

ADMINISTRATIVE PANEL DECISION

Veja Fair Trade, SARL v. 晏松

Case No. DCN2023-0022

1. The Parties

The Complainant is Veja Fair Trade, SARL, France, represented by SafeBrands, France.

The Respondent is 晏松, China.

2. The Domain Name and Registrar

The disputed domain name <veja-store.cn> is registered with 浙江贰贰网络科技有限公司 (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on April 28, 2023. On April 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 4, 2023, 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.

The Center verified that the Complaint satisfied the formal requirements of the China ccTLD Dispute Resolution Policy (the “Policy”), the China ccTLD Dispute Resolution Policy Rules (the “Rules”), and the WIPO Supplemental Rules for China ccTLD Dispute Resolution Policy and China ccTLD Dispute Resolution Policy Rules (the “WIPO Supplemental Rules”).

In accordance with the Rules, Articles 5 and 6, and Articles 14 to 16, and the WIPO Supplemental Rules, Paragraph 4(d), the Center formally notified the Respondent in Chinese and English of the Complaint, and the proceedings commenced on May 9, 2023. In accordance with the Rules, Articles 17 and 49, the due date for Response was May 29, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 31, 2023.

The Center appointed Andrew Sim as the sole panelist in this matter on June 8, 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, Article 29.

4. Factual Background

The Complainant is a French company registered since at least 2005 that sells shoes products to its customers worldwide, including China.

The Complainant is the owner of trademark registrations of the VEJA mark, including Chinese registration VEJA No. 6265970, registered on November 28, 2014 and International registration VEJA No. 848383, registered on February 1, 2005.

The Complainant also owns numerous domain names comprised of the mark VEJA, including <veja-store.com>, which is registered since March 21, 2007, <vejastore.cn>, <veja-store.net>, <veja-store.fr> and <veja-store.jp>. The Complainant maintains its presence on the Internet and mainly offers its products through its official website at “www.veja-store.com”.

The disputed domain name was registered on June 2, 2020. According to the evidence produced by the Complainant, the disputed domain name resolves to a parking page offering the disputed domain name for sale.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to a number of the Complainant's registered trademarks containing the word “veja”. The disputed domain name wholly incorporates the mark VEJA and the addition of the generic word “store” does not prevent the finding of confusing similarity. An Internet user may still be under the mistaken impression that he or she is visiting the Complainant's official website or the website of a reseller or a party associated with the Complainant.

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent does not have any rights in and has not registered any trademark similar to “veja” or “veja store”. The Respondent is not in any way associated with the Complainant and the Complainant has not authorised the Respondent's use of the VEJA trademark. Also, the disputed domain name is not the name or indication of activity of the Respondent. Further, the Respondent registered the disputed domain name to take advantage of the Complainant's reputation and intended to obtain commercial gain by selling the disputed domain name back to the Complainant. This is supported by the fact that the Respondent demanded EUR 3,000 in return for the transfer of the disputed domain name when the Complainant attempted an amicable resolution of the issue with the Respondent. The Respondent's conduct cannot be considered a *bona fide* offering of goods or services.

The Complainant finally submits that the disputed domain name was registered and is being used in bad faith. Given the Complainant's use of the VEJA trademark for over 15 years, the clear association between the disputed domain name and the Complainant's products and business, as well as the Complainant's reputation in China and on the Internet, the Respondent's knowledge of the existence of the Complainant's VEJA trademark prior to his registration of the disputed domain name is inferred. Further, as mentioned, the Respondent registered the disputed domain name for the primary purpose of obtaining commercial gains by selling it back to the Complainant for valuable consideration. Also, the Respondent's registration of the disputed domain name could constitute cybersquatting and it also prevents the Complainant from registering domain names corresponding to its usual registration pattern. The Complainant also submitted evidence seeking to show that the Respondent has engaged in a pattern of cyberquatting.

B. Respondent

Apart from the Respondent's offer to sell the disputed domain name as mentioned in section 5A above, the Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

6.1 Procedural Matter - Language of the Proceeding

According to Article 6 of the Policy and Article 8 of the Rules, unless otherwise agreed by the parties or determined in exceptional cases by the Panel, the language of the domain name dispute resolution proceedings shall be Chinese.

The Complainant submits that the language of the proceeding should be English. The Complainant mainly contends that the Respondent understands and speaks English, noting that the correspondence between the Parties was made in English; that a prior case involving the email address of the Respondent had been conducted in English; that the disputed domain name contains the English word “store”; that the disputed domain name was made on sale on the website of a company based in the United States of America (“US”) and in US dollars; and that it would be disproportionate in terms of time and costs to require the Complainant, which is not familiar with Chinese, to translate and submit the Complaint in Chinese.

In exercising its discretion to use a language other than Chinese, 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.

