

## **ADMINISTRATIVE PANEL DECISION**

Chewy, Inc. v. 代振生 (Zhen Sheng Dai)

Case No. D2023-2230

### **1. The Parties**

The Complainant is Chewy, Inc., United States of America (“United States”), represented by Demys Limited, United Kingdom.

The Respondent is 代振生 (Zhen Sheng Dai), China.

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

The disputed domain name <chewysale.shop> is registered with Chengdu West Dimension Digital Technology Co., Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on May 23, 2023. On May 23, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 24, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 29, 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 amended Complaint in English on June 2, 2023.

On May 29, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On May 30, 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 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 the Respondent in English and Chinese of the Complaint, and the proceedings commenced on June 5, 2023. In accordance with the

Rules, paragraph 5, the due date for Response was June 25, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 26, 2023.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on July 13, 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 an online retailer of pet food and other pet-related products, founded in 2011 and headquartered in Dania Beach, Florida, United States. In 2019, the Complainant was listed on the New York Stock Exchange, and in 2021 it made its debut on the "Fortune 500", Fortune magazine's annual ranking of 500 of the largest United States companies by revenue. Today the Complainant is one of the largest online retailers of pet supply products in the United States, employing over 20,000 people. At the end of 2022 fiscal year, the Complainant reported approximately USD 10.1 billion in revenue with 20.4 million active customers.

The Complainant provides evidence that it owns an international portfolio of trademark registrations for the word mark CHEWY. Examples of such registrations include the following word mark registrations: European Union Trade Mark registration number 016605834, registered on August 10, 2017; and Chinese trademark registration number 30646180, registered on February 21, 2020. The Complainant also has a strong online presence through its social media channels and through its official website hosted at the domain name <chewy.com>, which resolves to its official website and online shop.

The relevant registered trademarks adduced by the Complainant were successfully registered prior to the date of registration of the disputed domain name, which is March 21, 2023. The disputed domain name directs to an active website, which presents itself as a website operated by the Complainant by prominently displaying the CHEWY marks in the website banner, and by using product images and content taken from the Complainant's official website, and offers for sale pet supply products, including the Complainant's AMERICAN JOURNEY and FRISCO products, at heavily discounted prices.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant essentially contends that the disputed domain name is confusingly similar to its trademarks for CHEWY, 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 claims that its trademarks are intensively used and globally famous and provides printouts of its official website and of its marketing and related materials. The Complainant also refers to several prior decisions under the Policy which have recognized the rights of the Complainant in its marks and the reputation of such marks (see for instance *Chewy, Inc. v. Xiuyun Li*, WIPO Case No. [D2022-3766](#) and *Chewy, Inc. v. Super Privacy Service LTD c/o Dynadot / Ryan C*, WIPO Case No. [D2021-1274](#)). Moreover, the Complainant provides evidence that the disputed domain name is linked to an active website, which it claims that the Respondent is operating as an e-commerce website, selling what the Complainant presumes to be counterfeit or parallel import products, due to their heavily discounted prices and the lack of disclaimer and false suggestions of affiliation. In this context, the Complainant also essentially argues that the Respondent is unlawfully misrepresenting its website as operated by the Complainant, by using the Complainant's trademarks and product images and content, which are likely protected by copyright, and by including a misleading website description at the "About Us" section of the website linked to the disputed domain name. The Complainant essentially contends that the registration and use of the disputed domain name in such circumstances constitutes registration and use in bad faith.

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 submit any arguments on the merits of this 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 and the lack of response on the merits of this proceeding by the Respondent (the Panel notes that the Respondent was invited by the Center in Chinese and English and in a timely manner to present its comments and response in either Chinese or English, but chose not to do so); the fact that the disputed domain name is written in Latin letters and not in Chinese characters, contains the English word "sale" and that the website linked to the disputed domain name is exclusively in English, so that the Panel concludes that the Respondent is familiar with the English language; and, finally, the fact that Chinese as the language of 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 decides that the language of this proceeding shall be English.

### **6.2 Discussion and Findings on the Merits**

The Policy requires the Complainant to prove three elements:

- (a) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (b) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (c) 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 provided sufficient evidence that it has valid rights in its trademarks for CHEWY, based on its use and registration of the same as trademarks in several jurisdictions, as stated above.

Further, as to confusing similarity of the disputed domain name with the Complainant's CHEWY marks, the Panel finds that the disputed domain name was created by the Respondent by merely adding the word "sale" after the Complainant's CHEWY trademark. In this regard, the Panel refers to the WIPO Overview of WIPO

Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7, which states: “[...] in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.” The Panel concludes that the disputed domain name contains the Complainant’s trademark CHEWY in its entirety, which remain easily recognizable in spite of the abovementioned addition of the descriptive word “sale”, and which is therefore confusingly similar to the Complainant’s CHEWY marks. The Panel also notes that the applicable generic Top-Level Domain (“.shop” in this case) is viewed as a standard registration requirement, and may as such be disregarded by the Panel, see in this regard the [WIPO Overview 3.0](#), section 1.11.1.

