

## ADMINISTRATIVE PANEL DECISION

Hershey Chocolate & Confectionery LLC v. 吴小鹏 (xiaopeng wu)  
Case No. D2025-0116

### 1. The Parties

The Complainant is Hershey Chocolate & Confectionery LLC, United States of America (“United States”), represented by Arnold & Porter Kaye Scholer LLP, United States.

The Respondent is 吴小鹏 (xiaopeng wu), China.

### 2. The Domain Name and Registrar

The disputed domain name <hersheyscn.com> is registered with West263 International Limited (the “Registrar”).

### 3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on January 13, 2025. On January 14, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 15, 2025, 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 the Complainant on January 15, 2025, 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 on January 16, 2025.

On January 15, 2025, the Center informed the parties in Chinese and English, that the language of the registration agreement for the disputed domain name is Chinese. On January 16, 2025, the Complainant confirmed its request that English be the language of the proceeding. The Respondent 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 Respondent of the Complaint, and the proceedings commenced on January 21, 2025. In accordance with the Rules, paragraph 5, the due date for Response was February 10, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 12, 2025.

The Center appointed James Wang as the sole panelist in this matter on February 14, 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 major manufacturer and seller of chocolate and confectionery products and snacks.

The Complainant claims that its HERSEY'S trademark has been used in connection with candy, chocolate, and confectionery products since 1894.

The Complainant and its affiliates own numerous trademark registrations worldwide incorporating HERSEY'S, including but not limited to:

- United States Reg. No. 54041, registered on June 19, 1906; and
- China Reg. No. 5447244, registered on June 7, 2009.

The disputed domain name was registered on August 7, 2024. The disputed domain name resolved to a pornographic website featuring sexual video content, and also containing solicitations for paid advertising placement.

#### **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 the trademark in which the Complainant has rights. The Respondent has no rights or legitimate interests in respect of the disputed domain name. The disputed domain name was registered and is being used in bad faith.

##### **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 was filed in English. The Complainant requested that the language of the proceeding be English.

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 4.5.1).

Considering the Center has sent case-related communications to the Parties in both Chinese and English, including communications regarding the language of the proceeding, and thereby has given the Respondent an opportunity to comment on or to oppose the Complainant's request and arguments in Chinese or English, and considering the Respondent's default and lack of reaction after having been given a fair chance to comment or oppose, together with the fact that the disputed domain name consists of only Latin letters instead of Chinese characters, the Panel finds it would not be unfair to proceed in English as requested by the Complainant.

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 Elements**

According to paragraph 4(a) of the Policy, the Complainant must prove that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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**

The Complainant has provided evidence that the Complainant and its affiliates own numerous trademark registrations worldwide incorporating HERSHEY'S.

The applicable Top-Level Domain ("TLD") in a domain name is viewed as a standard registration requirement and as such is typically disregarded under the first element confusing similarity test. Therefore, the TLD ".com" shall be disregarded under the confusing similarity test in this case. See [WIPO Overview 3.0](#), section 1.11.1.

The disputed domain name incorporates the entirety of the Complainant's HERSHEY'S trademark, except the apostrophe. As the HERSHEY'S trademark is recognizable within the disputed domain name, the disputed domain name is confusingly similar to the Complainant's trademark. The addition of "cn" into the disputed domain name does not prevent a finding of confusing similarity. See [WIPO Overview 3.0](#), sections 1.7 and 1.8.

The Panel finds the first element of the Policy has been established.

### **B. Rights or Legitimate Interests**

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

According to the Complaint, the Complainant is not affiliated with the Respondent and has never authorized the Respondent to register or use the disputed domain name or the Complainant's trademarks. There is no evidence that the Respondent has used or is preparing to use the disputed domain name in connection with a bona fide offering of goods or services or has made or is making a legitimate noncommercial or fair use of the disputed domain name. There is no evidence that the Respondent has been commonly known by the disputed domain name.

The Panel finds that the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests, and the Respondent failed to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

The Panel finds the second element of the Policy has been established.

### **C. Registered and Used in Bad Faith**

Given the long history and international fame of the Complainant's HERSHEY'S trademark, it would be inconceivable that the Respondent registered the disputed domain name without knowledge of the Complainant's trademark at the time of the registration. The Panel finds that the disputed domain name was registered in bad faith.

The Panel noticed that the disputed domain name resolved to a pornographic website featuring sexual video content, and also containing solicitations for paid advertising placement. This indicates the Respondent's intent to profit in some fashion from or otherwise exploit the Complainant's trademark. In addition, the linking of the disputed domain name with a pornographic website might result in the tarnishing of the Complainant's trademark.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel therefore finds that the Complainant has established the third element 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 disputed domain name <hersheyscn.com> be transferred to the Complainant.

/James Wang/  
**James Wang**  
Sole Panelist  
Date: February 28, 2025