

ADMINISTRATIVE PANEL DECISION

Exclusive Books Group (Proprietary) Limited v. 杨彦鹏 (yang yan peng)
Case No. D2024-4940

1. The Parties

The Complainant is Exclusive Books Group (Proprietary) Limited, South Africa, represented by Moore Attorneys Incorporated, South Africa.

The Respondent is 杨彦鹏 (yang yan peng), China.

2. The Domain Names and Registrar

The disputed domain names <exclusivebooksonlinesale.com> and <exclusivebooksza.com> (the “Disputed Domain Names”) are registered with DNSPod, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on November 29, 2024. On December 3, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Names. On December 4, 2024, 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 December 6, 2024, 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 in English on December 10, 2024.

On December 6, 2024, the Center informed the Parties in Chinese and English, that the language of the Registration Agreement for the Disputed Domain Names is Chinese. On December 10, 2024, 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 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 Respondent in English and Chinese of the Complaint, and the proceedings commenced on December 11, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 31, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 3, 2025.

The Center appointed Andrew Sim as the sole panelist in this matter on January 13, 2025. 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 private company duly registered and incorporated under the company laws of South Africa, with registration no. 2013/142713/07. The Complainant is one of South Africa's largest bookselling chains with over 40 stores in South Africa, Botswana, and Namibia. The Complainant also operates a website ("www.exclusivebooks.co.za") (the "Official Website"), which displays information about the Complainant's businesses, offerings, and promotional and other corporate material and allows customers to make online purchases of the Complainant's products. The Complainant also operates a number of official social media pages on Instagram, Facebook, and X, using "Exclusive Books" and/or "exclusivebooks" as the account/usernames.

The Complainant holds a number of registered trademarks for EXCLUSIVE BOOKS (the "EXCLUSIVE BOOKS Trademark") and EB EXCLUSIVE BOOKS (the "EB EXCLUSIVE BOOKS Trademark") in various jurisdictions.

The EXCLUSIVE BOOKS Trademark

Jurisdiction	Mark	Registration Number	Registration Date	Class(es) Covered	Status
South Africa	EXCLUSIVE BOOKS	2002/15937	August 26, 2019	9	Registered
	EXCLUSIVE BOOKS	1993/10512	January 8, 1996	16	Registered
	EXCLUSIVE BOOKS	2002/15938	January 28, 2019	41	Registered
	EXCLUSIVE BOOKS	1993/10513	January 8, 1996	42	Registered
Namibia	EXCLUSIVE BOOKS	NA/T/2019/00032 5	May 29, 2019	16, and 35	Registered

The EB EXCLUSIVE BOOKS Trademark

Jurisdiction	Mark	Registration Number	Registration Date	Class(es) Covered	Status
South Africa	EB EXCLUSIVE BOOKS	2014/27218	January 2, 2020	9	Registered

	EB EXCLUSIVE BOOKS	2014/27219	January 2, 2020	16	Registered
	EB EXCLUSIVE BOOKS	2014/27220	January 2, 2020	35	Registered
	EB EXCLUSIVE BOOKS	2014/27221	January 2, 2020	38	Registered
	EB EXCLUSIVE BOOKS	2014/27222	September 8, 2020	41	Registered
Namibia	EB EXCLUSIVE BOOKS	NA/T/2019/00032 6	August 20, 2020	16, and 35	Registered

The Complainant also asserts that it enjoys extensive common law rights in its EXCLUSIVE BOOKS Trademark, as it is a widely-recognized brand and due to the extensive marketplace exposure of the EXCLUSIVE BOOKS Trademark, it has become well-known to members of the public within the relevant sector.

The Panel notes that the above registrations do not cover China, where the Respondent is located in, whether through national applications or international designations.

The Complainant claims that it owns a number of domain names associated with the EXCLUSIVE BOOKS Trademark.

Most notably, the Complainant claims that it owns and maintains the primary domain name <exclusivebooks.com>, being composed entirely of the EXCLUSIVE BOOKS Trademark and a generic Top-Level Domain ("TLD") ".com", since August 1997. It also claims to own and maintain the domain name <exclusivebooks.co.za> since August 1997, being composed entirely of the EXCLUSIVE BOOKS Trademark, a generic Second-Level Domain ".co", and a country code TLD ".za". Both domain names redirect to the Official Website.

The other domain names allegedly owned and maintained by the Complainant as listed out in the Complaint are mostly combinations of "exclusive" or the EXCLUSIVE BOOKS Trademark with additional English characters/words.

The Disputed Domain Names, <exclusivebooksonlinesale.com> and <exclusivebooksza.com>, were registered on August 28, 2024 and September 9, 2024, respectively.

