

ADMINISTRATIVE PANEL DECISION

Chewy, Inc. v. Yinfeng Yin, Xi Gong, Dongkun Wang
Case No. D2023-2493

1. The Parties

The Complainant is Chewy, Inc., United States of America (“United States”), represented by Demys Limited, United Kingdom.

The Respondents are Yinfeng Yin, China, Xi Gong, China, and Dongkun Wang, China.

2. The Domain Names and Registrar

The disputed domain names <chewybest.com>, <chewycheap.com>, <chewyexploiter.com>, <chewyoutlet.com>, <chewyown.com>, <chewy-pro.com>, and <chewyus.com> are registered with Hong Kong Juming Network Technology Co., Ltd (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 8, 2023. On June 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On June 9, 2023, 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 (Redacted for privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 9, 2023 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 on June 12, 2023.

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 Respondents of the Complaint, and the proceedings commenced on June 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 5, 2023. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on July 6, 2023.

The Center appointed Mihaela Maravela as the sole panelist in this matter on July 26, 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

According to information in the Complaint, the Complainant is an American online retailer of pet food and other pet-related products founded in 2011 and headquartered in the United States. The Complainant employs over 20,000 people and at the end of the 2022 fiscal year it reported approximately USD 10.1 billion in revenue with 20.4 million active customers.

The Complainant operates its official web shop from the website at the domain name <chewy.com> where Internet users can purchase products from more than 3,500 brands, including the Complainant's own brands AMERICAN JOURNEY and FRISCO.

The Complainant has registered various trademarks consisting for CHEWY, such as the United States trademark no. 5028009 registered on August 23, 2016, and the European Union Trade Mark no. 016605834 registered on August 10, 2017.

The disputed domain names were registered on March 7, 2023 and at the date of the Decision do not resolve to active websites. According to evidence submitted with the Complaint, the disputed domain names resolved to websites which appeared to offer pet supply products for sale, including the Complainant's AMERICAN JOURNEY and FRISCO brands. The websites also displayed product images, and descriptions that also appear on the Complainant's website.

5. Parties' Contentions

A. Complainant

The Complainant argues that the disputed domain names are confusingly similar to the registered trademark in which the Complainant has rights, as the disputed domain names incorporate the Complainant's CHEWY name and trademark in its entirety, with the addition of adornments "own", "outlet", "pro", "cheap", "best", "us" or "exploiter". As the CHEWY trademark is the prominent element in each of the disputed domain names, the Complainant contends that the addition of these adornments does nothing to distinguish the disputed domain names from the Complainant's name and trademark.

As regards the second element, the Complainant argues that there is no evidence that the Respondents have been commonly known by the disputed domain names. Further, the Complainant contends that the Respondents have not received permission or consent from the Complainant to act as an authorized distributor of its goods, or to use its name and trademark in the disputed domain names, or to use its copyright material or brands on the associated websites. The Complainant indicates that the Respondents have made unauthorized use of the Complainant's copyright material on the websites at the disputed domain names, by using the Complainant's trademarks and product images and content, which are protected by copyright, and by including a misleading website description at the "About Us" section of the websites linked to the disputed domain names. Moreover, the Complainant argues that even if the Respondents were genuine resellers of the Complainant's products (which is, in any event, denied) the Respondents could not claim nominative fair use as reseller or distributor, as, *inter alia*, the websites at the disputed domain names offer other third-party goods for sale alongside the Complainant's goods and the websites do not accurately and prominently disclose their relationship (or, more accurately, non-relationship) with the Complainant.

In what concerns the third element, the Complainant argues that there is a likelihood of "initial interest confusion"; the websites associated with the disputed domain names are confusing and the lack of any disclaimer increases the potential for confusion. The Respondents are not a genuine reseller of the

Complainant's goods and as such any Complainant's products offered on the Respondents' websites are outside of the Complainant's quality control systems. Further, these proceedings involve seven disputed domain names, all containing the Complainant's CHEWY name and trademark, therefore the Respondents have engaged in pattern of trademark-abusive domain name registrations as per the Policy.