In view of the above, the Panel accepts the Complainant’s submissions regarding the language of the proceeding. The Complainant may be unduly disadvantaged by having to conduct the proceeding in Chinese. The Panel further notes that the Center has notified the Respondent in both Chinese and English that the Respondent may comment on the language of the proceeding in his or her Response. The Respondent chose not to comment on the language of the proceeding or respond to the Complaint in either English or Chinese. Moreover, the Respondent replied the Complainant’s cease-and-desist letter in English, which indicates the Respondent is conversant in English. Having considered all the circumstances of this case, the Panel determines that English be the language of the proceeding.

6.2 Substantive Matter – Three Elements

Under Article 8 of the Policy, the Complainant must prove that:

- (i) the disputed domain name is identical with or confusingly similar to the Complainant’s name or mark in which the Complainant has civil rights or interests; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name or major part of the disputed domain name; and
- (iii) the Respondent has registered or has been using the disputed domain name in bad faith.

A. Identical or Confusingly Similar to the Complainant’s Name or Mark in which the Complainant has Civil Rights or Interests

The Complainant has established that it has registered trademark rights in the VEJA marks.

The test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademarks and the disputed domain name. It is long-established that the Top-Level Domain may be ignored when assessing the confusing similarity between the disputed domain name and the Complainant’s trademarks. Only the second-level portion of the disputed domain name is taken into consideration.

The disputed domain name incorporates the Complainant’s registered VEJA mark in its entirety. It is sufficient to establish confusing similarity between the Complainant’s trademarks and the disputed domain name.

While the extra word “store” is contained in the disputed domain name, the addition of the other term would not prevent a finding of confusing similarity between the Complainant’s trademarks and the disputed domain name.

Given the above analysis, the Panel finds that the disputed domain name is confusingly similar to trademarks in which the Complainant has rights in accordance with Article 8(a) of the Policy.

B. Rights or Legitimate Interests

The Complainant asserts that it has no connection with the Respondent, and has not authorized the Respondent to use its trademarks in any manner. The Panel agrees with the Complainant that the Respondent, who is identified as “晏松” (“Yan Song” in Pinyin), does not resemble the Complainant’s trademarks or the disputed domain name in any manner.

There is no evidence before the Panel that the Respondent’s use of the disputed domain name amounts to a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name under Articles 10(a) and (c) of the Policy because the disputed domain name resolves to a website offering it for sale. Further, the record shows that the Respondent demanded for EUR 3,000 for the transfer of the disputed domain name when approached by the Complainant. Therefore, it is suggested that the Respondent’s intention to register the disputed domain name is to sell it back to the Complainant or a competitor of the Complainant.

The Complainant has also submitted that the disputed domain name is not in any way associated with the name of the Respondent or an indication of activity of the Respondent. As mentioned, it is clear from facts that the Respondent’s name bears no resemblance with the disputed domain name and the Panel agrees that the Respondent is not commonly known by the disputed domain name. The Complainant’s continuous use of the VEJA trademark for over 15 years also supports this conclusion.

Based on the above analysis, the Panel accepts that, the Complainant has established a *prima facie* case with respect to the Respondent’s lack of rights or legitimate interests in the disputed domain name. The burden of production to demonstrate his or her rights or legitimate interests in respect of the disputed domain name shifts to the Respondent, and the Respondent failed to submit a response. The Panel concludes that the Respondent has not rebutted the Complainant’s *prima facie* case.

C. Registered or Used in Bad Faith

The Panel agrees with the Complainant that the Respondent was most likely aware of the Complainant’s goods and trademarks before or when the Respondent registered the disputed domain name. The disputed domain name was registered after the Complainant registered its VEJA marks for a number of years. Given the Complainant’s reputation in the shoe industry, its use of the VEJA mark for over 15 years and the obvious association between the disputed domain name and the Complainant, it is likely that the Respondent chose to register the confusingly similar disputed domain name notwithstanding his or her knowledge of the Complainant’s mark.

The disputed domain name resolves to a website offering it for sale, and the Respondent demanded EUR 3,000 for the transfer of the disputed domain name when being contacted by the Complainant. Therefore, the Panel finds that the Respondent has registered the disputed domain name for obtaining a financial benefit by selling the same back to the Complainant or a competitor of the Complainant.

The Panel further finds that the disputed domain name prevents the Complainant from registering a domain name corresponding to its usual registration system and may have interrupted the Complainant’s online business operation in China. On balance, an inference of bad faith can be drawn from overall behavior of the Respondent.

The Panel is therefore satisfied that the disputed domain name was registered and is being used in bad faith within the meaning of Article 8(c) of the Policy.

7. Decision

For the foregoing reasons, in accordance with Article 14 of the Policy and Article 40 of the Rules, the Panel orders that the disputed domain name <veja-store.cn> be transferred to the Complainant.

/Andrew Sim/

Andrew Sim

Sole Panelist

Date: June 26, 2023