

ADMINISTRATIVE PANEL DECISION

Spencer Gifts LLC v. Fan Hua (范华), Zhang Rong Hua (张荣华)
Case No. D2023-4295

1. The Parties

Complainant is Spencer Gifts LLC, United States of America, represented by Neal & McDevitt, United States of America (“US”).

Respondents are Fan Hua (范华), China, and Zhang Rong Hua (张荣华), China.

2. The Domain Names and Registrar

The disputed domain names <spirithalloween.com>, <spirit-halloweens.com>, <spirithalloweens.com>, <spirithalloweenwh.com> are 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 October 18, 2023. On October 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On October 20, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Names not available) and contact information in the Complaint.

The Center sent an email communication to Complainant on October 20, 2023, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrar, requesting Complainant to either file separate complaint(s) for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity. Complainant filed an amended Complaint in English on October 26, 2023.

On October 20, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On October 23, 2023, Complainant submitted a request that English be the language of the proceeding. Respondents 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 Respondents in English and Chinese of the Complaint, and the proceedings commenced on October 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 16, 2023. Respondents did not submit any formal response. The Center received communication by email from one of Respondents on October 27, 2023. On November 17, 2023, the Center informed the Parties that it would proceed to panel appointment.

The Center appointed Yijun Tian as the sole panelist in this matter on November 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

A. Complainant

Complainant, Spencer Gifts LLC, is a company incorporated in the US. It is the proprietor of the well-known Spirit Halloween stores. It is known for seasonal offerings like costumes, decorations, and accessories. Recognizable by iconic Halloween-themed signage, the stores feature expansive selections, themed sections, and interactive displays for a captivating shopping experience.

Complainant has rights in the SPIRIT HALLOWEEN marks. Complainant is the owner of numerous SPIRIT HALLOWEEN trademarks worldwide, including the US trademark registration for SPIRIT HALLOWEEN, registered on April 1, 2008 (registration number: 3,405,068); and the international trademark registration for SPIRIT HALLOWEEN, registered on March 14, 2014 (registration number: 1201058), which contains China as one of the designation countries.

B. Respondent

Respondents are Fan Hua (范华), China, and Zhang Rong Hua (张荣华), China.

The disputed domain names <spirithalloweens.com> and <spirithalloweenwh.com> were registered (with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn)) by Fan Hua (范华), China, on September 14, 2023. The disputed domain names <spirithalloween.com> and <spirit-halloweens.com> were registered (with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn)) by Zhang Rong Hua (张荣华), China, on September 26, 2023.

According to the Complaint and relevant evidence provided by Complainant, the disputed domain names have been resolved to deceptive websites purporting to be authorised online stores for Complainant's products, and the websites are in the English language and contain the contents copied from the original website of Complainant (Annexes 5-1 through 5-4 to the Complaint).

5. Parties' Contentions

A. Complainant

Complainant contends that the disputed domain names are all confusingly similar to Complainant's SPIRIT HALLOWEEN trademark. The disputed domain names either include the mark in its entirety or employ a minor misspelling of the SPIRIT HALLOWEEN mark. This is adequate to demonstrate confusing similarity under the Policy.

Complainant contends that Respondents lack rights or legitimate interests in the disputed domain names. Complainant contends that the disputed domain names were registered and are being used in bad faith. Complainant requests that the disputed domain names be transferred to it.

B. Respondents

Respondents did not reply to Complainant's contentions. One of the Respondents (Fan Hua (范华)) sent an email to the Center claiming that he does not own the disputed domain names.

6. Discussion and Findings

6.1. Language of the Proceeding

The language of the Registration Agreements for the disputed domain names <spirithalloween.com>, <spirit-halloweens.com>, <spirithalloweens.com>, and <spirithalloweenwh.com> 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.

From the evidence presented on the record, no agreement appears to have been entered into between Complainant and Respondents to the effect that the language of the proceeding should be English. Complainant filed initially its Complaint in English, and has requested that English be the language of the proceeding for the following reasons:

- (a) The disputed domain names have been registered under the ".com" generic Top-Level Domain ("gTLD").
- (b) The disputed domain names are comprised of the Latin script, as opposed to Chinese characters, and they either identically reproduce or are confusingly similar to Complainant's SPIRIT HALLOWEEN mark.
- (c) The content on the websites associated with the disputed domain names is in English (Annexes 5-1 to 5-4 to the Complaint).
- (d) Mandating Complainant to submit the Complaint in Chinese would be disproportionate, leading to additional expenses and unnecessary delays for translation, as per WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1.
- (e) In light of the aforementioned facts, it is evident that Respondents possess proficiency in the English language, and adopting English as the language of the proceeding would not unfairly prejudice them.

Respondents did not make any specific submissions with respect to the language of the proceeding.

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 (see [WIPO Overview 3.0](#), section 4.5.1).

On the record, Respondents, Fan Hua (范华) and Zhang Rong Hua (张荣华) both appear to be located in China and thus presumably not native English speakers, but considering the following aspects, the Panel has decided that the language of the proceeding shall be English: (a) the disputed domain names are registered in Latin characters, particularly in English (e.g., English words or misspelt English words "spirit" and "Halloween", rather than Chinese script; (b) the gTLD of the disputed domain names are ".com", so the disputed domains names seem to be prepared for users worldwide, particularly English speaking countries; (c) the webpages which the disputed domain names resolve to are in the English language; (d) the Center has notified Respondents of the language of the proceeding in both Chinese and English, and Respondents have indicated no objection to Complainant's request that English be the language of the proceeding; (e) the Center also notified Respondents in both Chinese and English of the Complaint, and informed Respondents that it would accept a response in either English or Chinese, but Respondents chose not to file any substantive response.

