

ADMINISTRATIVE PANEL DECISION

Jos G. Wijker v. 陈毅杰 (ChenYi Jie)

Case No. D2024-1522

1. The Parties

Complainant is Jos G. Wijker, Netherlands (Kingdom of the), represented by Novagraaf Nederland B.V., Netherlands (Kingdom of the).

Respondent is 陈毅杰 (ChenYi Jie), China.

2. The Domain Names and Registrar

The disputed domain names <summumwomenhome.shop> and <summundsales.shop> (the “Domain Names”) were registered with eName Technology Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint as regards the Domain Name <summumwomenhome.shop> was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on April 10, 2024. On April 11, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On April 12, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the 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 April 18, 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 April 19, 2024, including a request for addition of the Domain Name <summundsales.shop>. On April 24, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the additional Domain Names. On April 25, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the additional Domain Names which differed from the named Respondent (Redacted for privacy) and contact information in the Complaint. The Center sent an email communication to Complainant on the same day providing the registrant and contact information disclosed by the Registrar and inviting Complainant to submit an amendment to the Complaint. Complainant filed a second amended Complaint in English on April 25, 2024.

On April 18, 2024, the Center informed the parties in Chinese and English, that the language of the registration agreement for the Domain Names is Chinese. On April 19, 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 Complaints 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 of the Complaint in Chinese and English, and the proceedings commenced on April 26, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 16, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on May 17, 2024.

The Center appointed Kimberley Chen Nobles as the sole panelist in this matter on May 24, 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

Complainant owns an international fashion brand based in the Netherlands (Kingdom of the). It owns and operates its business under the trademark SUMMUM (derived from Latin, meaning “the highest” or “the best”), which was created by Jos and Jorien Wijker in 1998.

Complainant owns several registered trademarks for the SUMMUM mark, including:

- Benelux registered trademark number 637725 for the SUMMUM word mark, registered on August 7, 1998; and
- International registered trademark number 710977 for the SUMMUM word mark, designating the European Union, Norway and the United States of America, registered on March 18, 1999.

The Domain Names <summumwomenhome.shop> and <sumnumsales.shop> were registered on March 12, 2024 and April 16, 2024 respectively. At the time of the filing of the Complaint, the Domain Name <summumwomenhome.shop> resolved to a website allegedly featuring images from Complainant’s website, and purported offering Complainant’s products for sale, without any disclaimer clarifying the (lack of) relationship between the Parties. On the contrary, a Complainant’s competitor’s trademark was displayed at the bottom of the website. Complainant also contends that at the time of the filing of the Complaint, the Domain Name <sumnumsales.shop> resolved to an active website. After the filing of the Complaint, the content from each of the websites was removed. At the time of the Decision, each of the Domain Names resolved to an inactive or error page.

5. Parties’ Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Names.

Complainant contends that (i) each of the Domain Names is identical or confusingly similar to Complainant’s trademarks; (ii) Respondent has no rights or legitimate interests in the Domain Names; and (iii) Respondent registered and is using the Domain Names in bad faith.

In particular, Complainant contends that it has trademark registrations for SUMMUM, and that Respondent registered and is using the Domain Names with the intention to confuse Internet users looking for bona fide and well-known SUMMUM products and services.

Complainant notes that it has no affiliation with Respondent. Complainant further contends that Respondent is using the Domain Names as a tool to exploit Complainant's reputation for its own commercial gain, and that Respondent has no rights or legitimate interests in the registration and use of the Domain Names other than trademark infringement. Further, Complainant contends that Respondent has acted in bad faith in acquiring and setting up the Domain Names, when Respondent clearly knew of Complainant's rights.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

6.1. Preliminary Issue: Language of the Proceeding

The Rules, in paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement between the respondent and the registrar in relation to the disputed domain name, the language of the 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.

Complainant requests that the language of the proceeding should be English. According to the information received from the Registrar, the language of the Registration Agreement for the Domain Names is Chinese.

