

ADMINISTRATIVE PANEL DECISION

Ernsting's family GmbH & Co. KG v. Marco A Little; cfcew fgwq; dgdsgdss sdfgdgffd, 45456456; asdas asd, 12; Dew Sich; Marissa Pinkham, Marissa G Pinkham; eee qeqe, dasdhuighjbvbjhbjb; 士大夫 阿斯顿; Pranvera Grislin; Geneviève DEMANGE; an L; Alison Bares; Il sss; asd asd; 何 煌辉; Lewis Mackay; zhang snge; 林杰 (Jie Lin); zhang san; Anna Vancini Vancini; chen tengyu; K KKK; shi sa; zhang san; zhang snge; zhang san; xiao lin; Agim Mulakaj; and huu sii
Case No. D2024-5167

1. The Parties

The Complainant is Ernsting's family GmbH & Co. KG, Germany, represented by pm.legal, Germany.

The Respondents are Marco A Little, United States of America ("United States"); cfcew fgwq, Australia; dgdsgdss sdfgdgffd, 45456456, China; asdas asd, 12, United States; Dew Sich, United States; Marissa Pinkham, Marissa G Pinkham, Uruguay; eee qeqe, dasdhuighjbvbjhbjb, China; 士大夫 阿斯顿, United States; Pranvera Grislin, China; Geneviève DEMANGE, United States; an L, United States; Alison Bares, France; Il sss, Slovakia; asd asd, Réunion, France; 何 煌辉, China; Lewis Mackay, United Kingdom; zhang snge, China; 林杰 (Jie Lin), China; zhang san, China; Anna Vancini Vancini, United States; chen tengyu, China; K KKK, China; shi sa, China; zhang san, China; zhang snge, China; zhang san, China; xiao lin, China; Agim Mulakaj, United States; and huu sii, China.

2. The Domain Names and Registrars

The disputed domain names <ernstingsfamilyoutlet-eu.shop> and <ernstingsfamily-vip.shop> are registered with NameSilo, LLC.

The disputed domain names <ernstingsfamily-de.shop>, <ernstingsfamily-es.shop>, <ernstings-family-outlet.shop>, and <ernstings-family-sale.shop> are registered with NameCheap, Inc.

The disputed domain name <ernstings-family.store> is registered with Gname.com Pte. Ltd.

The disputed domain names <ernstings-familys.shop>, <ernstingsfamily.shop>, <ernstingsfamilydeal.shop>, <ernstingsfamilyoutlets.shop>, <ernstingsfamilyes.shop>, <ernstingsfamilyde-sale.shop>, <de-ernstingsfamily.shop>, <ernsting-family.shop>, <ernstingsfamily-ok.shop>, <ernstings-familys.store>, and <ernstingsfamily.baby> are registered with Dynadot Inc.

The disputed domain name <ernstingsfamilys.net> is registered with Gransy, s.r.o. d/b/a subreg.cz.

The disputed domain names <ernstingsfamilyee.shop> and <ernstingsfamily-se.shop> are registered with PDR Ltd. d/b/a PublicDomainRegistry.com.

The disputed domain name <ernstings-family-de.shop> is registered with Chengdu West Dimension Digital Technology Co., Ltd.

The disputed domain names <ernstingfamily.shop>, <ernstingsfamily-outlets.shop>, <ernstingsfamily-outlet.shop>, <ernstingsfamily-sell.shop>, <ernstingsfamily-sale.shop>, <ernsting-sfamily.shop>, <ernstingfamilydeal.shop>, <ernstingsfamily-ee.shop>, <ernstings-familyy.shop>, <ernstingsfamilyoutlet.shop>, <ernstingsfamilys.shop>, and <ernstingsfamilyo.shop> are registered with Web Commerce Communications Limited dba WebNic.cc (collectively, the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on December 16, 2024. On December 17, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On December 17, 18, 19, and 20, 2024, the Registrar transmitted by email to the Center its verification responses disclosing registrant and contact information for the disputed domain names which differed from the named Respondents and contact information in the Complaint.

The Center sent an email communication to the Complainant on December 23, 2024 with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrar, requesting the 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 and/or that all domain names are under common control. The Complainant filed an amended Complaint in English on December 27, 2024.

On December 23, 2024, the Center informed the Parties in Chinese and English, that the language of the Registration Agreement for the disputed domain names <ernstings-family.store> and <ernstings-family-de.shop> is Chinese. On December 27, 2024, the Complainant requested English to be the language of the proceeding. The Respondents did not submit any comment on the 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 the Respondents in English and Chinese of the Complaint, and the proceedings commenced on January 14, 2025. In accordance with the Rules, paragraph 5, the due date for Response was February 3, 2025. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on February 4, 2025.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on February 7, 2025. 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 is a German textile retailer that offers clothing with a focus on women's and children's fashion. The Complainant was founded in 1967. Today, the Complainant's group of companies has 1,925 stores in Germany and Austria and more than 12,500 employees. In the 2023/2024 financial year, the Complainant generated sales of EUR 1,465 billion. The Complainant also operates an online store and a mobile shopping app.

