

ADMINISTRATIVE PANEL DECISION

Ann Summers Limited v. mu chen, chenmu
Case No. D2022-2437

1. The Parties

Complainant is Ann Summers Limited, United Kingdom (hereinafter “UK”), represented by SafeNames Ltd., UK.

Respondent is mu chen, chenmu, China.

2. The Domain Name and Registrar

The disputed domain name <annsummers.com> is registered with CNOBIN Information Technology Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 5, 2022. On July 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 6, 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 Complainant on July 6, 2022 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 on July 6, 2022.

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 of the Complaint, and the proceedings commenced on July 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 28, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on July 29, 2022.

The Center appointed Yijun Tian as the sole panelist in this matter on August 4, 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

A. Complainant

Complainant, Ann Summers Limited, is a company incorporated in the UK. Founded in the 1970s, it is a leading British multinational retailer company, specializing in lingerie and accessories. Complainant's first "Ann Summers" store opened in London in 1972. It then rapidly expanded, opening its sixth "Ann Summers" store in 1980. There are close to a hundred "Ann Summers" stores, and the company's annual turnover regularly exceeds GBP 100 million (Annexes 4 and 5 to the Complaint).

Complainant has exclusive rights in the ANN SUMMERS marks. Complainant is the exclusive owner of several ANN SUMMERS marks worldwide, including United States of America (US) trademark registration for ANN SUMMERS registered on September 29, 1992 (the US trademark registration number 1721115); European Union trademark registration for ANN SUMMERS registered on October 5, 1998 (the European Union trademark registration number 000048421); and International trademark registration for ANN SUMMERS registered on April 17, 2014 (International trademark registration number 1236960).

Complainant has been using its official website at "www.annsummers.com" since 1997 to promote its products.

B. Respondent

Respondent is mu chen, chenmu, China. The disputed domain name <anns Summers.com> was registered on November 30, 2021. The disputed domain name was directed to a website with links to download pornographic videos, and with advertisements related to gambling (Annex 12 to the Complaint). It is currently resolved to a Chinese education company's website¹ (but it seems that most of its website content was reproduced from the website of Shaanxi Normal University (Science and Technology Department)).²

5. Parties' Contentions

A. Complainant

Complainant contends that the disputed domain name <anns Summers.com> is confusingly similar to Complainant's ANN SUMMERS trademarks. The disputed domain name <anns Summers.com> replicates the distinctive ANN SUMMERS trademark, replacing the first "m" with the letter "n", which constitutes an example of "typosquatting".

Complainant contends that Respondent lacks rights or legitimate interests in the disputed domain name.

Complainant contends that Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

Respondent did not reply to Complainant's contentions.

¹ See "http://anns Summers.com/".

² See "https://kjc.snnu.edu.cn/".

6. Discussion and Findings

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that the disputed domain name should be transferred:

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

On the basis of the evidence introduced by Complainant and in particular with regard to the content of the relevant provisions of the Policy (paragraphs 4(a)-(c)), the Panel concludes as follows:

A. Identical or Confusingly Similar

The Panel finds that Complainant has rights in the ANN SUMMERS marks. The Panel finds that the essential part of the disputed domain name “Ann Summers” is a mere misspelling of Complainant’s trademark ANN SUMMERS by replacing the first letter “m” with the letter “n”. In addition to this, the disputed domain name only differs from Complainant’s trademarks by the generic Top-Level Domain (“gTLD”) suffix “.com”. These do not compromise the recognizability of Complainant’s ANN SUMMERS mark within the disputed domain name, nor prevent a finding of confusing similarity between Complainant’s ANN SUMMERS mark and the disputed domain name (*Walgreen Co. v. Lin yanxiao / Linyanxiao*, WIPO Case No. [D2016-1605](#); and *Decathlon v. Zheng Jianmeng*, WIPO Case No. [D2019-0234](#)).

Moreover, as to “typosquatting”, section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) 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.”

Further, in relation to the gTLD suffix, section 1.11.1 of the [WIPO Overview 3.0](#) further states: “The applicable Top-Level Domain (‘TLD’) in a domain name (e.g., ‘.com’, ‘.club’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.”

The Panel, therefore, holds that the Complaint fulfils the first condition of paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that Respondent has rights or legitimate interests in the disputed domain name:

- (i) before any notice to Respondent of the dispute, the use by Respondent of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) Respondent has been commonly known by the disputed domain name, even if Respondent has acquired no trademark or service mark rights; or
- (iii) Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish Complainant’s trademarks.

The overall burden of proof on this element rests with Complainant. However, it is well established by previous UDRP panel decisions that once a complainant establishes a *prima facie* case that a respondent lacks rights or legitimate interests in a domain name, the burden of production shifts to the respondent to

rebut the complainant's contentions. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy (*Danzas Holding AG, DHL Operations B.V. v. Ma Shikai*, WIPO Case No. [D2008-0441](#); [WIPO Overview 3.0](#), section 2.1 and cases cited therein).

According to the Complaint, founded in the 1970s, Complainant is a leading British multinational retailer company, specializing in lingerie and accessories. It first "Ann Summers" store opened in London in 1972. It then rapidly expanded, opening its sixth "Ann Summers" store in 1980. There are close to a hundred "Ann Summers" stores, and the company's annual turnover regularly exceeds GBP 100 million (Annexes 4 and 5 to the Complaint). Complainant is the exclusive owner of several ANN SUMMERS marks worldwide, including US trademark registration for ANN SUMMERS registered in 1992, European Union trademark registration for ANN SUMMERS registered in 1998; and International trademark registration for ANN SUMMERS registered in 2014.

