

ADMINISTRATIVE PANEL DECISION

Autumnpaper Ltd v. 洗维法 (Xian Wei Fa)

Case No. D2022-4569

1. The Parties

The Complainant is Autumnpaper Ltd, United Kingdom, represented by Studio Barbero S.p.A., Italy.

The Respondent is 洗维法 (Xian Wei Fa), China.

2. The Domain Name and Registrar

The disputed domain name <alexandermcqueenoutlet.store> is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 30, 2022. On December 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 5, 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.

On December 5, 2022, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant confirmed its request that English be the language of the proceeding on December 5, 2022. The Respondent did not comment on the language of the proceeding.

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 in English and Chinese of the Complaint, and the proceedings commenced on December 12, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 3, 2023.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on January 9, 2023. 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 the owner of the fashion brand ALEXANDER MCQUEEN, which was founded in 1992 by the British designer and couturier Alexander McQueen and swiftly rose to prominence in the international luxury fashion sector. Over the years, the Complainant's product lines expanded to include perfume, fashion accessories, cosmetics, and a line of trainers. The Complainant distributes its products through a worldwide network of authorized third-party retailers, departments, and specialty stores, encompassing Europe, Asia, and North America. Furthermore, the Complainant also sells its products through wholesale distribution and in a growing number of its own boutiques, currently located in various jurisdictions, including China.

The Complainant provides evidence that it owns a large, international portfolio of trademark registrations for the mark ALEXANDER MCQUEEN. Examples of such registrations include the following word mark registrations: European Union Trade Mark No. 000565796, registered on May 14, 2003 and International Trademark Registration No. 840159, registered on April 23, 2004. The Complainant also has a strong presence online through its most popular social media channels and through its official websites hosted at the domain names <alexandermcqueen.com>, registered on September 12, 2000, and <alexandermcqueen.cn>, registered on March 17, 2003. The domain name <alexandermcqueen.cn> is particularly used by the Complainant to promote and offer for sale ALEXANDER MCQUEEN products with a focus on the Chinese market.

The relevant registered trademarks adduced by the Complainant were successfully registered prior to the date of registration of the disputed domain name, which is July 14, 2016. The Complainant submits evidence that the disputed domain name directs to an active website, which presents itself as a website operated by the Complainant by prominently using the ALEXANDER MCQUEEN marks, as well as product images from the Complainant's official website, and offers for sale purported ALEXANDER MCQUEEN products at heavily discounted prices. Furthermore, the website linked to the disputed domain name is also used to publish "shopping news" related to other major fashion brands, including the Complainant's competitors.

The Complainant also provides evidence that it has attempted to settle this matter amicably through its cease-and-desist demand letter of November 17, 2022, to which it received no response.

5. Parties' Contentions

A. Complainant

The Complainant essentially contends that the disputed domain name is confusingly similar to its trademarks for ALEXANDER MCQUEEN, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name was registered, and is being used in bad faith.

The Complainant claims that its trademarks are intensively used and globally famous in the fashion industry and provides printouts of its official website and of its marketing and related materials. Moreover, the Complainant provides evidence that the disputed domain name is linked to an active website, which it claims the Respondent is operating as an e-commerce website, selling what the Complainant presumes to be counterfeit products, due to their heavily discounted price. In this context, the Complainant also essentially argues that the Respondent is unlawfully misrepresenting its website as operated by the Complainant, by using the Complainant's trademarks and product images, which are likely protected by copyright, and by including a misleading website description. The Complainant finally also claims that the Respondent has

engaged in a pattern of trademark-abusive registrations, as it has been involved in a number of previous similar UDRP cases in which the respective panels have concluded that the Respondent had registered and used the respective domain names in bad faith. The Complainant essentially contends that the registration and use of the disputed domain name in such circumstances constitutes registration and use in bad faith.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

Pursuant to paragraph 11(a) of the Rules, 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.

According to the Registrar's verification response, the language of the Registration Agreement for the disputed domain name is Chinese. Nevertheless, the Complainant filed its Complaint in English, and requests that English be the language of the proceeding. The Panel notes that the Respondent did not comment on the language of the proceeding and did not submit any arguments on the merits of this proceeding.

In considering this request, the Panel has carefully reviewed all elements of this case, and deems the following elements particularly relevant: the Complainant's request that the language of the proceeding be English; the lack of comment on the language of the proceeding and the lack of response on the merits of this proceeding by the Respondent (the Panel notes that the Respondent was invited by the Center in Chinese and English and in a timely manner to present its comments and response in either Chinese or English, but chose not to do so); the fact that the disputed domain name is written in Latin letters and not in Chinese characters and that the website linked to the disputed domain is exclusively in English, so that the Panel concludes that the Respondent is capable of writing and understanding English; and, finally, the fact that Chinese as the language of proceeding could lead to unwarranted delays and additional costs for the Complainant. In view of all these elements, the Panel grants the Complainant's request, and decides that the language of this proceeding shall be English.

6.2 Discussion and Findings on the Merits

The Policy requires the Complainant to prove three elements:

- (a) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (b) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (c) the disputed domain name has been registered and is being used in bad faith.

Based on the evidence and arguments submitted, the Panel's findings are as follows:

A. Identical or Confusingly Similar

The Panel finds that the Complainant has provided sufficient evidence that it has valid rights in its trademarks for ALEXANDER MCQUEEN, based on its use and registration of the same as trademarks in several jurisdictions, as stated above.