B. Respondents

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

6. Discussion and Findings

6.1 Preliminary issue: Consolidation of Domain Names and of Respondents

The Panel will first deal with the question of whether the different domain name disputes should be consolidated in single proceedings. The consolidation of multiple domain name disputes under paragraph 3(c) or 10(e) of the Rules may be appropriate where the particular circumstances of a case indicate that common control is being exercised over the disputed domain names or the websites to which the disputed domain names resolve and the panel, having regard to all of the relevant circumstances, determines that consolidation would be procedurally efficient and fair and equitable to all parties.

According to WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2, "Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario".

In the present case, the Panel finds that the consolidation of the domain name disputes is justified as, *inter alia*: (i) the disputed domain names were registered with the same registrar; (ii) the disputed domain names were registered on the same day at close intervals of each other, (iii) the disputed domain names are similar in construction that they all incorporate the Complainant's trademark with the addition of terms, (iv) the websites to which the disputed domain names resolved shared similar characteristics.

The Panel finds that the consolidation is fair to the Parties, and the Respondents have been given an opportunity to object to consolidation through the submission of pleadings to the Complaint, but have chosen not to try to rebut the consolidation (see [WIPO Overview 3.0](#), section 4.11.2). Based on the Complaint, the Panel finds that it is more likely than not that the disputed domain names are in common control of one entity; hence, the Panel grants the consolidation for the disputed domain names (and will refer to the Respondents as the "Respondent").

6.2 Substantive Issues

No response has been received from the Respondent in this case. Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules. The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2 of the [WIPO Overview 3.0](#).

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights, (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names, and (iii) the disputed domain names have been registered and are being used in bad faith.

A. Identical or Confusingly Similar

Under paragraph 4(a)(i) of the Policy, the Complainant must prove that it has rights to a trademark, and that the disputed domain names are identical or confusingly similar to that trademark. This first element under the Policy functions primarily as a standing requirement. [WIPO Overview 3.0](#), section 1.7.

The Complainant has provided evidence of its rights in the CHEWY trademark by providing evidence of its trademark registrations.

As regards the second limb of the first element, the test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain names. It is well established that the generic Top-Level Domain (“gTLD”) may be ignored when assessing the confusing similarity between the disputed domain names and the Complainant’s trademarks as they are viewed as a standard registration requirement. See section 1.11.1 of the [WIPO Overview 3.0](#).

The disputed domain names consist of the CHEWY trademark, in addition to the terms “best”, “cheap”, “exploiter”, “outlet”, “own”, “pro”, “us” and the gTLD “.com”. The addition of the mentioned terms and of a hyphen in the case of the disputed domain name <chewy-pro.com>, does not prevent a finding of confusing similarity with the Complainant’s trademark. The fact that a domain name wholly incorporates a complainant’s trademark is sufficient to establish identity or confusing similarity for the purpose of the Policy, despite the addition of other words to such trademarks. The addition of another term (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity. See section 1.8 of the [WIPO Overview 3.0](#).

The Panel finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain names. Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent’s rights or legitimate interests in the disputed domain names.

As established by previous UDRP panels, it is sufficient for the complainant to make a *prima facie* case demonstrating that the respondent has no rights or legitimate interests in the disputed domain names in order to place the burden of production of evidence on the respondent (see section 2.1 of the [WIPO Overview 3.0](#)). In the present case, the Complainant has proved it holds rights over the trademark CHEWY, and claims that the Respondent has no legitimate reason to acquire the disputed domain names. There is no evidence that the Respondent is using the disputed domain names in connection with a *bona fide* offering of goods or services, nor does the Respondent appear to engage in any legitimate noncommercial or fair use of the disputed domain names within the meaning of paragraphs 4(c)(i) and (iii) of the Policy.