The Complainant owns a portfolio of trademark registrations for its ERNSTING'S FAMILY marks, including, but not limited to the following registrations: German Trademark Registration No. 30606757 for ERNSTING'S FAMILY, registered on June 9, 2006 for various services in class 35; and European Trademark Registration No. 015902273 for the ERNSTING'S FAMILY logo, registered on April 13, 2017 for various goods in classes 24, 25, 26, and 28. The Panel also notes that the Complainant has a strong online presence and owns a portfolio of domain names incorporating the ERNSTING'S FAMILY marks, such as for instance <ernstings-family.de>.

The disputed domain names were all registered between March 1, 2024 and December 14, 2024. The Complainant provides evidence that most of the disputed domain names were used in connection with identical or very similar copycat e-shops that prominently displayed the Complainant's ERNSTING'S FAMILY logo trademark, with only five of the disputed domain names not having been used, namely <ernstingsfamilys.net>, <ernstingsfamily-es.shop>, <ernstingsfamily-de.shop>, <ernstingsfamilyoutlet-eu.shop>, and <ernstingsfamilyee.shop>.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain names.

Notably, the Complainant contends that the disputed domain names are confusingly similar to its registered trademarks, since the disputed domain names incorporate the Complainant's distinctive trademarks ERNSTING'S FAMILY or variations thereon. The Complainant contends that the Respondents are not licensees of the Complainant, nor are the Respondents otherwise entitled or authorized to use the Complainant's trademarks for any purpose. The Complainant further states that it has not given the Respondents permission to use the mark and that the Respondents are not commonly known under the disputed domain name. Furthermore, the Complainant argues that the Respondents have merely registered the disputed domain names to host unlawful web-shops prominently displaying its logo mark and that such use indicates that the Respondents are using the disputed domain name in order to make a commercial gain by abusing the reputation of the Complainant's marks. The Complainant adds that the Respondents' use of the disputed domain names is qualified to disrupt the Complainant's business and that it is capable of reducing the number of visitors to the Complainant's website, may adversely affect the Complainant's business and therefore constitutes bad faith. The Complainant essentially argues that in these circumstances, the Respondents have no rights or legitimate interests in the disputed domain names and the registration and use of the disputed domain names are made in bad faith.

B. Respondents

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

6. Discussion and Findings

6.1. Preliminary Issues

A. First Preliminary Issue: Consolidation - Multiple Respondents

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

The disputed domain name registrants did not comment on the Complainant's 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 the 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 of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2.

As regards common control, the Panel notes that all of the disputed domain names were registered within a relatively short period of time, namely between March 1, 2024 and December 14, 2024; most of the disputed domain names were used in connection with identical or very similar copycat e-shops that prominently displayed the Complainant's well-known trademark and thereby clearly showed common control, with only five of the disputed domain names not having been used (namely <ernstingsfamilys.net>, <ernstingsfamily-es.shop>, <ernstingsfamily-de.shop>, <ernstingsfamilyoutlet-eu.shop>, and <ernstingsfamilyee.shop>); all of the disputed domain names have been registered using a very similar naming system whereby all of them contain the well-known mark ERNSTING'S FAMILY or a typographical variation thereof, sometimes combined with purported additional geographical identifiers such as "de", "es", or "eu" or other dictionary terms such as "sale" or "deal", thereby showing a clear pattern for all of the disputed domain names; most of the information provided for the disputed domain name registrants is obviously false (e.g., including the use of clearly inexistent names consisting of apparently random combinations of letters or numbers), thereby also showing a pattern; and none of the disputed domain name registrants have objected to the Complainant's request for consolidation or even cooperated in any way in this proceeding.

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 "the Respondent") in a single proceeding.

B. Second Preliminary Issue: Language of the Proceeding

The language of the Registration Agreement for the disputed domain names <ernstings-family.store> and <ernstings-family-de.shop> 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 and amended Complaint were filed in English and the Complainant requests that the language of the proceeding be English for several reasons, including, notably, the fact that the disputed domain names were registered in ASCII characters and include the common English word “family”; the fact that the disputed domain names in question have been used in connection with similar content as most of the other the domain names which all have been registered through English speaking registrars and the website of which contains the English notice “The website is under maintenance”.

The 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).

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. Findings on the Merits

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 the Complainant’s trademark and the disputed domain names. [WIPO Overview 3.0](#), section 1.7.

The 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 mark is easily recognizable within all of the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Respondent has not rebutted the 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.