Complainant submits that the English language should be the language for the current proceeding because: Complainant and its representative are based in the Netherlands (Kingdom of the), and conducting the proceedings in Chinese will require the retention of a translator, adding delay and considerable expense to Complainant, and result in delay to the proceedings; the Domain Names were registered in Latin characters and the content of the website it resolved to at the Domain Name <summunwomenhome.shop> was completely in English, indicating that Respondent has knowledge of English; and that the English language is the primary language used in international commerce.

In exercising its discretion to use a language other than that of the Registration Agreement for the Domain Name, 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.

The Panel accepts Complainant's submissions regarding the language of the proceeding. The Panel also notes that the Domain Names do not have any specific meaning in the Chinese language, and that each of the Domain Names contains Complainant's SUMMUM trademark in its entirety, and the addition of the English terms "womenhome" and "sales" to Complainant's trademark in the Domain Names <summunwomenhome,shop> and <summunsales.shop> respectively, and the content of the website to which the Domain Name <summunwomenhome,shop> resolved is in English, all of which indicate that Respondent understands English. The Panel further notes that the Center notified the Parties in Chinese and English of the language of the proceeding as well as notified Respondent in Chinese and English of the Complaint. Respondent chose not to comment on the language of the proceeding, nor did Respondent choose to file a Response in Chinese or English.

The Panel is also mindful of the need to ensure that the proceeding is conducted in a timely and cost-effective manner. Complainant may be unduly disadvantaged by having to translate the Complaint into Chinese and to conduct the proceeding in Chinese.

Having considered all the circumstances of this case, the Panel determines that English be the language of the proceeding.

6.2. Substantive Issues

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

- (i) each of the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Names; and
- (iii) the Domain Names were registered and are being used in bad faith.

Section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) states that failure to respond to the complainant’s contentions would not by itself mean that the complainant is deemed to have prevailed; a respondent’s default is not necessarily an admission that the complainant’s claims are true.

Thus, although in this case, Respondent has failed to respond to the Complaint, the burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence.

A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See [WIPO Overview 3.0](#), section 1.2.1. Complainant has provided evidence of its rights in the SUMMUM trademarks, as noted above under Section 4. Complainant has therefore proven that it has the requisite rights in the SUMMUM trademarks.

With Complainant’s rights in the SUMMUM trademarks established, the remaining question under the first element of the Policy is whether the Domain Names, typically disregarding the Top-Level Domain (“TLD”) in which it is registered (in this case is, “.shop”), are identical or confusingly similar to Complainant’s trademark. See, e.g., *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#).

Here, the Domain Names are confusingly similar to Complainant’s SUMMUM trademarks. The use of Complainant’s trademark in its entirety, with the addition of the words “womenhome” and “sales” to the Domain Names <summunwomenhome.shop> and <summunsales.shop> respectively, does not prevent a finding of confusing similarity between the Domain Names and the SUMMUM mark as it is recognizable in the Domain Names. [WIPO Overview 3.0](#), section 1.8.

Thus, the Panel finds that Complainant has satisfied the first element of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make a prima facie showing that a respondent possesses no rights or legitimate interests in a disputed domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes out such a prima facie showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with relevant evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

From the record in this case, it is evident that Respondent does not have any rights or legitimate interests in the Domain Names. In addition, Complainant asserts that Respondent is not an authorized reseller and is not related to Complainant. Respondent is also not known to be associated with the SUMMUM trademarks and there is no evidence showing that Respondent has been commonly known by the Domain Names.

In addition, Respondent has not used the Domain Names in connection with a bona fide offering of goods or services or a legitimate noncommercial or fair use. Rather, the Domain Name <summunwomenhome.shop> initially reverts to a webpage that displayed images obtained from Complainant's website, without Complainant's authorization, and purportedly offered the Complainant's products for sale. There is not any disclaimer clarifying the (lack of) relationship between the Parties. On the contrary, a Complainant's competitor's trademark was displayed above "About Us" and "Contact Us" hyperlinks at the bottom of the website. Complainant also contends that the Domain Name <summunsales.shop> initially resolved to an active website, the content of which was removed after filing of the Complaint. Such use does not constitute a bona fide offering of goods or services or a legitimate noncommercial or fair use and cannot under the circumstances confer on Respondent any rights or legitimate interests in the Domain Names. See, e.g., *Intesa Sanpaolo S.p.A. v. Charles Duke / Oneandone Private Registration*, WIPO Case No. [D2013-0875](#).

