

ADMINISTRATIVE PANEL DECISION

Winnebago Industries, Inc. v. Johnson Zhang Case No. D2022-2081

1. The Parties

- 1.1 The Complainant is Winnebago Industries, Inc., United States of America, represented by Faegre Drinker Biddle & Reath, United States of America (“United States”).
- 1.2 The Respondent is Johnson Zhang, Singapore.

2. The Domain Name and Registrar

- 2.1 The disputed domain name <usedwinnebagoera.com> (the “Domain Name”) is registered with Realtime Register B.V. (the “Registrar”).

3. Procedural History

- 3.1 The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 8, 2022. On June 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On June 10, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.
- 3.2 The Center verified that the 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”).
- 3.3 In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on June 13, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 3, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 4, 2022.
- 3.4 The Center appointed Matthew S. Harris as the sole panelist in this matter on July 19, 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

- 4.1 The Complainant is a corporation organized under the laws of the state of Minnesota, in the United States. The business was founded in the 1960s. Although it manufactures a range of outdoor lifestyle products under the “Winnebago” name, it is particularly well known (both in the United States and elsewhere) as a business that manufactures and deals in recreational vehicles and motorhomes. The name “Winnebago” is taken from the name of a river flowing through Forest City Iowa, where the Complainant’s business originated.
- 4.2 The Complainant has named one of its models of motorhomes as the “ERA”. The “Winnebago ERA” motorhome has been marketed under that name for over ten years.
- 4.3 The Complainant is the owner of various registered trade marks in the United States that incorporate or comprise the terms “Winnebago” or “ERA”. These include:
 - (i) United States registered trade mark no 1,908,349 filed on June 27, 1994 and registered on August 1, 1995, for WINNEBAGO as a typed drawing in class 12.
 - (ii) United States registered trade mark no 5,181,591 filed on September 11, 2016 and registered on April 11, 2017, for ERA as a standard character mark in class 12.
- 4.4 The Complainant also promotes and advertises its products on websites operation from the domain names <winnebago.com> and <winnebagoind.com>. It has operated the website linked to the <winnebagoind.com> domain name since 1996 and it acquired the <winnebago.com> domain name in 2019.
- 4.5 The Domain Name was registered on February 9, 2022. It has been used since registration to redirect Internet users to pornographic content on a website operating from the domain name <semo.bar>.
- 4.6 The registrant of the Domain Name, and the Respondent in these proceedings, appears to be an individual located in Singapore.
- 4.7 The Domain Name was initially included among a number of domain names the subject of WIPO Case No. [D2022-1911](#). At the time the complaint in those proceedings was filed, the publicly available Whois details for the Domain Name redacted the name and contact details of the registrant. Following the receipt of registrar verification information from the registrar in that case, the complaint in those proceedings was amended to exclude the Domain Name, and the present proceedings were commenced at about that time or shortly thereafter.

5. Parties’ Contentions

A. Complainant

- 5.1 The Complainant describes its business and marks and contends that the WINNEBAGO name and mark is well known “without limitation throughout the United States of America and in the Asia Pacific region”. The Complainant also describes how the Domain Name has been used since registration.
- 5.2 The Complainant contends that the Domain Name wholly incorporates its WINNEBAGO and ERA marks and is confusingly similar to those marks.
- 5.3 The Complainant claims that the Domain Name has been registered to profit from misdirected traffic “in search for Winnebago”. The Complainant maintains that the Respondent has no right or legitimate interest in the Domain Name as a result of such use. Further, it claims that the way that the Domain Name has been used fails to satisfy the requirements for demonstrating a legitimate interest in a domain name that incorporates a trade mark of another set out in *Oki Data Americas, Inc v. ASD, Inc.*,

WIPO Case No. [D2001-0903](#) (the “*Ok! Data* decision”).

- 5.4 The Complainant contends that it is highly likely that the Respondent knew of the Complainant's marks at the time of registering the Domain Name and that there is “a *prima facie* presumption that Respondent registered the ... Domain Name to attract Internet users to [the] Respondent's websites for commercial gain by creating confusion with the [Complainant's marks].” Further it is claimed that the way in which the Domain Name has been used falls within the scope of paragraph 4(b)(iv) of the Policy. The linkage to pornographic content is also said to demonstrate bad faith. It, therefore, maintains that the Domain Name was both registered and has been used in bad faith.