Moreover, Respondent is not an authorized dealer of ANN SUMMERS branded products or services. Complainant has therefore established a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name and thereby shifted the burden to Respondent to produce evidence to rebut this presumption (*The Argento Wine Company Limited v. Argento Beijing Trading Company*, WIPO Case No. [D2009-0610](#); *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

Based on the following reasons the Panel finds that Respondent has no rights or legitimate interests in the disputed domain name:

(a) There has been no evidence adduced to show that Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services. Respondent has not provided evidence of a legitimate use of the disputed domain name or reasons to justify the choice of the term "Ann Summers" in the disputed domain name. There has been no evidence to show that Complainant has licensed or otherwise permitted Respondent to use the ANN SUMMERS marks or to apply for or use any domain name incorporating the ANN SUMMERS marks.

(b) There has been no evidence adduced to show that Respondent has been commonly known by the disputed domain name. There has been no evidence adduced to show that Respondent has any registered trademark rights with respect to the disputed domain name. Respondent registered the disputed domain name in 2021, long after the ANN SUMMERS marks became known. The disputed domain name is confusingly similar to the ANN SUMMERS marks.

(c) There has been no evidence adduced to show that Respondent is making a legitimate noncommercial or fair use of the disputed domain name. By contrast, the disputed domain name was resolved to a website with links to download pornographic videos, and with advertisements related to gambling. It is currently resolved to a Chinese education company's website³ (but it seems that most of its website content was reproduced from the website of Shaanxi Normal University (Science and Technology Department)).⁴ It seems that Respondent is making profits through the Internet traffic attracted to the website under the disputed domain name (see *BKS Bank AG v. Jianwei Guo*, WIPO Case No. [D2017-1041](#); *BASF SE v. Hong Fu Chen, Chen Hong Fu*, WIPO Case No. [D2017-2203](#)).

Accordingly, Complainant has established that Respondent has no rights or legitimate interests in the disputed domain name. The Panel therefore holds that the Complaint fulfils the second condition of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out four circumstances, which, without limitation, shall be evidence of the

³ See "http://annsummers.com/".

⁴ See "https://kjc.snnu.edu.cn/".

registration and use of the disputed domain name in bad faith, namely:

(i) circumstances indicating that Respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to Complainant who is the owner of the trademark or service mark or to a competitor of Complainant, for valuable consideration in excess of Respondent's documented out-of-pocket costs directly related to the disputed domain name; or

(ii) Respondent has registered the disputed 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 Respondent has engaged in a pattern of such conduct; or

(iii) Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on the website or location.

The Panel concludes that the circumstances referred to in paragraph 4(b)(iv) of the Policy are applicable to the present case and upon the evidence of these circumstances and other relevant circumstances, it is adequate to conclude that Respondent has registered and used the disputed domain name in bad faith.

(a) Registration in Bad Faith

The Panel finds that Complainant has a widespread reputation in the ANN SUMMERS marks with regard to its products and services. As mentioned above, the ANN SUMMERS marks are distinctive and registered internationally, including international trademarks ANN SUMMERS registered in 2014, and the disputed domain name is a misspelling of Complainant's marks. It is most likely that Respondent had knowledge of the ANN SUMMERS marks at the time of the registration of the disputed domain name (in 2021).

Moreover, Respondent has chosen not to respond to Complainant's allegations. According to the UDRP decision in *The Argento Wine Company Limited v. Argento Beijing Trading Company, supra*, "the failure of the Respondent to respond to the Complaint further supports an inference of bad faith". See also *Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. [D2002-0787](#).

Thus, the Panel concludes that the disputed domain name was registered in bad faith.

(b) Use in Bad Faith

Respondent was using the website resolved by the disputed domain name to provide links to pornographic videos, and to display advertisements related to gambling. The disputed domain name is currently resolved to a website of a Chinese education company. Thus, the Panel concludes that Respondent is using the confusingly similar disputed domain name with the intention to attract, for commercial gain, Internet users to Respondent's website or other online locations.

Given the reputation and distinctiveness of the ANN SUMMERS marks, the Panel finds that the public is likely to be confused into thinking that the disputed domain name has a connection with Complainant, contrary to the fact. There is a strong likelihood of confusion as to the source, sponsorship, affiliation or endorsement of the website to which the disputed domain name resolves. In other words, Respondent has through the use of a confusingly similar disputed domain name created a likelihood of confusion with the ANN SUMMERS marks. Moreover, as mentioned above, Respondent offered links to pornographic videos and displayed advertisements related to gambling via the website to which the disputed domain name was

resolved, presumably for commercial gain. The Panel therefore concludes that the disputed domain name was registered and is being used by Respondent in bad faith. The current use of the disputed domain name for a website of a Chinese education company does not change the Panel's finding of Respondent's bad faith. Such use of the disputed domain name is also disruptive in relation to the interests of Complainant.

In summary, Respondent, by choosing to register and use the disputed domain name, which is confusingly similar to the ANN SUMMERS marks, intended to ride on the goodwill of these trademarks in an attempt to exploit, for commercial gain, Internet users destined for Complainant. In the absence of evidence to the contrary and rebuttal from Respondent, the choice of the disputed domain name and the conduct of Respondent as far as the website to which the disputed domain name has resolved is indicative of registration and use of the disputed domain name in bad faith.

The Panel therefore holds that the Complaint fulfils the third condition of paragraph 4(a) of the Policy.

7. Decision

For all 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 <annsunnmers.com> be transferred to Complainant.

/Yijun Tian/

Yijun Tian

Sole Panelist

Date: September 1, 2022