

ADMINISTRATIVE PANEL DECISION

Serena & Lily, Inc. v. 杨智超 (Zhi Chao Yang)
Case No. D2022-3581

1. The Parties

The Complainant is Serena & Lily, Inc., United States of America (“U.S.”), represented by RegitzMauck PLLC, U.S.

The Respondent is 杨智超 (Zhi Chao Yang), China.

2. The Domain Names and Registrar

The disputed domain names <serenaamdily.com>, <serenaannlily.com>, <serenaanslily.com>, <serenalandlily.com>, and <wwwserenaandlily.com> 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 September 27, 2022. On September 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On September 29, 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 September 30, 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 amendment to the Complaint in English on September 30, 2022.

On September 30, 2022, the Center transmitted another email communication to the Parties in English and Chinese regarding the language of the proceeding. On September 30, 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 amendment to 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”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent in Chinese and English of the Complaint, and the proceedings commenced on October 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 26, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 27, 2022.

The Center appointed Francine Tan as the sole panelist in this matter on November 1, 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, Serena & Lily, Inc., is the registered owner of the trade mark SERENA & LILY. It owns the following U.S. trade mark registrations for the SERENA & LILY trade mark:

- Registration No. 5,001,534, registered on July 19, 2016;
- Registration No. 4,382,476, registered on August 13, 2013;
- Registration No. 4,382,335, registered on August 13, 2013;
- Registration No. 4,382,515, registered on August 13, 2013;
- Registration No. 4,382,514, registered on August 13, 2013;
- Registration No. 4,382,337, registered on August 13, 2013;
- Registration No. 4,382,334, registered on August 13, 2013;
- Registration No. 4,382,333, registered on August 13, 2013;
- Registration No. 4,382,336, registered on August 13, 2013;
- Registration No. 4,363,513, registered on July 9, 2013;
- Registration No. 4,363,514, registered on July 9, 2013;
- Registration No. 4,330,828, registered on May 7, 2013; and
- Registration No. 3,241,729, registered on May 15, 2007.

The Complainant also owns and uses its website at the domain name <serenaandlily.com> to promote its products and services in relation to home furnishings.

The disputed domain names <serenaandlily.com>, <serenaannlily.com>, <serenaanslily.com>, <serenalandlily.com> and <wwwserenaandlily.com> were registered on August 29, 2022. All of the disputed domain names resolved to websites displaying Pay-Per-Click ("PPC") links to the Complainant's website and/or the Complainant's competitors' websites.

5. Parties' Contentions

A. Complainant

1. The disputed domain names are identical or confusingly similar to the Complainant's registered SERENA & LILY trade mark in which the Complainant has rights.
2. The Respondent has no rights or interests in respect of the disputed domain names.
3. The disputed domain names were registered and are being used in bad faith. The Respondent's registrations constitute cybersquatting as the Respondent is a typosquatter who registered the disputed domain names which are confusingly similar to the domain name of the Complainant's official website at "www.serenaandlily.com" (the "Complainant's Website"). The disputed domain names are intentionally designed to unlawfully redirect consumers from the Complainant's Website to the disputed domain names' parked pages which contain Google advertisements. The Google advertisements link to either the Complainant's Website or to the websites of the Complainant's competitors. The Respondent is

compensated by Google for every website visitor that originates from one of the typosquatted disputed domains and Google is compensated by the Complainant or the Complainant's competitors for every Internet user that links to their websites through the Google advertisements. As such, the Respondent is misappropriating money from the Complainant as a direct result of the registration of the disputed domain names – by indirectly charging the Complainant for Internet users who were searching for the Complainant's Website, or by charging the Complainant's competitors to divert Internet users from the Complainant's Website to their websites.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

The language of the Registration Agreements for the disputed domain names is Chinese. The Complainant requested that the language of the proceeding be English for these reasons:

- (i) The content of the parked pages of the disputed domain names is in the English language.
- (ii) The content of the click-through links that redirect to the Complainant's Website or the Complainant's competitors' websites that market competing products is in the English language.
- (iii) The Respondent appears to be a notorious cybersquatter.
- (iv) To proceed in Chinese, the Complainant would be burdened with additional translation costs.

The Respondent did not comment on the language of the proceeding.

Paragraph 11(a) of the Rules provides that:

"Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding."

The intention of paragraph 11(a) is to allow panels a measure of flexibility and discretion to consider the entire circumstances of each case, to ensure fairness between the parties, while at the same time not undermining the mandate for the proceeding to be administered in an expeditious manner. (See section 4.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").) The relevant points of consideration would include the parties' level of familiarity with the respective languages, the expenses to be incurred, the possibility of delay in the proceeding if translations are required, as well as the language of the domain names in dispute and of the resolving websites.

Having considered the relevant factors and interests of the respective Parties, the Panel determines that it would be appropriate for English be the language of the proceeding. The Panel is persuaded that the Respondent would not be prejudiced as it is probably familiar with and understands the English language, taking into account its selection of the language/script of the disputed domain names and of the parked pages. The Respondent had, moreover, been notified by the Center, in both Chinese and English language, of the commencement of the proceeding, the language of the Registration Agreement, and deadline for filing a Response. It therefore had ample opportunity to object and/or propose to submit its Response in Chinese, but it did not do so. In the absence of any objection and justification therefor by

the Respondent, the Panel does not find it procedurally efficient to have the Complainant translate the Complaint into Chinese. This would cause unnecessary delay in the proceeding.