Further, as to confusing similarity of the disputed domain name with the Complainant's ALEXANDER MCQUEEN marks, the Panel finds that the disputed domain name was created by the Respondent by merely adding the word "outlet" after the Complainant's ALEXANDER MCQUEEN trademark. In this regard, the Panel refers to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7, which states: "[...] in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing." The Panel concludes that the disputed domain name contains the Complainant's trademark ALEXANDER MCQUEEN, which remain easily recognizable in spite of the abovementioned addition of the word "outlet", and which is therefore confusingly similar to the Complainant's ALEXANDER MCQUEEN marks. The Panel also notes that the applicable generic Top-Level Domain (".store" in this case) is viewed as a standard registration requirement, and may as such be disregarded by the Panel, see in this regard the [WIPO Overview 3.0](#), section 1.11.1.

Accordingly, based on the above elements, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks. The Panel decides that the Complainant has satisfied the requirements of the first element under the Policy.

B. Rights or Legitimate Interests

On the basis of the evidence and arguments submitted, the Panel accepts that the Complainant makes out a *prima facie* case that the Respondent is not, and has never been, an authorized reseller, service provider, licensee, or distributor of the Complainant, is not a good faith provider of goods or services under the disputed domain name, and is not making legitimate noncommercial or fair use of the disputed domain name. The Panel also notes that the Respondent is not commonly known by the disputed domain name. As such, the Panel finds that the burden of production regarding this element shifts to the Respondent (see [WIPO Overview 3.0](#), section 2.1). However, no evidence or arguments have been submitted by the Respondent in reply.

The Panel also notes that the Respondent has not provided any evidence of the use of, or demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services. Instead, upon review of the facts and the evidence submitted in this proceeding, the Panel notes that the disputed domain name directs to an active website which shows a clear intent on the part of the Respondent to misleadingly pass it off as the Complainant's website for commercial gain. In fact, said website prominently displays the Complainant's trademarks and uses the Complainant's own product images likely protected by copyright, and also displays a deceptive website description, thereby misleading consumers into believing that the Respondent is at least licensed by, or affiliated with the Complainant and/or its trademarks. Moreover, the Panel also accepts that, given the unclear origin and the heavily discounted product prices, it is very likely that the products offered by the Respondent on such website are counterfeit products. Even if legitimate products, it is clear to the Panel from the foregoing elements that the Respondent is not a good faith provider of goods or services under the disputed domain name, see also *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#). Given the abovementioned elements, the Panel concludes that the Respondent's use does not constitute a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use of the disputed domain name.

On the basis of the foregoing elements, the Panel considers that none of the circumstances of rights or legitimate interests envisaged by paragraph 4(c) of the Policy apply, and that the Complainant has satisfied the requirements of the second element under the Policy.

C. Registered and Used in Bad Faith

Given the intensive use, widespread reputation, and fame of the Complainant's prior registered trademarks, the Panel finds that the subsequent registration of the disputed domain name clearly and consciously targeted the Complainant's prior registered trademarks for ALEXANDER MCQUEEN. The Panel deducts from these efforts to consciously target the Complainant's prior registered trademarks that the Respondent knew, or at least should have known, of the existence of the Complainant's trademarks at the time of registering the disputed domain name. This finding is confirmed by the fact that the website linked to the disputed domain name is used to offer for sale presumably counterfeit ALEXANDER MCQUEEN products, since this proves that the Respondent was fully aware of the Complainant's business and its prior trademarks. The Panel also notes that the website linked to the disputed domain name did not contain a disclaimer regarding the lack of relationship between the Parties and considers that through the Complainant's prior registration and intensive use of its trademarks, the disputed domain name is so closely linked and so obviously connected to the Complainant and its trademarks that the Respondent's registration of the disputed domain name points toward the Respondent's bad faith. In the Panel's view, the foregoing elements clearly indicate bad faith on the part of the Respondent, and the Panel therefore finds that it has been demonstrated that the Respondent registered the disputed domain name in bad faith.

As to use of the disputed domain name in bad faith, the Complainant provides evidence that the disputed domain name directs to an active website which shows a clear intent on the part of the Respondent to misleadingly pass it off as the Complainant's website, displaying the Complainant's trademarks, official product images (thereby likely violating the Complainant's copyrights), and offering products for sale that are likely counterfeit products. The Panel concludes from these facts that the Respondent is intentionally attracting Internet users for commercial gain to such website, by creating consumer confusion between the website associated with the disputed domain name and the Complainant's trademarks. This constitutes direct evidence of the Respondent's bad faith under paragraph 4(b)(iv) of the Policy. Moreover, the Panel also finds that the Complainant sufficiently proves that the Respondent has been engaged in a pattern of trademark-abusive domain name registrations. In this regard, the Panel refers to the Respondent's involvement as a respondent in a number of previous similar UDRP cases in which the respective panels have concluded that the Respondent had registered and used the respective domain names in bad faith, see for instance *René Caovilla S.p.A. v. Xian Wei Fa*, WIPO Case No. [D2018-0001](#) and *Callaway Golf Company v. Xian Wei Fa*, WIPO Case No. [D2017-2326](#). The preceding elements lead the Panel to conclude that the Respondent is using the disputed domain name in bad faith. The Panel therefore finds that it has been demonstrated that the Respondent has used, and is using the disputed domain name in bad faith.

Finally, the Respondent has failed to provide any response or evidence to establish its good faith or absence of bad faith. The Panel therefore finds that the Complainant has satisfied the requirements of the third requirement under 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 <alexandermcqueenoutlet.store> be transferred to the Complainant.

/Deanna Wong Wai Man/

Deanna Wong Wai Man

Sole Panelist

Date: January 18, 2023