

ADMINISTRATIVE PANEL DECISION

Freeman Holding, LLC v. 杨智超 (Zhi Chao Yang)
Case No. D2024-1170

1. The Parties

Complainant is Freeman Holding, LLC, United States of America (“USA”), represented by Vedder Price P. C., USA.

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

2. The Domain Name and Registrar

The disputed domain name <www.freeman.com> 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 18, 2024. On March 19, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 20, 2024, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to Complainant on March 20, 2024, 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, 2024.

On March 20, 2024, the Center informed the Parties in Chinese and English, that the language of the Registration Agreement for the disputed domain name is Chinese. On March 28, 2024, Complainant confirmed its request that English be the language of the proceeding. Respondent did not submit any comment on Complainant's submission.

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 Chinese and English of the Complaint, and the proceedings commenced on April 2, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 22, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on April 30, 2024.

The Center appointed Yijun Tian as the sole panelist in this matter on May 8, 2024. 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, Freeman Holding, LLC, is a company incorporated in the USA. Established in 1927, it is a renowned global event planning and management company known by the name Freeman and related marks. The trademark FREEMAN has been continuously used in commerce since 1948 to identify its goods and services in the USA. Complainant promotes its business online through the domain name <freeman.com>, created in 1997.

Complainant has exclusive rights in the FREEMAN marks. Complainant is the owner of several FREEMAN marks worldwide, such as a USA trademark registration for FREEMAN, registered since July 17, 2018 (the USA trademark registration number 5,518,973); a USA trademark registration for FREEMAN COMPANIES, registered since February 21, 1995 (the USA trademark registration number 1,880,065); and a Hong Kong, China ("HK") trademark registration for FREEMAN, registered since August 24, 2006 (the HK trademark registration number 300593479).

B. Respondent

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

C. The Disputed Domain Name

The disputed domain name <wwwfreeman.com> was registered on April 1, 2023, after the FREEMAN marks were registered. At the time of filing of the Complaint, the disputed domain name resolved to a pay-per-click ("PPC") website in English, which contained links for services that compete with Complainant (Annex 5 to the Complaint).

5. Parties' Contentions

A. Complainant

Complainant contends that the disputed domain name is identical or confusingly similar to the FREEMAN marks, in which Complainant has rights. The addition of "www" in front of Complainant's mark FREEMAN is a mere addition of non-distinctive text and is therefore confusingly similar to Complainant's mark.

Complainant contends that Respondent has no rights or legitimate interests in respect of the disputed domain name.

Complainant contends that the disputed domain name was registered and is being used in bad faith.

Complainant requests that the disputed domain name be transferred to it.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

6.1 Procedural 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.

The Complaint was filed in English. Complainant requested that the language of the proceeding be English for several reasons, including the fact that:

- (a) The disputed domain name and associated website content are in English, indicating Respondent's proficiency in the language.
- (b) Complainant, based in the USA, does not understand Chinese, minimizing potential unfairness or delay in translating the Complaint.
- (c) WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") notes that proceedings in the language of the registration agreement may not be warranted in scenarios where evidence suggests Respondent understands the Complaint language, as in this case.
- (d) The disputed domain name is in Latin script rather than Chinese characters, further supporting the use of English as the language of the proceeding.
- (e) The ongoing harm to Complainant necessitates a swift resolution to mitigate further harm caused by the disputed domain name.

Respondent did not make any 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, Respondent appears to be located in China and is thus presumably not a native English speaker, but considering the following aspects, the Panel has decided that the language of the proceeding shall be English: (a) the disputed domain name is registered in Latin characters rather than Chinese script; (b) the generic Top-Level Domain ("gTLD") of the disputed domain name is ".com", so the disputed domain name seems to be prepared for users worldwide, particularly English speaking countries; (c) the webpage which the disputed domain name resolved to was in the English language; (d) the Center has notified Respondent of the language of the proceeding in both Chinese and English, and Respondent has indicated no objection to Complainant's request that English be the language of the proceeding; (e) the Center also notified Respondent in both Chinese and English of the Complaint, and informed Respondent that it would accept a response in either English or Chinese, but Respondent chose not to file any 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 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 disputed domain name differs from Complainant's trademark FREEMAN, by only adding the prefix "www". As the disputed domain name contains a misspelling of Complainant's FREEMAN mark, and Complainant's FREEMAN mark is clearly recognizable in the disputed domain name, the Panel finds the disputed domain name is confusingly similar to Complainant's mark. 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 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 recognised 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 name. 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 name 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 name in connection with a bona fide offering of goods or services. Respondent has not provided evidence of a legitimate use of the disputed domain name or reasons to justify the choice of the term "freeman", being identical to Complainant's FREEMAN trademark, in the disputed domain name. There has been no evidence to show that Complainant has licensed or otherwise permitted Respondent to use the FREEMAN mark or to apply for or use any domain name incorporating the FREEMAN mark.

(ii) There has been no evidence adduced to show that Respondent has been commonly known by the disputed domain name. There has been no evidence adduced to show that Respondent has any registered trademark rights with respect to the disputed domain name. Respondent registered the disputed domain name in 2023, long after the FREEMAN mark became widely known. The disputed domain name is confusingly similar to Complainant's FREEMAN mark; and

(iii) There has been no evidence adduced to show that Respondent is making a legitimate noncommercial or fair use of the disputed domain name. By contrast, the disputed domain name resolved to a PPC website, which contained links for services that competed with Complainant. It seems that Respondent is making profit through the Internet traffic attracted to the website under the disputed domain name. (See *BKS Bank AG v. Jianwei Guo*, WIPO Case No. [D2017-1041](#); *Pet Plan Ltd. v. 权中俊 and 李金梁 (Li Jin Liang)*, WIPO Case No. [D2020-3358](#).)

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 name in bad faith.

The Panel finds that Complainant has a widespread reputation in the FREEMAN marks with regard to its products and services. As mentioned above, Complainant started its business in 1927, and it has registered its FREEMAN marks in the USA (since 2018) and HK (since 2006). Complainant also promotes its business online through the domain name <freeman.com>, created in 1997. Furthermore, Complainant's domain name <freeman.com>, which is entered into an Internet web browser as "www.freeman.com". Therefore, it is more likely than not that Respondent was aware of Complainant's trademark at the time of the registration of the disputed domain name (in 2023). Thus, the Panel concludes that the disputed domain name was registered in bad faith.

Respondent has used the website resolved by the disputed domain name for displaying PPC links to third-party commercial websites that compete with Complainant's business. Thus, the Panel concludes that Respondent has used the confusingly similar disputed domain name with the intention to attract, for commercial gain, Internet users to Respondent's website by creating a likelihood of confusion with Complainant. Such use constitutes bad faith pursuant to paragraph 4(b)(iv) of the Policy.

In summary, Respondent, by choosing to register and use the disputed domain name, which is confusingly similar to the FREEMAN marks, intended to ride on the goodwill of these trademarks in an attempt to exploit, for commercial gain, Internet users destined for Complainant. In the absence of evidence to the contrary and rebuttal from Respondent, the choice of the disputed domain name and the conduct of Respondent as far as the website to which the disputed domain name resolves is indicative of registration and use of the disputed domain name in bad faith.

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

7. Decision

For all 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 <www.freeman.com> be transferred to Complainant.

/Yijun Tian/

Yijun Tian

Sole Panelist

Dated: June 2, 2024