B. Respondent

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

6. Discussion and Findings

- 6.1 There are no exceptional circumstances within paragraph 5(f) of the Rules so as to prevent this Panel from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to lodge a formal Response.
- 6.2 Notwithstanding the default of the Respondent, it remains incumbent on the Complainant to make out its case in all respects set out in paragraph 4(a) of the Policy. Namely, the Complainant must prove that:
- (i) the Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights (paragraph 4(a)(i));
 - (ii) the Respondent has no rights or legitimate interests in respect of the Domain Name (paragraph 4(a)(ii)); and
 - (iii) the Domain Name has been registered and is being used in bad faith (paragraph 4(a)(iii)).
- 6.3 However, under paragraph 14(b) of the Rules, where a party does not comply with any provision of the Rules, the Panel shall “draw such inferences therefrom as it considers appropriate”.

A. Identical or Confusingly Similar

- 6.4 The Complainant has satisfied the Panel that it has registered trade marks in the United States that comprise or incorporate the terms “Winnebago” or “Era”. In order to satisfy the first element of the Policy it is usually sufficient for a complainant to show that the relevant mark is “recognizable within the disputed domain name”; as to which see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).
- 6.5 The Panel accepts that the only sensible reading of the Domain Name is as the terms “used”, “Winnebago” and “Era” in combination and the “.com” Top-Level Domain (“TLD”). As a consequence, the terms “Winnebago” and “Era” in which the Complainant has trade mark rights, are clearly recognisable in the Domain Name. The Complainant has, therefore, satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

- 6.6 For reasons that are addressed in greater detail in the context of the discussion of bad faith later on in this decision, it is clear that the Domain Name has been registered and held with knowledge of and with the intention of a deliberate association with, the Complainant's marks and business.

6.7 The Panel accepts that the Complainant's contention that the principles, set out in the *Oki Data* decision as to where they may be legitimate interests in a domain name that incorporate the trade mark of another for the purposes of selling products under that trade mark, have not been satisfied in this case. However, in the view of the Panel this case is more straightforward than this. There is no suggestion that the Domain Name has been registered and held because the Respondent has any potential legitimate association with the Complainant's products, whether "used" or otherwise. As is again addressed in greater detail in the context of the question of bad faith below, the Panel is satisfied that the Domain Name has been registered and held with the intention of taking some form of unfair advantage of the reputation of the Complainant's marks and business, and most likely with a view to commercially benefiting by attracting Internet users to a pornographic website by creating confusion with the Complainant's marks. Not only is there no right or legitimate interest in holding a domain name for such a purpose, but such activity constitutes positive evidence that no such right or legitimate interest exists (see section 2.15 of the [WIPO Overview 3.0](#)).

6.8 It follows that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy

C. Registered and Used in Bad Faith

6.9 There is no credible explanation for the registration of the Domain Name other than with the knowledge of and with the intention of making a reference to the Complainant's marks and business. Not only is their unusual nature of the term "Winnebago" and the reputation of that term as a mark, but the combination of that word with the term "Era", the name of one of the Complainant's products, and the word "used", only makes sense as a reference to the Complainant products.

6.10 The Panel accepts the Complainant's contention, that the use of the Domain Name to what appears to be a third party pornographic website, falls within the scope of the examples of circumstances indicating bad faith set out at paragraph 4(b)(iv) of the Policy. It strongly suggests that the Domain Name was registered with this sort of use in mind. Even if this is not correct, it is clear evidence that the Domain Name was registered and is being held with the intention of taking some form of unfair advantage of the Complainant's mark.

6.11 That is more than sufficient for a finding of bad faith registration and use (see section 3.1 of the [WIPO Overview 3.0](#)) and the Panel is, therefore, satisfied that the Complainant has made out the requirements of paragraph 4(a)(iii) of the Policy.

7. Decision

7.1 For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name <usedwinnebagoera.com> be transferred to the Complainant.

/Matthew S. Harris/

Matthew S. Harris

Sole Panelist

Date: August 3, 2022