Rather, according to the unrebutted evidence put forward by the Complainant, the disputed domain names resolved to online retail shops reproducing the Complainant’s CHEWY trademark and purportedly offering for sale the Complainant’s various products along with competitive products of other commercial origin. Such use does not confer in the Panel’s view rights or legitimate interests on the Respondent. Also, the websites to which the disputed domain names resolved used official product images of the Complainant who claims copyright in such material, and therefore create a false impression that these websites are affiliated to or endorsed by the Complainant. The Complainant denies extending an authorisation for this use. The Respondent has not rebutted these allegations and the Panel concludes that such use does not confer rights or legitimate interests on the Respondent.

Under certain circumstances, UDRP panels have recognized that resellers, distributors, or service providers using a domain name containing the complainant’s trademark to undertake sales or repairs related to the complainant’s goods or services may be making a *bona fide* offering of goods and services and thus have a

legitimate interest in such domain name (see [WIPO Overview 3.0](#), section 2.8.1), if certain requirements are met. As outlined in the “Okidata test”, such requirements normally include the respondent actually be offering the goods or services at issue, the respondent using the site to sell only the trademarked goods or services, the website accurately and prominently disclosing the registrant’s relationship with the trademark holder. Also, the respondent must not try to “corner the market” in domain names that reflect the trademark. See *Okidata Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#). In this case the websites to which the disputed domain names resolved did not disclose the relationship or lack of relationship with the trademark owner and included competitive products of other commercial origin. Therefore, the Panel considers that the above-mentioned criteria are not met in this case and the disputed domain names have not been used for a *bona fide* offering of goods in the meaning of the Policy.

Also, there is no evidence that the Respondent is commonly known by the disputed domain names within the meaning of paragraph 4(c)(ii) of the Policy.

The Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain names. The Respondent failed to rebut that *prima facie* case because the Respondent did not respond to the Complainant’s contentions.

Furthermore, the nature of the disputed domain names carries a risk of implied affiliation and cannot constitute a fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

With the evidence on file, the Panel finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

Under paragraph 4(a)(ii) of the Policy, the Complainant must prove that the disputed domain names were registered and are being used in bad faith.

According to the unrebutted assertions of the Complainant, its CHEWY trademarks were used in commerce well before the registration of the disputed domain names. The disputed domain names are confusingly similar to the Complainant’s trademarks. Also, the disputed domain names resolved to websites offering goods similar to the Complainant’s goods and dispelled the Complainant’s trademark and unauthorized copyrighted material from the Complainant’s official website. Under these circumstances, it is most likely that the Respondent was aware of the Complainant’s trademarks at the registration date of the disputed domain names.

As regards the use of the disputed domain names, from the evidence put forward by the Complainant and not rebutted by the Respondent, the disputed domain names directed Internet traffic to websites displaying the CHEWY trademarks in the website banner and purportedly offering for sale the Complainant’s various products along with competitive products of other commercial origin. In addition, the websites at the disputed domain names included product images and description of the Complainant without authorisation. Therefore, the Panel considers that the Respondent intentionally tried to attract, for commercial gain, Internet users to its websites by creating a likelihood of confusion with the Complainant’s trademark as to the source, sponsorship, affiliation of its websites.

The disputed domain names no longer resolve to an active website. The Panel finds that the passive holding of the disputed domain names does not in the circumstances of this case prevent a finding of bad faith.

With the evidence on file, the Panel finds that the disputed domain names were registered and are being used in bad faith, and that the requirements of paragraph 4(a)(iii) of the Policy are 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 <chewybest.com>, <chewycheap.com>, <chewyexploiter.com>, <chewyoutlet.com>, <chewyown.com>, <chewy-pro.com>, and <chewyus.com> be transferred to the Complainant.

/Mihaela Maravela/

Mihaela Maravela

Sole Panelist

Date: August 9, 2023