

ADMINISTRATIVE PANEL DECISION

Nextten Stauer, LLC v. 戚觅双 (Mathew Williams)

Case No. D2024-0438

1. The Parties

Complainant is Nextten Stauer, LLC, United States of America (“United States”), represented by Thompson McMullan, P.C., United States.

Respondent is 戚觅双 (Mathew Williams), United States.

2. The Domain Name and Registrar

The disputed domain name <diamondauraluxury.com> (the “Domain Name”) is registered with West263 International Limited (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on January 30, 2024. On January 31, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On February 1, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (John Doe) and contact information in the Complaint. The Center sent an email communication to Complainant on February 5, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint in English on February 14, 2024.

On February 5, 2024, the Center informed the Parties in Chinese and English, that the language of the Registration Agreement for the Domain Name is Chinese. On February 7, 2024, Complainant requested English to be the language of the proceeding. Respondent did not submit any comment on Complainant’s submission.

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 Respondent in Chinese and English of the Complaint, and the proceedings commenced on February 14, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 5, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on March 8, 2024.

The Center appointed Kimberley Chen Nobles as the sole panelist in this matter on March 20, 2024. 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

Complainant is an international retailer specializing in jewelry and watches. Complainant promotes its products as "luxury" jewelry and indicates that it has used the mark DIAMONDAURA in commerce in connection with jewelry since at least as early as January 2005.

Complainant owns numerous registered trademarks for the DIAMONDAURA mark throughout the world, including the United States of America, European Union, the United Kingdom, China, Australia, New Zealand, and Hong Kong, China. Examples of these registered trademarks include:

- United States registered trademark number 3,455,261 for the DIAMONDAURA word mark, registered on June 24, 2008;
- European Union registered trademark number 006996011 for the DIAMONDAURA word mark, registered on April 7, 2009;
- United Kingdom registered trademark number UK00906996011 for the DIAMONDAURA word mark, registered on April 7, 2009;
- China registered trademark number 14212988 for the DIAMONDAURA word mark, registered on April 28, 2015; and
- Hong Kong, China registered trademark number 303435714 for the DIAMONDAURA word mark, registered on June 21, 2016.

The Domain Name was registered on November 16, 2023, and the Complainant's evidence dated December 4, 2023 shows that the Domain Name redirected to a website that apparently offered gold-plated or diamond looking jewelry and jewelry made from leather or pearls, or other materials.

On December 4, 2023, Complainant sent a cease-and-desist letter to Respondent, explaining Complainant's trademark rights and requesting Respondent to cease using Complainant's trademark, and transfer the Domain Name to Complainant. According to Complainant, no response was received. Complainant then proceeded to file the Complaint. The Domain Name did not resolve to an active website at the time of filing of the Complaint, and remains inactive at the time of this decision.

5. Parties' Contentions

A. Complainant

Complainant contends that (i) the Domain Name is identical or confusingly similar to Complainant's trademarks; (ii) Respondent has no rights or legitimate interests in the Domain Name; and (iii) Respondent registered and is using the Domain Name in bad faith.

In particular, Complainant contends that it has trademark registrations for DIAMONDAURA, and that Respondent registered and is using the Domain Name with the intention to divert Internet traffic to Complainant's competitors.

Complainant notes that it has no affiliation with Respondent. Complainant further contends that Respondent is using the Domain Name to deceive Internet users who would expect to find a website that is affiliated with or sponsored by Complainant, and that Respondent has no rights or legitimate interests in the registration and use of the Domain Name. Further, Complainant contends that Respondent has acted in bad faith in acquiring and setting up the Domain Name, when Respondent clearly knew of Complainant's rights.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

6.1. Preliminary Issue: Language of the Proceeding

The Rules, in paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement between the respondent and the registrar in relation to the disputed domain name, the language of the 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.

Complainant submitted its original Complaint in English. In its Complaint, email dated February 7, 2024, and amended Complaint, Complainant submitted its request that the language of the proceeding should be English. According to the information received from the Registrar, the language of the Registration Agreement for the Domain Name is Chinese.

Complainant submits that English should be the language for the current proceeding mainly because: the physical address listed on Respondent's website, when it was active, was in the United Kingdom, where English is the primary language; Complainant sent its English-language cease-and-desist letter to the United Kingdom address, after which Respondent promptly deactivated its website; Whois database search records indicate that Respondent has listed its address as being in Utah, United States, while the physical address on Respondent's website was in the United Kingdom, and English is used in both countries; the Domain Name is composed of Latin characters with the addition of an English term, "luxury"; while the website was active its content was entirely in English, including the use of United States dollars in the advertised price of products and as the accepted currency for payment; Complainant further submitted that if the proceedings were conducted in Chinese, Complainant would have to incur significant translation expenses, which would add considerable costs to Complainant, cause undue burden on Complainant and result in delay to the proceeding.

In exercising its discretion to use a language other than that of the Registration Agreement for the Domain Name, 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.

The Panel accepts Complainant's submissions regarding the language of the proceeding. The Panel also notes that the Domain Name does not have any specific meaning in the Chinese language, and that the Domain Name contains Complainant's DIAMONDAURA trademark in its entirety, and the addition of the English term "luxury" to Complainant's trademark in the Domain Name, the Domain Name redirected to an English language webpage; all of which indicate that Respondent understands English. The Panel further notes that the Center notified the Parties in Chinese and English of the language of the proceeding as well as notified Respondent in Chinese and English of the Complaint. Respondent chose not to respond to the language of the proceeding, nor did Respondent choose to file a Response in Chinese or English.

