

ADMINISTRATIVE PANEL DECISION

Southern Glazer's Wine and Spirits, LLC v. Ao Xue, Cxcer
Case No. D2023-0123

1. The Parties

The Complainant is Southern Glazer's Wine and Spirits, LLC, United States of America ("United States"), represented by Jackson Walker, LLP, United States.

The Respondent is Ao Xue, Cxcer, China.

2. The Domain Name and Registrar

The disputed domain name <sgproof.shop> is registered with Sav.com, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on January 10, 2023. On January 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 11, 2023, 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.

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 of the Complaint, and the proceedings commenced on January 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 6, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 7, 2023.

The Center appointed Steven A. Maier as the sole panelist in this matter on February 23, 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 is a limited liability company with its principal place of business located in Florida, United States. It is a licensed distributor of alcoholic beverage products.

The Complainant is the owner of United States trademark registration number 6169439 for the standard character mark SG PROOF, registered on October 6, 2020 in International Class 35. It owns additional United States trademarks comprising or including the term SG PROOF with a design.

The disputed domain name was registered on December 6, 2022.

The Complainant provides evidence that the disputed domain name has resolved to a variety of different websites, including one headed "Security Check" and another comprising a parking page including what appear to be sponsored links.

5. Parties' Contentions

A. Complainant

The Complainant states that it has traded under the SG PROOF trademark since at least 2018. It provides evidence of its website at "www.sgproof.com" offering alcoholic beverages for sale.

The Complainant submits that the disputed domain name is identical and confusingly similar to its SG PROOF trademark. It contends that the presence of the generic Top-Level Domain ("gTLD") ".shop" is not to be regarded as a distinguishing factor.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It states that it has no relationship with the Respondent and has never authorized it to use its SG PROOF trademark, that the Respondent has not commonly been known by the disputed domain name and that the Respondent is making neither *bona fide* commercial use nor legitimate noncommercial or fair use of the disputed domain name.

The Complainant submits that the disputed domain name has been registered and is being used in bad faith. It contends that the Respondent is intentionally trading on the reputation of the Complainant's established SG PROOF trademark. It also relies on the fact that the disputed domain name has resolved to a number of different and seemingly unrelated websites, including those which, it says, appear to be phishing or scam websites and those including pay-per-click links. The Complainant contends, in particular, that the Respondent has sought to attract Internet users to its website for commercial gain, and to intercept the Complainant's customers, by creating a likelihood of confusion with the Complainant's SG PROOF trademark (paragraph 4(b)(iv) of the Policy).

The Complainant requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

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

A. Identical or Confusingly Similar

The Complainant has established that it is the owner of registered trademark rights in the mark SG PROOF. The disputed domain name comprises the term “sgproof” together with the gTLD “.shop” which is typically to be disregarded for the purpose of comparison under paragraph 4(a)(i) of the Policy. The Panel therefore finds that the disputed domain name is identical to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

In the view of the Panel, the Complainant’s submissions set out above give rise to a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. However, the Respondent has failed to file a Response in this proceeding and has not submitted any explanation for its registration and use of the disputed domain name, or evidence of rights or legitimate interests on its part in the disputed domain name, whether in the circumstances contemplated by paragraph 4(c) of the Policy or otherwise. The Panel therefore finds that the Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

The Panel finds the Complainant’s SG PROOF trademark to be distinctive and to have obtained a reputation in connection with the sale of alcoholic beverages. The Respondent has provided no explanation for its choice of the disputed domain name or its use and the Panel finds the disputed domain name to be inherently misleading, as inevitably suggesting to a significant number of Internet users that it resolves to a retail outlet connected with the Complainant. The Panel accepts the Complainant’s evidence as to the variety of websites to which the disputed domain name has resolved and that such websites are likely to provide a commercial benefit to the Respondent by taking unfair advantage of the Complainant’s rights. The Panel finds, in particular, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s trademarks as to the source, sponsorship, affiliation, or endorsement of its website or of a product or service on its website (paragraph 4(b)(iv) of the Policy).

The Panel finds in the circumstances 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, <sgproof.shop>, be transferred to the Complainant.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: March 9, 2023