

## **ADMINISTRATIVE PANEL DECISION**

Fairpoint Outdoors A/S v. Qianying Chen

Case No. D2023-2095

### **1. The Parties**

The Complainant is Fairpoint Outdoors A/S, Denmark, represented by Bech-Bruun Law Firm, Denmark.

The Respondent is Qianying Chen, China.

### **2. The Domain Name and Registrar**

The disputed domain name <fishingwestin.com> is registered with Gname.com Pte. Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on May 11, 2023. On May 12, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 16, 2023, 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 (fishingwestin.com Store LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 17, 2023 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 May 22, 2023.

On May 17, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On May 19, 2023, the Complainant submitted a 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 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 May 23, 2023. In accordance with the

Rules, paragraph 5, the due date for Response was June 12, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 13, 2023.

The Center appointed Douglas Clark as the sole panelist in this matter on July 7, 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 is a developer and manufacturer of sports fishing equipment headquartered in Denmark. The Complainant owns the brands Westin, Kinetic and Unique Files and is the exclusive distributor of the brands Sage and Rio in Scandinavia. The Complainant also owns and operates the domain name <westin-fishing.com> to promote its products.

The Complainant is also the owner of several trade mark registrations for WESTIN, including the following:

Trade Mark	Registration Number	Registration Date	Classes	Jurisdiction
WESTIN (word)	011893691	January 23, 2014	18, 25, 28	European Union
WESTIN (w)	1180330	July 23, 2013	18, 25, 28	International, including China

The disputed domain name <fishingwestin.com> was registered on December 8, 2022. At the date of this Complaint, the disputed domain name resolved to a website offering for sale fishing equipment under the WESTIN trade mark.

The Respondent is an individual based in China.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant contends that:

- (a) The disputed domain name is confusingly similar to its trade mark. The disputed domain name wholly incorporates the Complainant's WESTIN trade mark. The generic Top-Level Domain ("gTLD") ".com" in the disputed domain name does not eliminate the overall notion that the designations are connected to the trade mark and the likelihood of confusion that the disputed domain name and the trade mark are associated;
- (b) The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not affiliated with the Complainant in any way and the Complainant has never granted any authorisation or license to use the Complainant's trade mark. The Respondent is not commonly known by the disputed domain name, and has not made a *bona fide* offering of goods or services or a legitimate non-commercial or fair use of the disputed domain name. In fact the use made by the disputed domain name implies an affiliation with the Complainant which is not good faith; and
- (c) The disputed domain name was registered and is being used in bad faith. The Respondent has registered the disputed domain name well after the Complainant acquired trademark rights. Based on the use of the disputed domain name that includes references to the Complainant's products (which the Complainant claims are counterfeit), the Respondent registered and is using the disputed domain name to attract Internet users for commercial gain, creating a likelihood of confusion with the Complainant's trade mark.

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**

According to paragraph 11(a) of the Rules, unless otherwise agreed by the Parties, or 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.

In this case, the language of the Registration Agreement for the disputed domain name is in Chinese. Based on the given evidence, there is no agreement between the Complainant and the Respondent regarding the language of the proceeding. The Respondent did not respond as to the language of the proceeding. The Complainant has filed its Complaint in English and has requested that English be the language for the proceeding under the following grounds:

- a) the website of the disputed domain name is in English; and
- b) in order to proceed in Chinese, the Complainant would have had to retain specialised translation services that would cause an unnecessary burden to the Complainant and delay the proceeding.

In accordance with paragraph 11(a) of the Rules, the Panel hereby determines that the language of the proceeding shall be in English after considering the following circumstances:

- the Center has notified the Respondent of the proceeding in both English and Chinese;
- the Respondent has not commented on the language of the proceeding;
- the website under the disputed domain name is wholly in English;
- The website under the disputed domain name claims to be based in the United States of America, where English is an official language; and
- an order for the translation of the Complaint will result in significant expenses for the Complainant and a delay in the proceeding.