Based on the Complainant's evidence, upon visiting the Disputed Domain Name <exclusivebooksza.com> previously, it resolved to a website ("Website No. 1") which mirrored the Official Website, prominently featured the EB EXCLUSIVE BOOKS Trademark and offered books for sale. The words "@2024 Exclusive Books Online" appeared at the bottom of Website No. 1. Upon visiting the Disputed Domain Name <exclusivebooksonlinesale.com> previously, a suspected phishing warning popped out, and it resolved to a website ("Website No. 2") titled "puhuo001" which offered clothes for sale.

As of the date of the Complaint, the redirections of the Disputed Domain Names have changed, and both of them currently redirect to another website ("www.sportmanswarehouseafrica.com") ("Website No. 3") offering clothes for sale. Website No. 3 appears to be an imitation of "Sportsman Warehouse", a famous South

African retailer of sporting goods, who operates an official website at “www.sportsmanswarehouse.co.za”. From the Panel’s own visit to the Disputed Domain Names, which redirect to Website No. 3, and after browsing through Website No. 3, particularly the “ABOUT US” and “CONTACT US” sections, the Panel is satisfied, on the balance of probabilities, that Website No. 3 is a clear imitation of Sportsman Warehouse’s legitimate website.

After the Complainant becomes aware of the registrations of the Disputed Domain Names, it has, through its attorneys, sent two letters to the Registrar dated September 9, 2024 and September 25, 2024, demanding the transfers of the Disputed Domain Names to the Complainant. The Registrar has not replied.

Little information is known about the Respondent. Available information provided by the Registrar covers only the registrant’s name, postal address, telephone number, and email address.

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 Names.

First, the Complainant contends that the Disputed Domain Names are virtually identical and confusingly similar to the Complainant’s EXCLUSIVE BOOKS Trademark, as they wholly incorporate the EXCLUSIVE BOOKS Trademark. The only differences between the Complainant’s EXCLUSIVE BOOKS Trademark and the Disputed Domain Names are the insertions of the generic TLD “.com” and a generic term, namely “onlinesale” or “za”, as the case may be. It contends that the compositions of the Disputed Domain Names create a false impression that they are connected and/or associated with the Complainant.

Second, the Complainant contends that the Respondent lacks rights or legitimate interests in the Disputed Domain Names. The Complainant mentioned that the Disputed Domain Names redirect to various phishing, malicious, or fake websites (as summarized in section 4 above). The Respondent is not commonly known by either of the Disputed Domain Names. The Complainant has never permitted the Respondent to register the Disputed Domain Names and/or use its EXCLUSIVE BOOKS Trademark. There is no doubt that the Disputed Domain Names were only registered to interfere with the business of the Complainant and to confuse/mislead members of the public into believing that they belong to the Complainant.

Third, the Complainant contends that the Disputed Domain Names were registered and are being used in bad faith. The Complainant claims that the registrations of the Disputed Domain Names amount to abusive registrations, as the purposes of their registrations are to mislead the public and to take unfair advantage of the distinctive character and reputation of the Complainant’s acquired goodwill and reputation. The Disputed Domain Names are used for suspected phishing activities. The Complainant is also prevented from reflecting its EXCLUSIVE BOOKS Trademark in a corresponding domain name. A presumption of bad faith can be created by the mere registrations of the Disputed Domain Names which are identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity.

The Complainant requests that the Disputed Domain Names be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

The language of the Registration Agreement for the Disputed Domain Names 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 requested that the language of the proceeding be English for several reasons, including:

- (a) the Disputed Domain Names are registered in Latin characters instead of Chinese script;
- (b) the websites that the Disputed Domain Names resolve to (i.e., Website No. 1, Website No. 2, and Website No. 3) (collectively, the “Respondent’s Websites”) are not in Chinese;
- (c) the Complainant has no knowledge of Chinese, and requiring the Complainant to translate the Complaint in Chinese would cause delay and substantial expenses; and
- (d) the Respondent has failed to respond to the Complainant’s request for the language of the proceeding to be in English.

The Respondent did not make any submissions with respect to the language of the proceeding. This is despite the fact that the Center had sent the notification of the Complaint which includes instructions on the language of the proceeding to the Respondent in both Chinese and English.

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

Paragraph 4(a) of the Policy states that, in an administrative proceeding, the Complainant must prove each of the following three elements:

- (a) the Disputed Domain Names are 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 Names; and
- (c) the Disputed Domain Names have been registered and is being using in bad faith.

For the below reasons, support for the Complaint can be found due to the satisfaction of the three conditions for the Disputed Domain Names.

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 trademarks and the Disputed Domain Names. [WIPO Overview 3.0](#), section 1.7.

