

ADMINISTRATIVE PANEL DECISION

Modes Moose Inc. v. 颜文君 (Yan Wen Jun)
Case No. D2022-0128

1. The Parties

The Complainant is Modes Moose Inc., Canada, represented by Demys Limited, United Kingdom.

The Respondent is 颜文君 (Yan Wen Jun), China.

2. The Domain Names and Registrar

The disputed domain names <mooseknucklescanada.shop> and <mooseknuckles.shop> (the “Disputed Domain Names”) are 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 January 14, 2022. On January 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Names. On January 17, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on January 17, 2022, 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 January 18, 2022.

On January 17, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On January 17, 2022, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not 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 in English and Chinese of the Complaint, and the proceedings commenced on January 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 17, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 18, 2022.

The Center appointed Kar Liang Soh as the sole panelist in this matter on February 23, 2022. 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 Canadian manufacturer of luxury outerwear, sportswear, and accessories. The Complainant has been selling their products under the MOOSE KNUCKLES trademark since 2009 and has expanded its offices to Montreal, New York, Milan, and Shanghai. The Complainant's products are represented by celebrity brand ambassadors and has enjoyed publicity on fashion publications like Esquire, Fashion Network, and Women's Wear Daily ("WWD") in recent years.

The Complainant has successfully registered the MOOSE KNUCKLES trademark around the world. These registrations include:

| Jurisdiction | Trademark No. | Registration Date |
|---------------------|----------------------|--------------------------|
| European Union | 008979254 | September 20, 2010 |
| China | 8205296 | April 21, 2011 |
| International | 1530752 | March 16, 2020 |

The Complainant operates a website at "www.mooseknucklescanada.com". Google and Bing searches for the term "moose knuckles" result in hits that refer to the Complainant and its products, rather than in the context of any generic or descriptive use.

The Respondent appears to be an individual in China. Very little information about the Respondent is available beyond the Registrar's reply to the Center's request for verification.

The Disputed Domain Names were both registered on March 21, 2021. On or before January 14, 2022 (the date of the Complaint), the Disputed Domain Names redirected to webpages at "www.sedo.com" which offered them for sale each at USD 399. By January 28, 2022, the offer price for the Disputed Domain Names at "www.sedo.com" had dropped to USD 199.

5. Parties' Contentions

A. Complainant

The Complainant contends that:

a) The Disputed Domain Names are identical or confusingly similar to the MOOSE KNUCKLES trademark. The earliest registrations of the MOOSE KNUCKLES trademark pre-date the registration of the Disputed Domain Names by almost 11 years. The addition of the word "Canada" to the Disputed Domain Name <mooseknucklescanada.shop> does nothing to distinguish it from the MOOSE KNUCKLES trademark, which remain the dominant element in <mooseknucklescanada.shop>. The word "Canada" is a generic geographical descriptor. The Disputed Domain Name <mooseknuckles.shop> incorporates the MOOSE KNUCKLES trademark in its entirety. The Top-Level Domain ("gTLD") ".shop" is wholly generic in that it is required only for technical reasons;

b) The Respondent has no rights or legitimate interests in the Disputed Domain Names. The Complainant has found no evidence that the Respondent is commonly known by the Disputed Domain Names. The Respondent is not a licensee of the Complainant and has not received any permission or consent from the Complainant to use its registered or unregistered marks. The Complainant has found no

evidence that the Respondent owns any trademark registrations incorporating the term “moose knuckles” or “moose knuckles canada”, or has ever traded as such; and

c) The Disputed Domain Names were registered and are being used in bad faith. The term “moose knuckles” is infrequently used as an English-language slang expression. The Complainant is a well known and international clothing brand. It is more likely than not that the Respondent had the Complainant firmly in mind when registering the Disputed Domain Names. The Respondent acquired the Disputed Domain Names primarily for the purpose of selling, renting, or otherwise transferring the Disputed Domain Names to the Complainant or a competitor of the Complainant, for valuable consideration in excess of the Respondent’s documented out-of-pocket costs directly related to the Disputed Domain Names.

B. Respondent

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

6. Discussion and Findings

6.1 Language of Proceeding

The default language of the proceeding is Chinese but the Complainant has requested that English should be adopted as the language of the proceeding. The Panel has the discretion under paragraph 11 of the Rules to determine the language of the proceeding having regard to the circumstances. Having reviewed the circumstances, the Panel determines that the language of the proceeding shall be English. In doing so, the Panel has taken into consideration the following:

- a) the Disputed Domain Names incorporate meaningful English words and they redirect to an English language website at “www.sedo.com”, strongly suggesting that the Respondent is able to understand English;
- b) the Complaint has already been submitted in English;
- c) the Complainant has highlighted that it will be put to great expense and inconvenience to translate the submissions from English to Chinese, and the Panel sees no reason to doubt this concern;
- d) the Respondent, not having filed a response, has chosen not to contest the proceeding. The Respondent has also not objected to the Complainant’s language request;
- e) the Panel is bilingual and is comfortable with handling submissions in both Chinese and English should there be a need to do so; and
- f) insisting that Chinese should be the language of the proceeding would not result in any procedural efficacy but in fact cause unnecessary inconvenience and delay to the proceeding.