Moreover, the nature of the Domain Names, including Complainant's trademark and the terms "womenhome" and "sales" to Complainant's trademark in the Domain Names <summunwomenhome.shop> and <summunsales.shop> respectively, which refers to SUMMUM products purportedly offered for sale and reinforced its association with Complainant's business and products, is misleading and carries a risk of implied affiliation. See [WIPO Overview 3.0](#), section 2.5.1.

Accordingly, Complainant has provided evidence supporting its prima facie claim that Respondent lacks any rights or legitimate interests in the Domain Names. Respondent has failed to produce countervailing evidence of any rights or legitimate interests in the Domain Names, reinforcing the notion that Respondent was not using the Domain Names in connection with a bona fide offering.

Thus, the Panel concludes that Respondent does not have any rights or legitimate interests in the Domain Names, and Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that Respondent's actions indicate that Respondent registered and is using the Domain Names in bad faith.

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances indicating bad faith registration and use on the part of a domain name registrant, namely:

"(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location."

The Panel finds that Complainant has provided ample evidence to show that registration and use of the SUMMUM trademarks long predate the registration of the Domain Names. Complainant is also well established and known. Indeed, the record shows that Complainant's SUMMUM trademarks and related products and services are widely known and recognized. In addition, the addition of the terms "womenhome" and "sales" to Complainant's trademark in the Domain Names <summunwomenhome.shop> and

<summumsales.shop> respectively, is directly related to Complainant's business activities. Therefore, Respondent was aware of the SUMMUM trademarks when it registered the Domain Names. See [WIPO Overview 3.0](#), section 3.2.2; and see also *TTT Moneycorp Limited v. Privacy Gods / Privacy Gods Limited*, WIPO Case No. [D2016-1973](#).

The Panel therefore finds that Respondent's awareness of Complainant's trademark rights at the time of registration suggests bad faith. See *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite*, WIPO Case No. [D2001-1070](#); and *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#).

Further, the registration of the Domain Names incorporating Complainant's SUMMUM trademark in its entirety suggests Respondent's actual knowledge of Complainant's rights in the SUMMUM trademarks at the time of registration of the Domain Names and its effort to opportunistically capitalize on the registration and use of the Domain Names.

Moreover, Respondent registered and is using the Domain Names to confuse and mislead consumers looking for bona fide and well-known SUMMUM products and services of Complainant or authorized partners of Complainant. In particular, the evidence provided by Complainant indicates that the Domain Name <summunwomenhome.shop> resolved to a website which duplicates Complainant's copyrighted images, and displayed clothing similar to those offered by Complainant. Complainant also contends that the Domain Name <summumsales.shop> initially resolved to an active website, but its content was removed after the filing of the Complaint. Such use of the SUMMUM mark in the Domain Names is intended to capture Internet traffic from Internet users who are looking for Complainant's products and services. Therefore, by using the Domain Names, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's webpage by creating a likelihood of confusion with Complainant's SUMMUM marks as to the source, sponsorship, affiliation, or endorsement of Respondent's websites.

Further, the Panel also notes the failure of Respondent to submit a Response. Under the circumstances of this case, the Panel finds the current non-use of the Domain Names does not prevent a finding of bad faith. [WIPO Overview 3.0](#), section 3.3.

Accordingly, the Panel finds that Respondent registered and is using the Domain Names in bad faith and Complainant succeeds under the third element of 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 Domain Names <summunwomenhome.shop> and <summumsales.shop> be transferred to Complainant.

/Kimberley Chen Nobles/

Kimberley Chen Nobles

Sole Panelist

Date: June 3, 2024