

ADMINISTRATIVE PANEL DECISION

Muitas Ltd v. 张伟 (zhang wei)
Case No. D2022-0053

1. The Parties

The Complainant is Muitas Ltd c/o Silverstein Legal, United States of America ("USA").

The Respondent is 张伟 (zhang wei), China.

2. The Domain Name and Registrar

The disputed domain name <clips4slae.com> is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on January 6, 2022. On January 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 12, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on January 13, 2022 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 to the Complaint in English on January 13, 2022.

On January 13, 2022, the Center transmitted an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant confirmed the request that English be the language of the proceeding on January 13, 2022. The Respondent did not comment on the language of the proceeding.

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 English and Chinese of the Complaint, and the proceedings commenced on January 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 10, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 15, 2022.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on February 24, 2022. 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 in this proceeding provides an online platform allowing users to post and sell audiovisual content through clip stores on the Internet.

The Complainant owns trademark registrations incorporating the term “Clips4sale”, for instance, USA trademark registration number 3508680 for CLIPS4SALE.COM (word mark), registered on September 30, 2008 and USA trademark registration number 3554200 for CLIPS4SALE (word mark), registered on December 30, 2008. The Complainant also owns trademark registrations for a series of related trademarks, including the word mark CLIPS4, USA trademark registration number 4800900, registered on August 25, 2015 and the word mark CLIP4, USA trademark registration number 4814248, registered on September 15, 2015. The Complainant holds the above USA trademark registrations following a series of assignments, most recently in June 2021.

The Respondent is a natural person from China.

The Complainant asserts that it owns the domain name <clips4sale.com>, which was registered by its predecessor in interest on July 21, 2003. The Complainant and/or its related companies operate the website at “www.clips4sale.com” in connection with the provision of a platform that allows Internet users to post and sell audiovisual content through clip stores.

The disputed domain name was registered on October 8, 2020. The disputed domain name is currently redirected to an active website which, at the time of this decision, displays what are presumed to be pay-per-click hyperlinks to dating and sexually explicit content. At the time of filing of the Complaint, the disputed domain name dynamically resolved to various different websites, including the website with par-per-click hyperlinks, the e-commerce websites or the website requiring installation of Chrome extension.

5. Parties’ Contentions

A. Complainant

The Complainant essentially contends that the disputed domain name is confusingly similar to its prior trademarks for CLIPS4SALE, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name was registered, and is being used in bad faith.

The Complainant provides evidence of the contents of the online platform that it hosts at its official domain name <clips4sale.com>. The Complainant essentially contends that the Respondent chose to register the disputed domain name by willfully misspelling (“typosquatting”) the Complainant’s trademark for CLIPS4SALE to create consumer confusion and obtain unlawful financial gains. The Complainant contends that such use does not confer any rights or legitimate interests onto the Respondent in respect of the disputed domain name and constitutes bad faith registration and use of the disputed domain name.

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. Preliminary Issue: Language of the Proceeding

Pursuant to paragraph 11(a) of the Rules, the language of the administrative 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.

According to the Registrar's verification response, the language of the Registration Agreement for the disputed domain name is Chinese. Nevertheless, the Complainant filed its Complaint in English, and requests that English be the language of the proceeding. The Panel notes that the Respondent did not comment on the language of the proceeding and did not provide a Response on the merits of this administrative proceeding.

In considering this request, the Panel has carefully reviewed all elements of this case, and deems the following elements particularly relevant: the Complainant's request that the language of the proceeding be English; the lack of comment on the language of the proceeding by the Respondent (the Panel notes that the Respondent was invited by the Center in a timely manner in Chinese and English to present his comments on the language of the proceeding, but chose not to do so); the fact that the disputed domain name includes the English word "clips"; and, finally, the fact that Chinese as the language of the proceeding could lead to unwarranted delays and additional costs for the Complainant. In view of all these elements, the Panel grants the Complainant's request, and has decided that the language of this administrative proceeding shall be English.