6.2 Discussion

Paragraph 4(a) of the Policy requires the Complainant must establish the following to succeed in this proceeding:

- (i) the Disputed Domain Names are 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 Names; and
- (iii) the Disputed Domain Names were registered and are being used in bad faith.

A. Identical or Confusingly Similar

On the basis of the trademark registrations for the MOOSE KNUCKLES trademark, the Panel accepts that the Complainant has rights in the MOOSE KNUCKLES trademark. The trademark registrations for the MOOSE KNUCKLES trademark pre-date the registration of the Disputed Domain Names. It is obvious that both Disputed Domain Names incorporate the MOOSE KNUCKLES trademark in its entirety. There is no question that the Disputed Domain Name <mooseknuckles.shop> is identical to the Complainant's MOOSE KNUCKLES trademark. The Panel agrees with the Complainant that the word "Canada" is a generic geographical descriptor and its presence in the Disputed Domain Name <mooseknucklescanada.shop> does not prevent a finding of confusing similarity with the MOOSE KNUCKLES trademark. The MOOSE KNUCKLES trademark remains a prominent and dominant element in <mooseknucklescanada.shop>. The gTLD ".shop" is a standard registration requirement and it is a consensus of past UDRP panels to disregard the gTLD when comparing domain names with relevant trademarks (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.11.1). In any event, the Panel is of the view that the gTLD does not affect the dominance of the MOOSE KNUCKLES trademark in the Disputed Domain Names. As such, the Panel holds that the Disputed Domain Name <mooseknuckles.shop> is identical to the Complainant's MOOSE KNUCKLES trademark, and the Disputed Domain Name <mooseknucklescanada.shop> is confusingly similar to the Complainant's MOOSE KNUCKLES trademark. The first limb of paragraph 4(a) of the Policy is thereby established.

B. Rights or Legitimate Interests

There is no evidence before the Panel that even remotely suggests that the Respondent is commonly known by any of the Disputed Domain Names, holds any trademark rights to the term "moose knuckles" or "moose knuckles canada", or has ever traded under these terms. On the other hand, the Complainant, which holds rights for the MOOSE KNUCKLES trademark including in China where the Respondent is based, has denied granting any licence or permission to the Respondent to use the MOOSE KNUCKLES trademark. There is nothing before the Panel to suggest that the Respondent is making any *bona fide* or legitimate noncommercial or fair use of the Disputed Domain Names. Offering them for sale certainly does not qualify as such. The Panel is satisfied that the Complainant has shown a *prima facie* case that the Respondent does not have any rights or legitimate interests in the Disputed Domain Names. Since no Response was filed, this *prima facie* case is not rebutted and the second limb of paragraph 4(a) of the Policy is accordingly made out on the facts.

C. Registered and Used in Bad Faith

The evidence before the Panel shows clearly that the Respondent was offering to sell the Disputed Domain Names at USD 399, a price clearly in excess of typical out-of-pocket costs of registering a domain name. Ten days after the date of the Complaint, the price had dropped to USD 199, suggesting that the Complaint might have had some bearing on the price drop. Even so, it remains higher than the typical cost of registering a domain name.

The term "moose knuckles" has a clear literal meaning (that is, an anatomical part of a particular animal). When a term such as this is used to refer to something other than its literal meaning, the reference becomes fanciful and unusual. The Complainant has built a luxury clothing business centered around this term as a trademark for close to 11 years. The Google and Bing search results provided by the Complainant demonstrate that the term "moose knuckles" is popularly recognized as a trademark associated with the Complainant. The Panel resonates with the Complainant's contention that the Respondent must have had the Complainant or the MOOSE KNUCKLES trademark in mind when registering the Disputed Domain Names.

Paragraph 4(b)(i) of the Policy describes an example of bad faith registration and use within the meaning of the 3rd limb of paragraph 4(a) of the Policy:

“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;”

The Complainant has alleged forcefully that the Respondent registered the Disputed Domain Names in the manner of bad faith registration and use illustrated by paragraph 4(b)(i) of the Policy. Despite receiving such serious allegations, the Respondent has chosen to remain inexplicably silent.

Having regard to the circumstances, in particular the actual offer for sale of the Disputed Domain Names in excess of out-of-pocket costs of registering them, and the Respondent’s likely knowledge of the Complainant or the MOOSE KNUCKLES trademark when registering the Disputed Domain Names, the Panel is satisfied that the Respondent must have registered the Disputed Domain Names primarily for the purpose of selling them in the manner outlined in paragraph 4(b)(i) of the Policy. The Panel accordingly finds the third limb of paragraph 4(a) established on the facts.

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 <mooseknucklescanada.shop> and <mooseknuckles.shop> be transferred to the Complainant.

/Kar Liang Soh/

Kar Liang Soh

Sole Panelist

Date: March 18, 2022