Further, this Panel decided in *Zappos.com, Inc. v. Zufu aka Huahaotrade*, WIPO Case No. [D2008-1191](#), that a respondent's failure to respond to a preliminary determination by the Center as to the language of the proceeding "should, in general, be a strong factor to allow the Panel to decide to proceed in favour of the language of the Complaint".

### **6.2 Substantive Issues**

The Complainant must satisfy all three elements of paragraph 4(a) of the Policy in order to succeed in its action:

- (i) the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights to;

- (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.

#### **A. Identical or Confusingly Similar**

The Panel finds that the disputed domain name <fishingwestin.com> is confusingly similar to the Complainant's trade mark. The disputed domain name incorporates the word "fishing" with the WESTIN trade mark in full and followed by the gTLD ".com". The addition of this word does not preclude a finding of confusing similarity. The gTLD is generally disregarded when considering the first element. (See Section 1.11.1, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)")).

The Complainant has therefore satisfied the first element under paragraph 4(a) of the Policy.

#### **B. Rights or Legitimate Interests**

The Respondent has not asserted any rights or legitimate interests in relation to the disputed domain name.

Section 2.1 of the [WIPO Overview 3.0](#) provides:

"While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of 'proving a negative', requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element."

The Panel finds that the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests, which has not been rebutted by the Respondent. Accordingly, the Respondent has no rights or legitimate interests in regard to the disputed domain name.

The Panel also notes that the disputed domain name resolves to a page that advertises WESTIN products. While the Complainant alleges these are counterfeit, no evidence of this is produced. The Panel will consider the matter on the basis they are genuine products.

In principle, it is not objectionable to resell or promote for resale genuine trademarked goods by reference to the mark. Further, as long as certain conditions are met a seller can make use of a trademark in a domain name to sell genuine products. In *Ok! Data Americas, Inc. v. ASD, Inc.* WIPO Case No. [D2001-0903](#), the panel in that case held that to be "*bona fide*" within the meaning of paragraph 4(c)(i) of the policy, the offering should meet the following requirements:

- The Respondent must actually be offering the goods or services at issue;
- The Respondent must use the site to sell only the trademarked goods; otherwise, it could be using the trademark to bait internet users and then switch them to other goods;
- The site must accurately disclose the registrant's relationship with the trademark owners; it may not, for example, falsely suggest that it is the trademark owner, or that the website is the official site; and
- The Respondent must not try to corner the market in all domain names, thus depriving the trademark owner of reflecting its own mark in a domain name.

In this case the Respondent does not meet, at least, the third requirement set out above. The website under the disputed domain name does not accurately disclose its relationship with the Complainant when, in fact, it is not.

Furthermore, the Panel finds that the disputed domain name carries a risk of implied affiliation with the Complainant as it incorporates the Complainant's trade mark WESTIN with the word "fishing". See section 2.5.1 of the [WIPO Overview 3.0](#).

The second element of paragraph 4(a) of the Policy is therefore satisfied.

### **C. Registered and Used in Bad Faith**

Based on the given evidence, the disputed domain name was registered and is being used in bad faith.

The disputed domain name was registered long after the Complainant has registered the WESTIN trade mark and the use of the Complainant's WESTIN trade mark is clearly not a coincidence. The WESTIN trade mark is used by the Complainant to conduct its business and the Complainant has used the trade mark for over 10 years. The Panel is satisfied that the Respondent was aware of the Complainant and its WESTIN trade mark when he or she registered the disputed domain name.

The Respondent has registered the disputed domain name to attract Internet users to the website for commercial gain in accordance with paragraph 4(b)(iv) of the Policy. The disputed domain name directs Internet users to a website featuring the Complainant's WESTIN products. The Respondent is intentionally attracting Internet users to the disputed domain name by misleading them into believing they are transacting on the Complainant's official website.

For the above reasons, the Panel finds that the disputed domain name was registered and is being used in bad faith.

The Complainant has therefore satisfied the third element under paragraph 4(a) 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 <fishingwestin.com> be transferred to the Complainant.

*/Douglas Clark/*

**Douglas Clark**

Sole Panelist

Date: July 21, 2023