

ADMINISTRATIVE PANEL DECISION

Sullair LLC v. jianwanqi tong
Case No. D2023-0141

1. The Parties

The Complainant is Sullair LLC, United States of America, represented by Fieldfisher LLP, United Kingdom.

The Respondent is jianwanqi tong, China.

2. The Domain Name and Registrar

The disputed domain name <shsullair.com> is registered with Cool Breeze Domains, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 11, 2023. On January 12, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 16, 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 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 of the Complaint, and the proceedings commenced on January 18, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 7, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 8, 2023.

The Center appointed Taras Kyslyy as the sole panelist in this matter on February 14, 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, paragraph 7.

4. Factual Background

The Complainant was established in 1965 and provides compressed air solutions in the United States of America and worldwide. The Complainant became a Hitachi Group Company in 2017. The Complainant owns a number of trademark registrations for its SULLAIR mark in various jurisdictions, including for instance Chinese trademark registration No. 5374284, registered on August 28, 2009.

The Complainant predominantly advertises and markets its business through its website at “www.sullair.com”.

The disputed domain name was registered on April 9, 2022 and resolves to a website in Chinese language featuring content with pornographic elements and gambling advertisements.

5. Parties' Contentions

A. Complainant

The disputed domain name is identical or confusingly similar to the Complainant's trademark. The disputed domain name contains the word element identical SULLAIR to the Complainant's trademark. The addition of letters “sh” in the disputed domain name lacks distinctiveness and add little to the distinctive SULLAIR element. Alternatively, the letters “sh” may stand for geographical term of Shanghai province in China, contributing to the impression the disputed domain name is a Chinese local version of the Complainant's website.

The Respondent has no rights or legitimate interests in the disputed domain name. The use of the disputed domain name is not related to a *bona fide* offering of goods and services. The Respondent is not commonly known by the disputed domain name and is not making any legitimate non-commercial use of it.

The disputed domain name was registered and is being used in bad faith. The disputed domain name was registered primarily to disrupt the Complainant's business, since it contains the Complainant's trademark and at its website features pornographic and gambling content tarnishing the Complainant's trademark. The Respondent has intentionally attempted to attract for commercial gain Internet users to its website by using a domain name which is likely to cause confusion with the Complainant's website.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

According to section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the “[WIPO Overview 3.0](#)”) the applicable generic Top-Level Domain (“gTLD”) 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. Thus, the Panel disregards gTLD “.com” for the purposes of the confusing similarity test.

According to section 1.7 of the [WIPO Overview 3.0](#) in cases where a domain name incorporates the entirety of a trademark the domain name will normally be considered identical or confusingly similar to that mark for purposes of UDRP standing. The Panel finds that in the present case the disputed domain name incorporates the entirety of the Complainant's trademark.

According to section 1.8 of the [WIPO Overview 3.0](#) where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The Panel finds that the addition of “sh” letters does not prevent finding confusing similarity of the disputed domain name to the Complainant’s trademark.

Considering the above the Panel finds the disputed domain name is confusingly similar to the Complainant’s trademark, therefore, the Complainant has established its case under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant has established *prima facie* that the Respondent has no rights or legitimate interests in the disputed domain name.

Furthermore, the Respondent provided no evidence that it holds rights or legitimate interests in the disputed domain name.

The available evidence do not confirm that the Respondent is commonly known by the disputed domain name, which could demonstrate its rights or legitimate interests (see, e.g., *World Natural Bodybuilding Federation, Inc. v. Daniel Jones, TheDotCafe*, WIPO Case No. [D2008-0642](#)).

The use of the disputed domain names to redirect to the website with adult sexually explicit content is not, in the context of this case, a *bona fide* offering of goods or services (see, e.g., *International Business Machines Corporation v. chenaibin*, WIPO Case No. [D2021-0339](#)).

Considering the above the Panel finds the Respondent does not have rights or legitimate interests in the disputed domain name. Therefore, the Complainant has established its case under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

According to section 3.2.2 of the [WIPO Overview 3.0](#) noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant’s mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant’s mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent’s claim not to have been aware of the complainant’s mark. The Panel finds that since the Complainant’s trademark is an invented distinctive word, and it was intensively used use for a significant period of time to become known in its sector including on the Internet, on the balance of probabilities the Respondent most probably knew and targeted the Complainant and its trademark when registering the disputed domain name, which is bad faith.

According to paragraph 4(b)(iv) of the Policy the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith: by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location. Using the disputed domain name confusingly similar to the Complainant’s trademark creates a likelihood of confusion with the Complainant’s trademark and hosting there a website with links to gambling and pornographic content potentially allows the Respondent to obtain revenue from this practice. Under such circumstances the Panel finds that the disputed domain name is being used in bad faith.

The fact that the website at the disputed domain name provides adult sexually explicit content with pornography elements is a clear indication that the domain name has been registered and used in bad faith (see, e.g., *Six Continents Hotels, Inc. v. Seweryn Nowak*, WIPO Case No. [D2003-0022](#), *Miroglio S.p.A. v. Mr. Alexander Albert W. Gore*, WIPO Case No. [D2003-0557](#)).

Considering the above the Panel finds the disputed domain name was registered and is being used in bad faith. Therefore, the Complainant has established its case under paragraph 4(a)(iii) 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 name <shsullair.com> be transferred to the Complainant.

/Taras Kyslyy/

Taras Kyslyy

Sole Panelist

Date: February 28, 2023