6.2. Discussion and Findings on the merits

The Policy requires the Complainant to prove three elements:

- (i) the disputed domain name is 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 name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

Based on the evidence and arguments submitted, the Panel's findings are as follows:

A. Identical or Confusingly Similar

The Panel finds that the Complainant has shown sufficient evidence that it has valid rights in the mark CLIPS4SALE, based on its use and registration of the same as a registered trademark.

Moreover, as to confusing similarity, the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 1.9, states: "A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element". In this case, the Panel considers that the disputed domain name was clearly selected by intentionally misspelling the Complainant's trademark for CLIPS4SALE, incorporating such trademark in its entirety, except that the position of the letters "a" and "l" are switched in the disputed domain name. In the Panel's view, this is a clear case of intentional misspelling of the Complainant's trademark, or typosquatting. Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark and finds that the Complainant has satisfied the requirements of the first element under the Policy.

B. Rights or Legitimate Interests

On the basis of the evidence and arguments submitted, the Panel finds that the Complainant makes out a *prima facie* case that the Respondent is not, and has never been, an authorized reseller, service provider, licensee or distributor of the Complainant, is not a good faith provider of goods or services under the disputed domain name and is not making a legitimate noncommercial use or fair use of the disputed domain name. The Panel also notes that the Respondent is not commonly known by the disputed domain name. As such, the Panel finds that the burden of production regarding this element shifts to the Respondent (see WIPO Overview 3.0, section 2.1). However, the Respondent did not provide any Response or evidence in this administrative proceeding.

Furthermore, upon review of the facts, the Panel notes that the disputed domain name dynamically redirects to various different websites including an active webpage containing what are presumed to be pay-per-click hyperlinks to dating and sexually explicit content. This shows the Respondent's intention to divert consumers for commercial gain to such third party websites, by taking unfair advantage of the goodwill and reputation of the Complainant's trademark for CLIPS4SALE (see also previous UDRP decisions in this sense such as *Alain Afflelou Franchiseur v. Iihongbo*, WIPO Case No. D2020-2074 and *Maker Studios, Inc. v. ORM LTD / Contact Privacy Inc. Customer 0137258808*, WIPO Case No. D2014-0918).

On the basis of the foregoing, the Panel considers that none of the circumstances of rights or legitimate interests envisaged by paragraph 4(c) of the Policy apply, and that the Complainant has satisfied the requirements of the second element under the Policy.

C. Registered and Used in Bad Faith

The Complainant asserts that it owns the domain name <clips4sale.com>, which was registered by its predecessor in interest on July 21, 2003. The Complainant and/or its related companies operate the website at "www.clips4sale.com" in connection with the provision of a platform that allows Internet users to post and sell audiovisual content through clip stores.

The Panel finds that the registration of the disputed domain name with the intentional misspelling of the CLIPS4SALE trademark by the Respondent, who is entirely unaffiliated with the Complainant, is, by itself, sufficient to create a presumption of bad faith of the Respondent (see in this regard also *Alain Afflelou Franchiseur v. Iihongbo*, *supra* and *Randstad Holding nv v. Pinaki Kar*, WIPO Case No. D2013-1796). Furthermore, the Panel considers the disputed domain name to be so closely linked and so obviously connected to the trademark CLIPS4SALE that the Respondent's registration of the disputed domain name, which is a typosquatted version of such trademark, points toward the Respondent's bad faith. In the Panel's view, the preceding elements clearly indicate the bad faith of 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 disputed domain name currently redirects to the website that displays pay-per-click hyperlinks to dating and sexually explicit content. This shows that the Respondent is misleading and diverting consumers for commercial gain to such website by creating a likelihood of confusion with the Complainant's marks. This constitutes evidence of bad faith of the Respondent under paragraph 4(b) of the Policy and leads the Panel to conclude that the Respondent is also using the disputed domain name in bad faith, to take unfair advantage of the Complainant's trademarks.

Finally, the Respondent has failed to provide any response or evidence to establish his good faith or absence of bad faith. The Panel therefore finds that the Complainant has satisfied the requirements of the third element under 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 name <clips4slae.com> be transferred to the Complainant.

/Deanna Wong Wai Man/

Deanna Wong Wai Man

Sole Panelist

Date: March 10, 2022