Accordingly, based on the above elements, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademarks. The Panel therefore decides 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 accepts 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 legitimate noncommercial 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, no evidence or arguments have been submitted by the Respondent in reply.

Upon review of the facts and evidence in this proceeding, the Panel notes that the Respondent has not provided any evidence of the use of, or demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services. Instead, the Panel notes that the disputed domain name directs to an active website which shows a clear intent on the part of the Respondent to misleadingly pass it off as the Complainant’s website for commercial gain. In fact, said website prominently displays the Complainant’s trademarks and uses some of the Complainant’s own product images and content likely protected by copyright, and also displays a deceptive website description at the “About Us” section, thereby misleading consumers into believing that the Respondent is the Complainant or is at least licensed by, or affiliated with the Complainant and/or its trademarks. Moreover, the Panel also accepts that, given the unclear origin, the lack of any clear disclaimer and false suggestions of affiliation on the website and given the heavily discounted product prices, there is a grave risk that the products offered by the Respondent on such website are counterfeit products. Moreover, even if the products were legitimate products, it is clear to the Panel from the foregoing elements that the Respondent is not a good faith provider of goods or services under the disputed domain name, see also *Okidata Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#). Given the abovementioned elements, the Panel concludes that the Respondent’s use does not constitute a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use of the disputed domain name.

Finally, the Panel considers that the nature of the disputed domain name is inherently misleading, and carries a grave risk of implied affiliation with the Complainant, see [WIPO Overview 3.0](#), section 2.5.1.

On the basis of the foregoing elements, 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**

Given the intensive prior use and strong reputation of the Complainant’s prior registered trademarks, the Panel finds that the subsequent registration of the disputed domain name by the Respondent clearly and consciously targeted the Complainant’s prior registered trademarks for CHEWY. In this regard, the Panel

also refers to several prior decisions under the Policy which have recognized the Complainant's rights in its trademarks and their reputation (see for instance *Chewy, Inc. v. Xiuyun Li*, WIPO Case No. [D2022-3766](#) and *Chewy, Inc. v. Super Privacy Service LTD c/o Dynadot / Ryan C*, WIPO Case No. [D2021-1274](#)). The Panel therefore deducts from the Respondent's efforts to consciously target the Complainant's reputable prior trademarks that the Respondent knew, or at least should have known, of the existence of the Complainant's trademarks at the time of registering the disputed domain name. This finding is further confirmed by the fact that the website linked to the disputed domain name is used to offer for sale competing (and potentially counterfeit) pet supply products by reference to the Complainant's CHEWY mark, since this proves that the Respondent was fully aware of the Complainant's business and its prior trademarks. The Panel also notes that the website linked to the disputed domain name does not contain a disclaimer regarding the lack of relationship and even falsely suggests to be the Complainant, or to be at least affiliated with the Complainant. The Panel also considers that with the Complainant's prior registration and intensive use of its trademarks and the composition of the disputed domain name, the disputed domain name is so closely linked and so obviously connected to the Complainant and its trademarks that the Respondent's registration of the disputed domain name points toward the Respondent's bad faith. In the Panel's view, the foregoing elements clearly indicate bad faith on the part of the Respondent, and the Panel therefore finds that it has been demonstrated that the Respondent registered the disputed domain name in bad faith.

As to the use of the disputed domain name in bad faith, the disputed domain name directs to an active website, which shows a clear intent on the part of the Respondent to misleadingly pass it off as the Complainant's website by prominently displaying the CHEWY marks in the website banner, as well as product images and content taken from the Complainant's official website (thereby likely violating the Complainant's copyrights), and offering products for sale, including the Complainant's AMERICAN JOURNEY and FRISCO products, which may be counterfeit products due to their heavily discounted prices and unclear origin. The Panel concludes from these facts that the Respondent is intentionally attracting Internet users for commercial gain to such website, by creating consumer confusion between the website associated with the disputed domain name and the Complainant's trademarks. This constitutes direct evidence of the Respondent's bad faith under paragraph 4(b)(iv) of the Policy. The Panel therefore finds that it has been demonstrated that the Respondent has used, and is using the disputed domain name in bad faith.

Finally, the Respondent has failed to provide any response or evidence to establish its good faith or absence of bad faith. The Panel therefore finds that the Complainant has satisfied the requirements of the third requirement 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, <chewysale.shop> be transferred to the Complainant.

*/Deanna Wong Wai Man/*

**Deanna Wong Wai Man**

Sole Panelist

Date: July 24, 2023