6.2 Substantive Issues

A. Identical or Confusingly Similar

The Complainant has established it has rights in the SERENA & LILY trade mark. The disputed domain names <serenaamdilily.com>, <serenaannlily.com>, and <serenaanslily.com> each consists of a misspelled typosquatted version of the Complainant's SERENA & LILY mark (the symbol "&", written as "and", is misspelled), which does not prevent a finding of confusing similarity with the Complainant's trade mark. (See section 1.9 of the [WIPO Overview 3.0](#).) The addition of "www" prefaced in the disputed domain name <wwwserenaandlily.com> or letter "l" in the disputed domain name <serenalandlily.com> does not prevent a finding of confusing similarity as the Complainant's mark remains clearly recognizable in the disputed domain names. (See section 1.8 of the [WIPO Overview 3.0](#).) Further, it is also well established that the generic Top-Level Domain ".com" is viewed as a standard registration requirement and as such, is disregarded for the purposes of considering the issue of identity or confusing similarity.

The Panel accordingly finds that the first element of paragraph 4(a) of the Policy has been satisfied.

B. Rights or Legitimate Interests

The Panel finds that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain names. The Complainant's registrations of the SERENA & LILY trade mark, secured from as early as 2007, predate the registration date of the disputed domain names by many years. The Complainant did not license nor authorize the Respondent to use SERENA & LILY as a trade mark or in a domain name. Neither is there any evidence that the Respondent is commonly known by any of the disputed domain names. The use of the disputed domain names which incorporates the Complainant's trade mark for use in redirecting Internet traffic to the Complainant's and the Complainant's competitors' websites through PPC links does not constitute a legitimate noncommercial or fair use of the disputed domain names within the meaning of paragraph 4(c)(iii) of the Policy.

Having established a *prima facie* case, the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain names. The Respondent did not file a Response in the present case to rebut the Complainant's assertions and evidence.

In the circumstances, the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain names.

The Panel therefore finds that the second element of paragraph 4(a) of the Policy has been satisfied.

C. Registered and Used in Bad Faith

The Panel is persuaded in the circumstances of this case that the Respondent targeted the Complainant and its well-established SERENA & LILY mark. There is no other reason for the Respondent to have registered the disputed domain names, which consist of a series of misspelled typosquatted versions of the Complainant's SERENA & LILY trade mark, except for the sole purpose of riding off the reputation and goodwill therein, and creating confusion with, the Complainant's SERENA & LILY trade mark. This is all the more apparent from the fact that the Complainant owns and operates the domain name <serenaandlily.com>, which the Respondent would very likely have been aware of when it registered the variations of the disputed domain names. Moreover, there does not appear to be any plausible good faith use to which the disputed domain names, which resolve to parked pages containing PPC links to the Complainant's or the Complainant's competitors' websites, can be put.

“If ... circumstances indicate that the respondent’s intent in registering the disputed domain name was in fact to profit in some fashion from or otherwise exploit the complainant’s trademark, panels will find bad faith on the part of the respondent. While panel assessment remains fact-specific, generally speaking such circumstances, alone or together, include: (i) the respondent’s likely knowledge of the complainant’s rights, (ii) the distinctiveness of the complainant’s mark, (iii) a pattern of abusive registrations by the respondent, ... (v) threats to point or actually pointing the domain name to trademark-abusive content, ... (vii) failure of a respondent to present a credible evidence-backed rationale for registering the domain name, ... Particularly where the domain name at issue is identical or confusingly similar to a highly distinctive or famous mark, panels have tended to view with a degree of skepticism a respondent defense that the domain name was merely registered for legitimate speculation (based for example on any claimed dictionary meaning) as opposed to targeting a specific brand owner.” (See section 3.1.1 of the [WIPO Overview 3.0.](#))

The Panel finds that there has been bad faith registration and use by the Respondent in respect of all five disputed domain names. The facts and circumstances which support the finding include the following:

- (i) the high degree of distinctiveness and earlier registrations of the Complainant’s SERENA & LILY mark;
- (ii) the Respondent’s likely knowledge of the Complainant’s rights in the SERENA & LILY mark;
- (iii) the failure of the Respondent to submit a Response, or to provide any explanation or evidence showing that it has rights or legitimate interests in the disputed domain names;
- (iv) the implausibility of any good faith use to which the disputed domain names may be put; and
- (v) by registering a series of five disputed domain names containing the Complainant’s mark or variations thereof, the Respondent’s engaged in a pattern of abusive registration of domain names.

It can be surmised that the Respondent fully appreciated the value associated with the SERENA & LILY trade mark, which is why it registered the five disputed domain names which consist of misspelled versions of the Complainant’s SERENA & LILY mark and used them for parked pages with PPC links. The Panel therefore concludes that the Respondent has registered and is using the disputed domain names in bad faith.

The Panel therefore finds that the third element of paragraph 4(a) of the Policy has been satisfied.

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, <serenaamdilily.com>, <serenaannlily.com>, <serenaanslily.com>, <serenalandlily.com>, and <wwwserenaandlily.com>, be transferred to the Complainant.

/Francine Tan/

Francine Tan

Sole Panelist

Date: November 8, 2022