

ADMINISTRATIVE PANEL DECISION

Thrive Causemetics, Inc. v. 张青 (Qing Zhang)
Case No. DCC2024-0005

1. The Parties

The Complainant is Thrive Causemetics, Inc., United States of America (“United States”), represented by Frost Brown Todd LLC, United States.

The Respondent is 张青 (Qing Zhang), China.

2. The Domain Name and Registrar

The disputed domain name <thrivecosmeticsusa.cc> 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 5, 2024. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 6, 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. On the same day, the Center sent an email communication to the Complainant, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint in English on March 11, 2024.

On March 6, 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 11, 2024, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any 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 the Respondent of the Complaint in English and in Chinese, and the proceedings commenced on March 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 1, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 2, 2024.

The Center appointed Matthew Kennedy as the sole panelist in this matter on April 10, 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

The Complainant is a direct-to-consumer cosmetics brand with a focus on philanthropy. It focuses on 100% vegan and cruelty-free cosmetics products. It holds United States trademark registration number 6988219 for THRIVE CAUSEMETICS, registered on February 28, 2023, specifying goods and services in classes 3, 21, and 35. That trademark registration is current. The Complainant has also registered the domain name <thrivecausemetics.com> that it uses in connection with a website where it provides information about its activities and offers its cosmetic products for sale. The website displays a "thrive causemetics" logo (referred to below as the "Complainant's logo").

The Respondent is an individual resident in China.

The disputed domain name was registered on January 16, 2024. According to evidence presented by the Complainant, the disputed domain name formerly resolved to a website in English that displayed the Complainant's logo and photographs of models and products from the Complainant's website. The Respondent's website purportedly offered these cosmetics products for sale. The page headers read "thrive causemetics" (as spelt in the mark). The copyright notice claimed rights in the name of "Thrivecosmeticsusa Official" (as spelt in the disputed domain name). Prices were displayed in USD. After the Complainant took takedown action, the disputed domain name ceased to resolve to any active website.

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 name.

Notably, the Complainant contends that the disputed domain name is confusingly similar to its THRIVE CAUSEMETICS mark. The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is neither a licensee nor an authorized reseller of the Complainant's goods. The Respondent is not affiliated with the Complainant in any way. The disputed domain name was registered and is being used in bad faith. The Respondent has registered and is using the disputed domain name in bad faith to benefit from misdirected traffic in search of information and options to purchase the Complainant's legitimate goods.

B. Respondent

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

6. Discussion and Findings

6.1 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 and amended Complaint were filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that the disputed domain name contains English words and the content of the associated website is in English, which suggests that the Respondent is more than capable of understanding that language, whereas translation of the Complaint would cause potential unfairness and unwarranted delay.

The Respondent did not make any specific submissions with respect to the language of the proceeding or display any interest in otherwise participating in this proceeding, despite the Center having sent two emails regarding the language of the proceeding and the notification of the Complaint in both Chinese and English.

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[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 Substantive Issues

Paragraph 4(a) of the Policy provides that a complainant must prove 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

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 name. See [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of the THRIVE CAUSEMETICS trademark for the purposes of the Policy. See [WIPO Overview 3.0](#), section 1.2.1.

The disputed domain name reproduces the trademark but with the second term ("causemetics") spelt as the dictionary word "cosmetics". This variation in the spelling of the trademark makes little or no difference to pronunciation (depending on one's accent) and relatively little difference to its visual appearance. The disputed domain name also contains the geographical term "usa" but this does not prevent a finding of confusing similarity as the disputed domain name contains sufficient recognizable aspects of the mark. The only other element in the disputed domain name is the country or territory code Top-Level Domain ("ccTLD") of the Cocos (Keeling) Islands (".cc") which, as a standard requirement of domain name registration, may be

disregarded in the assessment of confusing similarity. Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's THRIVE CAUSEMETICS mark for the purposes of the Policy. See [WIPO Overview 3.0](#), sections 1.7, 1.8, 1.9, and 1.11.

Therefore, 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. See [WIPO Overview 3.0](#), section 2.1.

In the present case, the disputed domain name formerly resolved to an online store that was presented as if it were operated by the Complainant. However, the Complainant submits that the Respondent is not affiliated with it in any way, and that the Respondent is neither a licensee nor an authorized reseller of its goods. At the present time, the disputed domain name does not resolve to any active website. In view of these circumstances, the Panel does not consider that the Respondent is using the disputed domain name in connection with a bona fide offering of goods or services, nor that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

Further, the Registrar has verified that the Respondent's name is 张青 (Qing Zhang), not the disputed domain name. Nothing in the record indicates that the Respondent has been commonly known by the disputed domain name.

Lastly, the Panel notes that the disputed domain name incorporates the dictionary word "cosmetics", which describes the type of goods offered on the Respondent's former website. However, that word appears in the disputed domain name after the word "thrive", resulting in a combination that is aurally identical or near-identical to the Complainant's trademark. The associated website gives the false impression that the disputed domain name resolves to a website operated by the Complainant. Accordingly, these circumstances do not constitute evidence that the Respondent has any rights or legitimate interests in respect of the disputed domain name.

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 name. 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 name such as those enumerated in the Policy or otherwise.

Based on the 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. The fourth of these 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.”

In the present case, the disputed domain name was registered in 2024, after the registration of the Complainant’s THRIVE CAUSEMETICS trademark. The disputed domain name contains the combination “thrivecosmetics” which is aurally identical or near-identical to the Complainant’s trademark and has no apparent meaning other than as a variation in the spelling of the Complainant’s mark. The meaning is not altered by the addition of the geographical reference “usa” and the ccTLD extension. The website associated with the disputed domain name displays the Complainant’s logo and displays photographs from the Complainant’s website. In these circumstances, the Panel finds that the Respondent registered the disputed domain name with the Complainant and its THRIVE CAUSEMETICS mark in mind.

As regards use, the disputed domain name formerly resolved to a website that was falsely presented as an online store operated by the Complainant, offering for sale what purported to be the Complainant’s products. The disputed domain name operated by attempting to attract Internet users searching for the Respondent or its products and diverting them to the Respondent’s website. This use was intentional and for commercial gain. Accordingly, the Panel finds that these circumstances fall within the terms of paragraph 4(b)(iv) of the Policy.

The Panel notes that the disputed domain name has not resolved to any active website since the Complainant took takedown action. This change in use does not alter the Panel’s conclusion, as the non-use of the disputed domain name does not prevent a finding of bad faith under the passive holding doctrine given the totality of the circumstances in this case. See [WIPO Overview 3.0](#), section 3.3.

Therefore, 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 name <thrivecosmeticsusa.cc> be transferred to the Complainant.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: April 23, 2024