

ADMINISTRATIVE PANEL DECISION

Christopher Esber v. Feng Yang
Case No. D2022-3751

1. The Parties

The Complainant is Christopher Esber, Australia, represented by Yara Law, Australia.

The Respondent is Feng Yang, China.

2. The Domain Name and Registrar

The disputed domain name <christopheresbers.com> is registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 7, 2022. On October 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 10, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and its contact details.

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”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on October 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 17, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 22, 2022.

The Center appointed Fabrizio Bedarida as the sole panelist in this matter on December 2, 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 an Australian fashion designer who established his brand and business in or around 2010 in Sydney, Australia.

The Complainant's various collections of apparel, jewellery and shoes (and related goods) are available for sale directly via the Complainant's website, "www.christopheresber.com.au" ("Complainant's Website").

The Complainant's collections are also available for purchase in multiple United States of America ("United States") cities including New York, and are available for purchase from multiple third-party fashion websites and traditional bricks-and-mortar outlets around the world. Generally, the Complainant's annual revenue is in excess of AUD 3-4million per annum.

The Complainant is, *inter alia*, the owner of:

Australian trademark CHRISTOPHER ESBER registration number 1354304 registered on November 15, 2010.

International trademark CHRISTOPHER ESBER registration number 1582455 registered on December 23, 2020, designating, *inter alia*, the European Union, the United Kingdom, the United States, the Russian Federation, and several other countries.

Hong Kong, China trademark CHRISTOPHER ESBER registration number 305638230 registered on May 27, 2021.

In addition, the Complainant holds the domain name <christopheresber.com.au>, where the Complainant's collection is displayed.

The disputed domain name was registered on May 14, 2022.

The disputed domain name is currently not reachable, whereas at the time the Complaint was filed it resolved (at least until October 4, 2022) to a website where the Complainant's trademark was displayed and purported CHRISTOPHER ESBER goods were offered for sale at discounted prices.

The Complainant's trademark registrations predate the registration of the disputed domain name.

5. Parties' Contentions

A. Complainant

The Complainant claims that:

- (a) the disputed domain name is confusingly similar to the Complainant's trademark;
- (b) the Respondent lacks any rights or legitimate interests in the disputed domain name; and
- (c) the Respondent has registered and is using the disputed domain name in bad faith.

The Complainant *inter alia* specifically claims that the disputed domain name resolved (at least until October 4, 2022) to a website which was primarily a fake copy of the Complainant's website that directly referred to the Complainant and blatantly infringed the Complainant's registered trademark rights. In addition, the Complainant affirms that the Respondent has misappropriated copyrighted images of models and apparel from the Complainant's website.

B. Respondent

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

6. Discussion and Findings

In order for the Complainant to obtain a transfer of the disputed domain name, paragraphs 4(a)(i) – (iii) of the Policy require that the Complainant must demonstrate to the Panel that:

- (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

The Complainant has established rights in the CHRISTOPHER ESBER trademark.

The disputed domain name contains the Complainant's CHRISTOPHER ESBER trademark with the addition of the letter "s" and the generic Top-Level Domain ("gTLD") ".com".

The addition in the disputed domain name of the letter "s" does not prevent a finding of confusing similarity with the CHRISTOPHER ESBER trademark.

Pursuant to section 1.9 of the Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") which states: "A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element." In addition, the gTLD is disregarded under the first element confusing similarity test. See section 1.11 of the [WIPO Overview 3.0](#).

Therefore, the Panel finds the disputed domain name to be confusingly similar to the CHRISTOPHER ESBER trademark in which the Complainant has rights.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy

B. Rights or Legitimate Interests

This Panel finds that the Complainant has made a *prima facie* case that the Respondent does not have rights or legitimate interests in the disputed domain name. The Respondent has no connection or affiliation with the Complainant and the Complainant has not licensed or otherwise authorized the Respondent to use or register any domain name incorporating the Complainant's trademark. The Respondent does not appear to engage in any legitimate noncommercial or fair use of the disputed domain name, nor any use in connection with a *bona fide* offering of goods or services.

Indeed, it appears that the Respondent has attempted to usurp the Complainant's goodwill in the trademark, in an attempt to confuse and deceive Internet users into doing business with the Respondent. The disputed domain name is nearly identical to the Complainant's trademark, carrying a risk of implied affiliation that is exacerbated by the impersonating nature of the content found at the disputed domain name, which features the Complainant's trademarked products at discounted prices without any disclaiming information, raising the Complainant's suspicions concerning the likely counterfeit nature of the goods. Such use does not amount to a *bona fide* offering nor noncommercial fair use. See sections 2.5.1, 2.8, and 2.13 of the [WIPO Overview 3.0](#). In addition, the Respondent does not appear to be commonly known by the disputed domain name or by a similar name. Moreover, the Respondent has not replied to the Complainant's contentions, claiming any rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Based on the evidence put forward by the Complainant, the Panel is of the opinion that the Respondent was aware of the Complainant's trademark registrations and rights to the CHRISTOPHER ESBER mark when it registered the disputed domain name.

As pointed out by the Complainant, the surname "Esber" is not common and in combination with the first name, "Christopher", renders the whole name unusual and likely to be an uncommon name. Moreover, the disputed domain name was used for a website where the content displayed showed the Complainant's trademark as well as purported CHRISTOPHER ESBER branded collections, and displayed images copied from the Complainant's website. Consequently it is clear that the Respondent registered the disputed domain name while aware of the Complainant's trademark and activity, and did so with the intention to attract, for commercial gain, Internet users to its own website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of either the Respondent and/or its website, so as to trick those users into doing business with the Respondent. This constitutes bad faith registration and use as well as a disruption of the Complainant's business under the Policy.

Inference of bad faith can also be found in the failure to respond to the Complainant's contentions, and the Respondent's lack of any rights or legitimate interests in the disputed domain name.

Another factor supporting the conclusion of bad faith registration and use of the disputed domain name, based on the documents filed by the Complainant, and not refuted by the Respondent, is given by the fact that the Respondent apparently provided incorrect, if not false, details regarding its contact references on its website (e.g. false company name, false UK address) and possibly also to the Registrar.

Accordingly, the Panel finds, on the basis of the evidence presented, that the Respondent registered and is using the disputed domain name in bad faith.

Therefore, the Complainant has satisfied paragraph 4(a)(iii) 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, <christopheresbers.com>, be transferred to the Complainant.

/Fabrizio Bedarida/

Fabrizio Bedarida

Sole Panelist

Date: December 14, 2022