

ADMINISTRATIVE PANEL DECISION

Deli Management, Inc. v. 杨智超 (Yang Zhi Chao)
Case No. D2023-0855

1. The Parties

The Complainant is Deli Management, Inc., United States of America (“United States”), internally represented.

The Respondent is 杨智超 (Yang Zhi Chao), China.

2. The Domain Name and Registrar

The disputed domain name <jasonsdeeli.com> is registered with eName Technology Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on February 24, 2023. On February 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 28, 2023, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on the same day, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On March 1, 2023, the Complainant filed a first amendment to the Complaint in English, adding the Registrar-verified registrant as the Respondent. On the following day, the Complainant filed a second amendment to the Complaint in English, revising the requested remedy.

On February 28, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On March 1, 2023, the Complainant submitted a 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 amendments 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 proceedings commenced on March 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 28, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 29, 2023.

The Center appointed Matthew Kennedy as the sole panelist in this matter on March 31, 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 operates deli-style restaurants. It holds United States trademark registration number 1325158 for JASON'S DELI, registered on March 12, 1985, with a claim of first use in commerce on November 30, 1976, specifying restaurant and delicatessen services in class 42, and disclaiming the exclusive right to use "Deli", apart from the mark as shown. The trademark registration remains current. The Complainant has also registered the domain name <jasonsdeli.com> that it uses in connection with a website where it provides information about its restaurant locations and allows customers to order online.

The Respondent is an individual resident in China.

The disputed domain name was registered on June 21, 2022. It resolves to a landing page that displays pay-per-click ("PPC") links for "Food catering near me", "Food catering", and "Restaurants that cater near me".

5. Parties' Contentions

A. Complainant

The disputed domain name infringes on the Complainant's JASON'S DELI mark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services. Rather, the Respondent is targeting people that mistype the Complainant's domain name with the intent of infecting the user's computer with malware or ransomware. The Respondent is not known by the disputed domain name and does not conduct business through the disputed domain name.

The disputed domain name was registered and is being used in bad faith. The Respondent added one letter to the Complainant's domain name - a practice known as typosquatting - and clearly registered the disputed domain name in bad faith. The Respondent is targeting people that accidentally mistype the Complainant's domain name. The Complainant provides printouts from its investigation of the disputed domain name and associated IP address. Subdomains were recently created in June and September 2022, which have spam infrastructure behind them and a number of recent trojan, malware and ransomware samples associated.

B. Respondent

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

6. Discussion and Findings

6.1 Language of the Proceeding

Paragraph 11(a) of the Rules provides that “unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative 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”. The Registrar confirmed that the language of the Registration Agreement for the disputed domain name is Chinese.

The Complainant requests that the language of the proceeding be English. Its main arguments are that the Complainant is a United States corporation, its trademark and the disputed domain name are in English and the Respondent’s website is also in English.

Paragraphs 10(b) and (c) of the Rules require the Panel to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding take place with due expedition. Prior UDRP panels have decided that the choice of language of the proceeding should not create an undue burden for the parties. See, for example, *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#); *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui’erpu (HK) electrical appliance co. ltd.*, WIPO Case No. [D2008-0293](#).

The Panel observes that the Complaint and amendments to the Complaint were filed in English. Despite the Center having sent emails regarding the language of the proceeding, and the notification of the Complaint, in both Chinese and English, the Respondent did not comment on the language of the proceeding or express any interest in otherwise participating in this proceeding. Therefore, the Panel considers that requiring the Complainant to translate the Complaint into Chinese would create an undue burden and delay whereas accepting the Complaint in English does not cause prejudice to either Party.

Having considered all the circumstances above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English.

6.2 Analysis and Findings

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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

Based on the evidence presented, the Panel finds that the Complainant has rights in the JASON’S DELI mark.

The disputed domain name incorporates the JASON’S DELI mark, omitting the apostrophe for technical reasons, and repeating the “e”, which is an obvious typographical error (so-called “typosquatting”). Despite these minor differences, the JASON’S DELI mark remains clearly recognizable within the mark. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.9.

The only other element in the disputed domain name is a generic Top-Level Domain (“gTLD”) extension (“.com”). As a standard requirement of domain name registration, this element may be disregarded in the comparison between a domain name and a trademark for the purposes of the first element of paragraph 4(a) of the Policy, unless it has some impact beyond its technical function, which is not the case here. See [WIPO Overview 3.0](#), section 1.11.

For the above reasons, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights. The Complainant has satisfied the first condition in paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the Panel, shall demonstrate that the Respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- (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 trademark 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 trademark or service mark at issue.

With respect to the first circumstance set out above, the disputed domain name, which incorporates a misspelt version of the Complainant's JASON'S DELI mark, resolves to a landing page displaying PPC links that are related to the nature of the Complainant's goods and services (*i.e.*, food and restaurants). It is clear from the Complaint that the Respondent is not affiliated with the Complainant in any way. The Panel does not consider this to constitute a *bona fide* offering of goods or services that would create rights or legitimate interests in the disputed domain name. See [WIPO Overview 3.0](#), section 2.9.

With respect to the second circumstance set out above, the Respondent's name is listed in the Registrar's Whois database as 杨智超 (Yang Zhi Chao). Nothing indicates that the Respondent has been commonly known by the disputed domain name.

With respect to the third circumstance set out above, the disputed domain name resolves to a landing page displaying PPC links that operate for the commercial gain of the Respondent, if he is paid to direct traffic to the linked sites, or the commercial gain of the operators of the linked sites, or both. None of these scenarios is a legitimate noncommercial or fair use of the disputed domain name.

In view of the above findings, it is unnecessary for the Panel to evaluate the Complainant's allegations regarding the potential use of the disputed domain name to distribute malware.

In summary, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent failed to rebut that *prima facie* case because he did not respond to the Complaint.

Therefore, based on the record of this proceeding, the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that certain circumstances, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The fourth circumstance is as follows:

- (iv) by using the [disputed] domain name, [the respondent has] intentionally attempted to attract, for

commercial gain, Internet users to [the respondent's] 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 [the respondent's] website or location or of a product or service on [the respondent's] website or location.

As regards registration, the disputed domain name was registered in 2022, many years after the registration of the Complainant's JASON'S DELI mark. The disputed domain name incorporates that mark with an obvious typographical error and adds only a gTLD extension. The disputed domain name appears to have no other purpose than as an approximation of the Complainant's mark and domain name <jasonsdeli.com>. The Respondent provides no alternative explanation for his choice of the disputed domain name. In view of these circumstances, the Panel is persuaded that the Respondent had the Complainant and its JASON'S DELI mark in mind when he registered the disputed domain name.

As regards use, the disputed domain name appears to be intended to attract Internet users searching for the Complainant's website who mistype its mark in a browser, and then divert them to the Respondent's landing page with PPC links, even though it would eventually be clear to those who reach the landing page that it is not affiliated with the Complainant. Given these circumstances and the findings in Section 6.2B above, the Panel considers that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of his location within the terms of paragraph 4(b)(iv) of the Policy.

Therefore, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant has satisfied the third element in 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 disputed domain name <jasonsdeeli.com> be transferred to the Complainant.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: April 11, 2023