Moreover, upon review of the facts and evidence submitted, the Panel notes that all disputed domain names apart from <ernstingsfamilys.net>, <ernstingsfamily-es.shop>, <ernstingsfamily-de.shop>, <ernstingsfamilyoutlet-eu.shop>, and <ernstingsfamilyee.shop> directed to active web-shop pages (which, as the Complainant states, may at some point have been only accessible via mobile phones, but that does not change the current Panel assessment), which also prominently displayed the Complainant's ERNSTING'S FAMILY logo trademark. The Panel also notes that there are no elements in this case that point to the Respondent having made any reasonable and demonstrable preparations to use the disputed domain names in connection with a bona fide offering of goods or services. In the Panel's view, these elements show that the Respondent's intention was not to make any use of the disputed domain names as a bona fide provider of goods or services, or to make legitimate noncommercial use or fair use of the disputed domain names. Instead, it shows the Respondent's clear intention to mislead and divert Internet users for commercial gain to such web-shop pages by taking unfair advantage of the goodwill and reputation of the Complainant's ERNSTING'S FAMILY marks.

As to the disputed domain names <ernstingsfamilys.net>, <ernstingsfamily-es.shop>, <ernstingsfamily-de.shop>, <ernstingsfamilyoutlet-eu.shop>, and <ernstingsfamilyee.shop>, the Complainant provides evidence that these disputed domain names directed to inactive webpages. In this regard, the Panel finds that holding a domain name passively, without making any use of it, also does not confer any rights or legitimate interests in the disputed domain name on the Respondent under the circumstances of this case (see in this regard earlier UDRP decisions such as *Bollore SE v. 赵竹飞 (Zhao Zhu Fei)*, WIPO Case No. [D2020-0691](#); and *Vente-Privee.Com and Vente-Privee.com IP S.à.r.l. v. 崔郡 (jun cui)*, WIPO Case No. [D2021-1685](#)).

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 the Respondent has registered the disputed domain names which are confusingly similar to the Complainant's distinctive ERNSTING'S FAMILY marks, which the Panel accepts are well-known marks, based on their intensive and wide-spread use, notably in jurisdictions such as Germany and Austria. Furthermore, the Panel also notes that the Complainant's trademarks were registered years before the registration date of the disputed domain names. The Panel deduces from these elements that the Respondent knew, or at least should have known, of the existence of the Complainant's trademarks at the time of registering the disputed domain names. This finding has furthermore been factually confirmed by the fact that the Respondent prominently used the Complainant's logo marks on the web-shops to which most of the disputed domain names directed before they were taken down. In the Panel's view, these elements indicate bad faith on the part of the Respondent, and the Panel therefore finds that it has been demonstrated that the Respondent registered 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.

Particularly, the Complainant provides evidence that most of the disputed domain names directed to active web-shop pages which also prominently displayed the Complainant's ERNSTING'S FAMILY logo trademark. The Panel concludes that such use constitutes an intentional attempt to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's marks as to the source, affiliation, or endorsement of the disputed domain names. This constitutes direct evidence of the Respondent's bad faith under paragraph 4(b)(iv) of the Policy.

As to the disputed domain names <ernstingsfamilys.net>, <ernstingsfamily-es.shop>, <ernstingsfamily-de.shop>, <ernstingsfamilyoutlet-eu.shop>, and <ernstingsfamilyee.shop>, these disputed domain names directed to inactive webpages. In this regard, the Panel refers to the settled view of panels applying the Policy which have found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the strong reputation of the Complainant’s trademarks, the composition of these disputed domain names incorporating the Complainant’s marks, and the unlikelihood of any good faith use of these disputed domain names by the Respondent, and finds that in the circumstances of this case the current passive holding of these disputed domain names does not prevent a finding of bad faith under 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 names <de-ernstingsfamily.shop>, <ernstingfamilydeal.shop>, <ernsting-family.shop>, <ernstingfamily.shop>, <ernstingsfamily.baby>, <ernstingsfamilydeal.shop>, <ernstingsfamilyde-sale.shop>, <ernstings-family-de.shop>, <ernstingsfamily-de.shop>, <ernstingsfamily-ee.shop>, <ernstingsfamilyee.shop>, <ernstingsfamily-es.shop>, <ernstingsfamilies.shop>, <ernstingsfamily-ok.shop>, <ernstingsfamilyo.shop>, <ernstingsfamilyoutlet-eu.shop>, <ernstings-family-outlet.shop>, <ernstingsfamily-outlet.shop>, <ernstingsfamilyoutlet.shop>, <ernstingsfamily-outlets.shop>, <ernstingsfamilyoutlets.shop>, <ernstings-family-sale.shop>, <ernstingsfamily-sale.shop>, <ernstingsfamily-sell.shop>, <ernstingsfamily-se.shop>, <ernsting-sfamily.shop>, <ernstingsfamily.shop>, <ernstingsfamilys.net>, <ernstings-familys.shop>, <ernstingsfamilys.shop>, <ernstings-familys.store>, <ernstings-family.store>, <ernstingsfamily-vip.shop>, and <ernstings-familyy.shop> be transferred to the Complainant.

/Deanna Wong Wai Man/

Deanna Wong Wai Man

Sole Panelist

Date: February 18, 2025