

## **ADMINISTRATIVE PANEL DECISION**

**COSRX v. 陈龙 (chenlong)**

**Case No. D2023-2785**

### **1. The Parties**

The Complainant is COSRX, Republic of Korea, represented by KAI International IP Law Firm, Republic of Korea.

The Respondent is 陈龙 (chenlong), China.

### **2. The Domain Name and Registrar**

The disputed domain name <cosrxus.com> is registered with Xin Net Technology Corporation (the "Registrar").

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on June 30, 2023. On July 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 5, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Anonymous) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 11, 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 amendment in English to the Complaint on July 12, 2023.

On July 11, 2023, the Center informed the parties in Chinese and English, that the language of the registration agreement for the disputed domain name is Chinese. On July 12, 2023, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant's submission.

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 July 18, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 7, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 15, 2023.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on August 22, 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 a cosmetics company headquartered in the Republic of Korea. The Complainant manufactures and sells more than 150 types of cosmetic products under the mark COSRX in more than 80 countries globally through various channels, including via its official website and major third party e-commerce platforms. The Complainant claims to be recognized as a leading Korean K-beauty brand and states that it has become very popular globally in the cosmetic skincare sector.

The Complainant provides evidence that it owns a portfolio of trademark registrations for the mark COSRX. Examples of such registrations include Chinese Trademark Registration number 14966434, for the word mark COSRX, registered on September 14, 2015 and Republic of Korea Trademark Registration number 4500530950000 for the word mark COSRX, registered on January 5, 2015. The Complainant also states that it has a strong online presence and owns a portfolio of official domain names incorporating the COSRX mark, including <cosrx.com>.

The relevant registered trademarks adduced by the Complainant were successfully registered prior to the date of registration of the disputed domain name by the Respondent, which was May 27, 2023. The Complainant submits evidence that the disputed domain name directs to an active website, prominently using the COSRX marks as well as official product images of the Complainant, and purportedly offering for sale products branded with the Complainant's trademarks, which, according to customer complaints received by the Complainant, do not get delivered after purchase. The website also displays a title "Official Site".

The Complainant also provides evidence that it attempted to settle this dispute amicably through its cease-and-desist letter sent to the Respondent on June 26, 2023, but states that it received no response from the Respondent.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name incorporates its COSRX mark in its entirety, that the Respondent has no rights or legitimate interests in the disputed domain name and that the Respondent has registered and is using the disputed domain name in bad faith. The Complainant particularly argues that the Respondent acted with the intention to obstruct the Complainant's business or to gain profits illegally by impersonating the Complainant's business or to deliberately lure Internet users to the website for commercial gain by creating a likelihood of confusion with the Complainant's mark and business as to the source, sponsorship, affiliation or endorsement of the website or products and/or services in question.

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 Procedural Issue: Language of the Proceeding**

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant has requested that the language of the proceeding be English for several reasons, including the fact that both the disputed domain name and all of its linked pages are written in English, and even the disputed domain name itself includes the word "us". Therefore, the Respondent is able to communicate in English.

The Respondent did not make any specific submissions with respect to the language of the proceeding nor did the Respondent file a Response in Chinese or English, despite that the Center notified the Respondent in both Chinese and English of the language of the proceeding and the commencement of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

### **6.2 Substantive Issues**

#### **A. Identical or Confusingly Similar**

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms, here, the letters "us", which are commonly used as the acronym for the United States of America, may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

## **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the Respondent fails to come forward with such relevant evidence, the Complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Complainant submits evidence that the disputed domain name directs to an active website, prominently using the COSRX marks as well as official product images of the Complainant, and purportedly offering for sale products branded with the Complainant’s trademarks, which, according to customer complaints received by the Complainant, do not get delivered after purchase. The website also displays a title “Official Site”, which is contrary to the face. The Panels finds that such use can never confer rights or legitimate interests on the Respondent.

Based on the available record, the Panel finds the second element of the Policy has been established.

## **C. Registered and Used in Bad Faith**

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent has registered the disputed domain name years after the Complainant registered and started to intensively use its distinctive trademarks for COSRX. The Panel therefore finds that the subsequent registration and use of the disputed domain name by the Respondent clearly and consciously targeted the Complainant’s prior registered trademarks for COSRX. 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 has been indeed used to purportedly offer for sale products branded with the Complainant’s trademarks, which have, according to consumer complaints to the Complainant, never even been delivered to the consumers buying them. In the Panel’s view, these 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 is linked to an active e-commerce website, displaying the Complainant’s trademarks, official product images (thereby likely violating the Complainant’s copyrights) and purportedly offering for sale products branded with the Complainant’s trademarks. The website also displays a title “Official Site”, which is contrary to the face. The Panel concludes from these facts that the Respondent is intentionally attracting Internet users for commercial gain to such websites, 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.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

## **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, <cosrxus.com>, be transferred to the Complainant.

*/Deanna Wong Wai Man/*

**Deanna Wong Wai Man**

Sole Panelist

Date: August 27, 2023