As the Panel has already noted in section 4 above, the registrations of the Complainant's EXCLUSIVE BOOKS Trademark and EB EXCLUSIVE BOOKS Trademark do not cover China, where the Respondent is located in. However, given the global nature of the Internet and Domain Name System, the Panel does not consider the lack of registration or designation in China is relevant to the assessment under this first element. [WIPO Overview 3.0](#), section 1.1.2. Given the above, it is unnecessary for the Panel to consider whether the Complainant has acquired common law rights over its EXCLUSIVE BOOKS Trademark due to alleged extensive recognition and market exposure.

Therefore, 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 entirety of the EXCLUSIVE BOOKS Trademark is reproduced within the Disputed Domain Names. Although the additions of the term ("onlinesale" or "za", as the case may be) and the generic TLD ".com" following the EXCLUSIVE BOOKS Trademark may bear on assessment of the second and third elements, the Panel finds the addition of such terms do not prevent a finding of confusing similarity between the Disputed Domain Names and the EXCLUSIVE BOOKS Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Accordingly, the Disputed Domain Names are confusingly similar to the Complainant's EXCLUSIVE BOOKS Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. 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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the Disputed Domain Names. 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 Names such as those enumerated in the Policy or otherwise.

From the overall appearance of the Respondent's Websites as described in section 4 above, the Panel finds that the Respondent's Websites are used for illegal or illegitimate activities for the following reasons:

- (i) Website No. 1 was clearly an illegal imitation of the Complainant's Official Website;

(ii) Insufficient evidence is adduced by the Complainant to support a definitive conclusion that Website No. 2 was an illegal or illegitimate website. However, given that a phishing warning appeared when the Complainant attempted to visit Website No. 2, Website No. 2 is no longer accessible at the present, and that the Respondent has not discharged his burden of production, an unrebutted prima facie case that Website No. 2 was used for phishing activities is established; and

(iii) Website No. 3 is clearly an illegal imitation of Sportsman Warehouse's official website.

According to previous UDRP decisions, the use of a domain name for illegitimate or illegal activity, such as phishing or impersonation, can never confer rights or legitimate interests on a respondent.

[WIPO Overview 3.0](#), section 2.13.1.

Particularly in regards to the three illustrative examples of legitimate interests in paragraph 4(c) of the Policy, the Panel finds that:

(i) the Respondent has not used the Disputed Domain Names in connection with a bona fide offering of goods or services, as the Panel has ruled that the Respondent's Websites were all used for illegal or illegitimate activities;

(ii) the Disputed Domain Names do not correspond with the Respondent's name (i.e., “杨彦鹏 (yang yan peng)”), and there is no evidence of the Respondent operating any business or organization with similar name as the Disputed Domain Names; and

(iii) the Respondent's use of the Disputed Domain Names do not fall within the scope of legitimate noncommercial or fair use, as the Respondent's Websites were used for illegal or illegitimate activities.

The Panel also finds that the Respondent has no rights or legitimate interests to use the Complainant's EXCLUSIVE BOOKS Trademark in the Disputed Domain Names.

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.

The Panel finds that the circumstances of registering and using the Disputed Domain Names clearly demonstrate the Respondent's bad faith and have constituted the situation as specified in paragraph 4(b)(iv) of the Policy:

(a) the Complainant's EXCLUSIVE BOOKS Trademark has been registered since 1996 before the Respondent's registration of the Disputed Domain Names which are confusingly similar to the Complainant's EXCLUSIVE BOOKS Trademark, and also similar to its primary domain name <exclusivebooks.com>;

(b) while neither of the Complainant's EXCLUSIVE BOOKS Trademark and EB EXCLUSIVE BOOKS Trademark covers China, where the Respondent is located in, given that the EB EXCLUSIVE BOOKS Trademark appeared in its exact form and stylization at the top of Website No. 1, the Panel finds that the Respondent must have had actual knowledge of the Complainant and the EB EXCLUSIVE BOOKS Trademark as well as constructive knowledge, at the very least, of the EXCLUSIVE BOOKS Trademark at the time of registering the Disputed Domain Names;

(c) as earlier found in section 6.2B above that the Respondent's Websites are intended to impersonate legitimate websites of other brands (including the Complainant), bad faith is manifestly apparent.

[WIPO Overview 3.0](#), section 3.1.4;

(d) consumer confusion is created given that the Disputed Domain Names currently redirect to Website No. 3, being hosted under an entirely different domain name and displaying contents totally unrelated to “Exclusive Books”. [WIPO Overview 3.0](#), section 3.1.4; and

(e) there is no reasonable connection or association between the Respondent and the Disputed Domain Names.

Inference of bad faith is also drawn in accordance with paragraph 14(b) of the Rules for the Respondent’s failure to file a response as required in paragraph 5(a) of the Rules in the absence of exceptional circumstances.

The Panel finds that the Complainant has established the third element 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 Names <exclusivebooksonlinesale.com> and <exclusivebooksza.com> be transferred to the Complainant.

/Andrew Sim/

Andrew Sim

Sole Panelist

Date: January 31, 2025