The Panel is also mindful of the need to ensure that the proceeding is conducted in a timely and cost-effective manner. Complainant may be unduly disadvantaged by having to translate the Complaint into Chinese and to conduct the proceeding in Chinese.

Having considered all the circumstances of this case, the Panel determines that English be the language of the proceeding.

6.2. Substantive Issues

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name was registered and is being used in bad faith.

Section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") states that failure to respond to the complainant's contentions would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true.

Thus, although in this case, Respondent has failed to respond to the Complaint, the burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence.

A. Identical or Confusingly Similar

Ownership of a trademark registration prima facie satisfies that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See [WIPO Overview 3.0](#), section 1.2.1. Complainant has provided evidence of its rights in the DIAMONDAURA trademarks, as noted above under section 4. Complainant has also submitted evidence which supports that the DIAMONDAURA trademarks are widely known and a distinctive identifier of Complainant's products and services. Complainant has therefore proven that it has the requisite rights in the DIAMONDAURA trademarks.

With Complainant's rights in the DIAMONDAURA trademarks established, the remaining question under the first element of the Policy is whether the Domain Name, typically disregarding the Top-Level Domain ("TLD") in which it is registered (in this case is, ".com"), is identical or confusingly similar to Complainant's trademark. See, e.g., *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#).

Here, the Domain Name is confusingly similar to Complainant's DIAMONDAURA trademarks. The use of Complainant's trademark in its entirety, with the addition of the word "luxury", does not prevent a finding of confusing similarity between the Domain Name and the DIAMONDAURA trademark as it is recognizable in the Domain Name. [WIPO Overview 3.0](#), section 1.8.

Thus, the Panel finds that Complainant has satisfied the first element of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make a prima facie showing that a respondent possesses no rights or legitimate interests in a disputed domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes out such a prima facie showing, the burden of production shifts to the respondent, though the burden of proof

always remains on the complainant. If the respondent fails to come forward with relevant evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

From the record in this case, Complainant asserts that Respondent is not an authorized reseller and is not related to Complainant. Respondent is also not known to be associated with the DIAMONDAURA trademarks and there is no evidence showing that Respondent has been commonly known by the Domain Name.

In addition, Respondent has not used the Domain Name in connection with a bona fide offering of goods or services or a legitimate noncommercial or fair use. Rather, the Domain Name previously redirected to a webpage that apparently offered gold-plated or diamond looking jewelry and jewelry made from leather or pearls or other materials. Contrary to the meaning of the term “luxury” in the Domain Name, each piece of jewelry sold on the website at the disputed domain name was less than USD 100.

After the Complainant’s cease-and-desist letter, and prior to the filing of the Complaint, the Domain Name changed to an inactive page, and remains inactive at the time of this decision. Such use does not constitute a bona fide offering of goods or services or a legitimate noncommercial or fair use and cannot under the circumstances confer on Respondent any rights or legitimate interests in the Domain Name. See, e.g., *Intesa Sanpaolo S.p.A. v. Charles Duke / Oneandone Private Registration*, WIPO Case No. [D2013-0875](#).

Accordingly, Complainant has provided evidence supporting its prima facie claim that Respondent lacks any rights or legitimate interests in the Domain Name. Respondent has failed to produce countervailing evidence of any rights or legitimate interests in the Domain Name.

Thus, the Panel concludes that Respondent does not have any rights or legitimate interests in the Domain Name, and Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that Respondent’s actions indicate that Respondent registered and is using the Domain Name in bad faith.

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances indicating bad faith registration and use on the part of a domain name registrant, namely:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

The Panel finds that Complainant has provided evidence to show that registration and use of the DIAMONDAURA trademarks long predate the registration of the Domain Name. Complainant is also well established and known. Indeed, the record shows that Complainant's DIAMONDAURA trademarks and related products and services are widely known and recognized. Therefore, it is more likely than not that Respondent knew or should have known of the DIAMONDAURA trademarks when it registered the Domain Name which suggests bad faith. See [WIPO Overview 3.0](#), section 3.2.2; see also *TTT Moneycorp Limited v. Privacy Gods / Privacy Gods Limited*, WIPO Case No. [D2016-1973](#).

Moreover, the evidence provided by Complainant indicated that prior to Complainant's cease-and-desist letter, the Domain Name reverted to a website which apparently offered gold-plated or diamond looking jewelry and jewelry made from leather or pearls or other materials at rather low prices. The Panel finds that the use of the DIAMONDAURA mark in the Domain Name is more likely than not intended to capture Internet traffic from Internet users who are looking for Complainant's products. Therefore, by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's webpage by creating a likelihood of confusion with Complainant's DIAMONDAURA marks as to the source, sponsorship, affiliation, or endorsement of Respondent's website.

After the Complainant's cease-and-desist letter, and prior to the filing of the Complaint, the Domain Name changed to an inactive page, and remains inactive at the time of this decision. Considering the circumstances of this case, such use does not prevent a finding of bad faith under the doctrine of passive holding. See [WIPO Overview 3.0](#), section 3.3.

Further, the Panel also notes the failure of Respondent to respond to the cease-and-desist letter, or to submit a Response.

Accordingly, the Panel finds that Respondent registered and is using the Domain Name in bad faith and Complainant succeeds under the third element of paragraph 4(a) 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 Domain Name <diamondauraluxury.com> be transferred to Complainant.

/Kimberley Chen Nobles/

Kimberley Chen Nobles

Sole Panelist

Date: April 3, 2024