

ADMINISTRATIVE PANEL DECISION

Utz Quality Foods, LLC v. Shi Ji Fu Xuan Ke Ji Fa Zhan Bei Jing You Xian Gong Si (世纪富轩科技发展(北京)有限公司)
Case No. D2022-2719

1. The Parties

The Complainant is Utz Quality Foods, LLC, United States of America (“United States”), represented by Cozen O’Connor, United States.

The Respondent is Shi Ji Fu Xuan Ke Ji Fa Zhan Bei Jing You Xian Gong Si (世纪富轩科技发展(北京)有限公司), China.

2. The Domain Name and Registrar

The disputed domain name <utzpretzels.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 July 25, 2022. On July 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 27, 2022, the Registrar transmitted by email to the Center its verification response disclosing the 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 July 29, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant added the Registrar provided registrant information to the Complaint in English on July 29, 2022.

On July 29, 2022, the Center transmitted another email communication to the Parties in English and Chinese regarding the language of the proceeding. On July 29, 2022, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

The Center verified that the Complaint together with the newly added Registrar-provided registrant information 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 Chinese and English of the Complaint, and the proceeding commenced on August 5, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 25, 2022. The Respondent sent an informal email communication to the Center on August 23, 2022, but did not submit a formal Response. Accordingly, the Center notified the Parties on August 26, 2022 that it would proceed to the panel appointment process.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on September 15, 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

The Complainant is a snack food company headquartered in the United States, founded in 1921, and listed on the New York Stock Exchange. The Complainant produces and sells in the United States over 3.5 million pounds of snacks per week, including a range of pretzels, popcorn, potato chips and other snack food products, under the trade mark UTZ (the "Trade Mark").

The Complainant is the owner of numerous registrations in the United States for the Trade Mark, including United States registration No. 878,317, registered on October 7, 1969; and United States registration No. 3,742,446, registered on January 26, 2010.

The Complainant promotes its products under the Trade Mark via its website at "www.utzsnacks.com".

B. Respondent

The Respondent is apparently a company based in Beijing, China.

C. The Disputed Domain Name

The disputed domain name was registered on July 6, 2022.

D. Use of the Disputed Domain Name

The disputed domain name has not been used or resolved to an active website.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to the Trade Mark; the Respondent has no rights or legitimate interests in respect of the disputed domain name; and the disputed domain name has been registered and is being used in bad faith.

B. Respondent

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

In its informal email dated August 23, 2022, the Respondent stated that the disputed domain name had been purchased from the Registrar via its official channels, and asked why the disputed domain name had been placed under Registrar lock.

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is English. 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, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

Paragraph 11(a) of the Rules allows the Panel to determine the language of the proceeding having regard to all the circumstances. In particular, it is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding, in order to ensure fairness to the Parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. Language requirements should not lead to an undue burden being placed on the Parties and undue delay to the proceeding (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

The Complainant has requested that the language of the proceeding be English for the following reasons:

- (i) the language most widely used in international relations and one of the working languages of the Center is English;
- (ii) the disputed domain name is formed by words in English and not in Chinese script;
- (iii) the disputed domain name is confusingly similar to the Trade Mark; and
- (iv) the use of Chinese would require the Complainant to retain specialized translation services with costs likely to exceed the overall cost of the proceeding and would therefore impose an undue burden on the Complainant.

The Respondent did not file a formal Response and did not file any submissions with respect to the language of the proceeding.

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 3.0](#), section 4.5.1).

Although there is insufficient evidence before the Panel to support a conclusion that the Respondent is conversant in English, the Panel notes that the Respondent did not file a formal Response and that in the Respondent's informal email dated August 23, 2022, the Respondent did not reply to the Complainant's contentions; and that all of the Center's communications with the Parties have been sent in English and Chinese.

The Panel is also mindful of the need to ensure the proceeding is conducted in a timely and cost effective manner.

In all the circumstances, the Panel, therefore, finds it is not foreseeable that the Respondent would be prejudiced, should English be adopted as the language of the proceeding.

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 Elements of the Policy

The Complainant must prove each of the three elements in paragraph 4(a) of the Policy in order to prevail.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has rights in the Trade Mark acquired through use and registration.

The disputed domain name incorporates the entirety of the Trade Mark (see [WIPO Overview 3.0](#), section 1.7), followed by the word “pretzels” (one of the snack food items manufactured and sold for many years by the Complainant under the Trade Mark).

Where a relevant trademark is recognizable within a disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless or otherwise) does not prevent a finding of confusing similarity under the first element (see [WIPO Overview 3.0](#), section 1.8).

The Panel therefore finds that the disputed domain name is confusingly similar to the Trade Mark.

B. Rights or Legitimate Interests

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

- (i) before any notice to the respondent of the dispute, the respondent’s use 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) the respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name even if the respondent has acquired no trademark or service mark rights; or
- (iii) the 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 the trademark or service mark at issue.

The Complainant has not authorized, licensed, or permitted the Respondent to register or use the disputed domain name or to use the Trade Mark. The Panel finds on the record that there is a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and the burden is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that it has acquired any trademark rights in respect of the disputed domain name or that the disputed domain name has been used in connection with a *bona fide* offering of goods or services. On the contrary, the Respondent’s passive holding of the disputed domain name underscores its lack of rights or legitimate interests in the disputed domain name.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain name; and there has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

In addition, the Panel notes the nature of the disputed domain name, which carries a risk of implied association (see [WIPO Overview 3.0](#), section 2.5.1).

In its informal email dated August 23, 2022, the Respondent stated that the disputed domain name had been purchased from the Registrar via its official channels. This by itself does not confer any rights or legitimate interests on the Respondent.

The Panel finds that the Respondent has failed to produce any evidence to rebut the Complainant's *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Panel, therefore, finds that the Respondent lacks rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Given (i) the reputation of the Complainant and of its Trade Mark in relation to snack foods; (ii) the distinctiveness of the Trade Mark; (iii) the fact the Trade Mark has no meaning in the Chinese language; (iv) the fact the disputed domain name is confusingly similar to the Trade Mark; and (v) the lack of any substantiated credible explanation from the Respondent, the Panel finds, in all the circumstances, that the requisite element of bad faith has been made out.

Furthermore, the Respondent's non-use or passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy (see [WIPO Overview 3.0](#), section 3.3).

The Panel considers the Respondent was most likely aware of the Complainant's Trade Mark at the time it registered the disputed domain name, given the well-known nature of the Complainant's Trade Mark and that the disputed domain name incorporates the Trade Mark in its entirety plus the additional word "pretzels" (one of the snack food items manufactured and sold for many years by the Complainant under the Trade Mark); and that in light of the inherently misleading nature of the disputed domain name, there cannot be any actual or contemplated good faith use of the disputed domain name by the Respondent.

For all the foregoing reasons, the Panel concludes that the disputed domain name has been registered and is being used in bad faith.

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 <utzpretzels.com> be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Dated: September 29, 2022