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. Consolidation: Multiple Respondents

The amended Complaint was filed in relation to nominally different domain name registrants. Complainant alleges that the domain name registrants are the same entity or mere alter egos of each other, or under common control. Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

Even though one of the registrants (Fan Hua (范华)) sent an email claiming that he does not own the disputed domain names, the Panel notes the Registrar confirmed Fan Hua (范华) as the registrant of the disputed domain names <spirithalloweens.com> and <spirithalloweenwh.com> and the email was sent from the Registrar-confirmed email address of this registrant. Moreover, the disputed domain name registrants did not comment on Complainant's consolidation request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See [WIPO Overview 3.0](#), section 4.11.2.

As regards common control, the Panel finds that Complainant has provided sufficient evidence to establish that the disputed domain names or corresponding websites are subject to common control, for the following reasons:

- (a) Each of the disputed domain names incorporates either Complainant's SPIRIT HALLOWEEN mark or a closely related variation.
- (b) The content present on the disputed domain names is virtually identical across all four websites, featuring the unauthorized use of Complainant's marks and images.
- (c) The disputed domain names were all registered on two separate days in September 2023 and share the same Registrar (Annex 1 to the Complaint).
- (d) All of the disputed domain names employ the Cloudflare service for the establishment of MX Records (Annex 6 to the Complaint).
- (e) For the assignment of Nameservers, all the disputed domain names utilize the Cloudflare service (Annex 1 to the Complaint).
- (f) It is noteworthy that all the disputed domain names seem to be designed with a common objective: the fraudulent collection of sensitive information from unsuspecting users, including credit card data (see Annexes 5-1 to 5-4 to the Complaint).
- (g) Given the evident common control over the disputed domain names, consolidating them into a single matter would be efficient. Respondents are unlikely to demonstrate that consolidation would result in prejudice.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as "Respondent") in a single proceeding.

6.3 Substantive Issues: Three Elements

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the SPIRIT HALLOWEEN or a misspelling of Complainant's SPIRIT HALLOWEEN mark is reproduced within the disputed domain names. More specifically, accordingly, the disputed domain names are identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Regarding the disputed domain names <spirit-halloweens.com>, <spirithalloweens.com>, and <spirithalloweenwh.com>, while the addition of other characters "-", "s", and "wh", may bear on assessment of the second and third elements, the Panel finds the addition of such characters do not prevent a finding of confusing similarity between the disputed domain names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Regarding the disputed domain name <spiriithalloween.com>, the Panel finds the disputed domain name differs from Complainant's trademark SPIRIT HALLOWEEN, by only one letter. Respondent has changed the spelling of "Spirit Halloween" by one letter (adding one extra letter "i" after the second "i" letter of "Spirit").

As the disputed domain name <spiriithalloween.com> contains a misspelling of Complainant's SPIRIT HALLOWEEN mark, the Panel finds the disputed domain name must be considered a prototypical example of typosquatting. Section 1.9 of the [WIPO Overview 3.0](#) states: "A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element."

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain names. Respondent has not rebutted Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

More specifically,

(i) there has been no evidence adduced to show that Respondent is using the disputed domain names in connection with a *bona fide* offering of goods or services. Respondent has not provided evidence of reasons to justify the choice of the terms “Spirit Halloween”, Complainant’s SPIRIT HALLOWEEN trademark, in the disputed domain names. There has been no evidence to show that Complainant has licensed or otherwise permitted Respondent to use the SPIRIT HALLOWEEN marks or to apply for or use any domain name incorporating the SPIRIT HALLOWEEN marks;

(ii) there has been no evidence adduced to show that Respondent has been commonly known by the disputed domain names. There has been no evidence adduced to show that Respondent has any registered trademark rights with respect to the disputed domain names. Respondent registered the disputed domain names in 2023, after the SPIRIT HALLOWEEN marks became widely known. The disputed domain names are confusingly similar to Complainant’s SPIRIT HALLOWEEN marks; and

(iii) there has been no evidence adduced to show that Respondent is making a legitimate noncommercial or fair use of the disputed domain names. By contrast, all active disputed domain names resolved to websites purporting to be authorised online stores for Complainant’s products, and the websites were in the English language, contain the contents copied from the original website of Complainant, and purport to offer Complainant’s goods for sale. It seems that Respondent is making profits through the Internet traffic attracted to the websites under the disputed domain names. (See *BKS Bank AG v. Jianwei Guo*, WIPO Case No. [D2017-1041](#); and *Pet Plan Ltd. v. 权中俊 and 李金梁 (Li Jin Liang)*, WIPO Case No. [D2020-3358](#).)

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that Respondent has registered and used the disputed domain names in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

UDRP panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds Respondent’s registrations and use of the disputed domain names constitute bad faith under the Policy.

Based on the information provided by Complainant, the Panel finds that Complainant has a widespread reputation in the SPIRIT HALLOWEEN marks with regard to its products and services. It is not conceivable that Respondent would not have had Complainant’s trademark in mind at the time of the registration of the disputed domain names (in 2023). This has been reinforced by the fact that each disputed domain name incorporates Complainant’s SPIRIT HALLOWEEN trademark.

Respondent has used the websites resolved by the disputed domain names for displaying the contents copied from the original website of Complainant, and purports to offer Complainant’s goods for sale.

Thus, the Panel concludes that Respondent is using confusingly similar disputed domain names with the intention to attract, for commercial gain, Internet users to Respondent's websites by creating a likelihood of confusion with Complainant. Such use constitutes bad faith pursuant to paragraph 4(b)(iv) of the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 names <spirithalloween.com>, <spirit-halloweens.com>, <spirithalloweens.com>, <spirithalloweenwh.com> be transferred to Complainant.

/Yijun Tian/

Yijun Tian

Sole Panelist

Date: January 10, 2024