of registration suggests bad faith. See *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite*, WIPO Case No. [D2001-1070](#); *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#).

Further, the registration of the Domain Name incorporating Complainant's CHRONODRIVE trademark suggests Respondent's actual knowledge of Complainant's rights in the CHRONODRIVE trademark at the time of registration of the Domain Name and its effort to opportunistically capitalize on the reputation of Complainant's trademark.

In addition, as noted above, Respondent has not used the Domain Name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. Instead, the Domain Name resolves to a parked page offering the Domain Name for sale. As noted above, the parked page also features PPC links to third party websites. This is a clear indication that Respondent intentionally attempted to attract, for commercial gain, Internet users to its own website by creating a likelihood of confusion with Complainant's CHRONODRIVE trademark as to the source, sponsorship, affiliation, or endorsement of Respondent's website.

Lastly, in the present circumstances, including the distinctiveness and reputation of the CHRONODRIVE trademark, the failure of Respondent to submit a Response or to provide any evidence of actual or contemplated good faith use of the Domain Name, and the implausibility of any good faith use to which the Domain Name may be put, support a finding of bad faith. Accordingly, the Panel finds that Respondent has registered and is using the Domain Name in bad faith and Complainant succeeds under the third element of 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 Domain Name, <chronodrive.co>, be transferred to Complainant.

*/Kimberley Chen Nobles/*

**Kimberley Chen Nobles**

Sole Panelist

Date: May 9, 2022