

ADMINISTRATIVE PANEL DECISION

The Vermont Country Store v. 刘营军 (liu ying jun)
Case No. D2023-0485

1. The Parties

The Complainant is The Vermont Country Store, United States of America (“United States”), represented by Brann & Isaacson, United States.

The Respondent is 刘营军 (liu ying jun), China.

2. The Domain Name and Registrar

The disputed domain name <vermontcountrystore.store> is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on February 1, 2023. On February 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 3, 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.

On February 3, 2023, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant requested that English be the language of the proceeding on February 14, 2023, 2023. 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 proceeding commenced on February 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 9, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 10, 2023.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on March 15, 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

A. Complainant

The Complainant is a company incorporated in the State of Vermont in the United States and a retailer since 1946 of clothing, home goods and gourmet food products under the trade mark THE VERMONT COUNTRY STORE (the "Trade Mark").

The Complainant is the owner of registrations in the United States for the Trade Mark, including United States registration No. 1,143,763, with a registration date of December 16, 1980.

In addition to traditional bricks and mortar retail, the Complainant also provides online retail services under the Trade Mark via its website at "www.vermontcountrystore.com".

B. Respondent

The Respondent is apparently an individual located in China.

C. The Disputed Domain Name

The disputed domain name was registered on November 5, 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 Trade Mark and offering for sale products similar to those sold by the Complainant – 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:

"©2021www.vermontcountrystore.store. 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."

As at the date of this Decision, the disputed domain name is not resolved to any active website.

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 an undue burden 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 several reasons, including the fact the disputed domain name is an English language domain name; and the Website was also in the English language.

The Respondent did not make any submissions regarding the language of the proceeding, and did not file any response to the Complaint herein.

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.

In light of the English language content of the Website, the Panel finds there is sufficient evidence in support of the conclusion that the Respondent is conversant in English.

The Panel is also mindful of the need to ensure the proceeding is conducted in a timely and cost effective manner.

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 consists of the dominant feature of the Trade Mark – namely, the words "vermont country store". Where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing (see [WIPO Overview 3.0](#), section 1.7).

The Panel further notes that disregarding the generic Top-Level Domains (“gTLD”) “.store” in the disputed domain name, it is identical to the second level of the Complainant’s domain name <vermontcountrystore.com>.

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 Trade Mark prominently on the Website), 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 at some stage following the filing of the Complaint 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 <vermontcountrystore.store> be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Dated: March 25, 2023