



Asian Domain Name Dispute Resolution Centre

hongkong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2401897
Complainant:	ShenZhen USAMS Trading Co., Ltd., ShenZhen USAMS Technology Co., Ltd.
Respondent:	Bibo Liu
Disputed Domain Name(s):	<USAMS.COM>

1. The Parties and Contested Domain Name

The Complainant companies are ShenZhen USAMS Trading Co., Ltd. and ShenZhen USAMS Technology Co., Ltd., of Block A, Ganfeng Technology Building, No.993 Jiaxian Road, Bantian, Longgang District, Shenzhen, China (collectively “the Complainant”). The authorized representative of the Complainant is Qin Wang, of Room 205, Building 7, Vanke Xinghuo Online, No. 2, Wuhe South Road, Bantian Street, Longgang District, Shenzhen, China.

The Respondent is Bibo Liu, of Fengshang Shidai, Xixiang, Baoan District, Shenzhen, China.

The domain name at issue is <USAMS.com>, registered by the Respondent with GoDaddy.com, LLC.

2. Procedural History

On 29 June 2024, pursuant to the Uniform Domain Name Dispute Resolution Policy (“the Policy”), the Rules for the Uniform Domain Name Dispute Resolution Centre Policy (“the Rules”) and the Asian Domain Name Dispute Resolution Centre Supplemental Rules (“the ADNDRC Supplemental Rules”), the Complainant submitted a Complainant in the Chinese language to the Hong Kong Office of the ADNDRC (“the Centre”) and elected this case to be dealt with by a single-member panel. The Centre acknowledged receipt of the Complainant and notified the Registrar of the disputed domain name on 2 July 2024. The Centre received a reply from the Registrar on 11 July 2024.

On 12 July 2024, the Centre notified the Complainant of the deficiency of the Complainant and requested Complainant to rectify, within 5 calendar days (on or before 17 July 2024), the deficiency by updating the information of the Respondent in accordance with the WHOIS information provided by the Registrar. On 17 July, the Complainant submitted a revised Complainant to the Centre. On 19 July, the Centre reminded the Complainant that

according to Article 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 of the disputed domain name is English, therefore the language of the proceedings of this Complainant should be English. The Complainant was requested to respond regarding the language of the proceedings on or before 24 July 2024. On 22 July 2024, the Complainant requested to change the language of proceedings to be Chinese. After reviewing the revised Complainant, the Centre confirmed the Complainant is in administrative compliance with the Policy and the Rules on 22 July 2024.

On 24 July 2024, the Centre sent a Written Notice of Complainant to the Respondent, notifying the Respondent that a Complainant had been filed against the Respondent by the Complainant and the deadline for submitting a response was 13 August 2024. On the same day, the Centre notified the Respondent that the Complainant requested to change the language of the proceeding to Chinese and requested the Respondent to respond to such. On 26 July 2024, the Respondent notified the Centre that the language of proceedings should be English. On 12 August 2024, the Respondent submitted its response.

On 30 July 2024, the Centre listed Prof. Jyh-An Lee as a candidate of the sole panelist. Prof. Jyh-An Lee confirmed his availability and position to act independently and impartially between the parties on the same day, and was appointed as the sole Panelist for the captioned case on 12 August 2024. Both parties were informed of the appointment on the same day. On the 17th of August 2024, the Complainant submitted Supplementary Comments regarding the Respondent's Response in the HK-2401897 Domain Name Dispute Case to the Centre.

3. Language of Proceedings

According to Article 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. Section 4.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions (Third Edition) states that “panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios include (i) evidence showing that the respondent can understand the language of the complaint, (ii) the language/script of the domain name particularly where the same as that of the complainant's mark, (iii) any content on the webpage under the disputed domain name, (iv) prior cases involving the respondent in a particular language, (v) prior correspondence between the parties, (vi) potential unfairness or unwarranted delay in ordering the complainant to translate the complaint, (vii) evidence of other respondent controlled domain names registered, used, or corresponding to a particular language, (viii) in cases involving multiple domain names, the use of a particular language agreement for some (but not all) of the disputed domain names, (ix) currencies accepted on the webpage under the disputed domain name, or (x) other indicia tending to show that it would not be unfair to proceed in a language other than that of the registration agreement.”

In the present case, the language of the Registration Agreement of the disputed domain name is English. Therefore, the default language of proceeding should be English. Despite

the Registration Agreement is in English, the Complainant has submitted its Complaint in Chinese and chosen Chinese as the language of proceeding on the basis that both parties in the present case are Chinese entities and understand the Chinese language. Nevertheless, after being notified by the Centre, the Complainant also resubmitted a Complaint in English and agreed to be bound by the decision of the Panel regarding the change of the language of the proceeding. The Centre notified the Respondent regarding the Complainant's request to change the language of the proceeding in both English and Chinese and requested the Respondent to respond by 29 July 2024. On 26 July 2024, the Respondent replied to such request insisting that the language of proceeding should be English and filed its Response in both English and Chinese.

In light of the aforementioned circumstances, the Panel has determined that the parties involved did not reach an agreement regarding the change of the language of the proceeding. Additionally, the Complainant's resubmitted Complaint in English clearly demonstrates that the Complainant has no difficulty understanding and communicating in English, thus ensuring that proceeding in English will not prejudice the Complainant. Therefore, it is appropriate to adhere to the default language for the proceeding. However, the Panel decides not to order the Complainant to translate its full submission into English because (1) the Respondent's Response filed in both languages indicates that he has no difficulty understanding Chinese, and thus having the Complainant submitting its evidence in Chinese will not create prejudice against the Respondent; and (2) requiring the Complainant to translate the complaint into English could result in unwarranted delays, contradicting the expeditious nature of UDRP proceedings and imposing additional costs and time burdens on the parties involved. In conclusion, the Panel has determined that the language of the proceeding in this case should align with the language specified in the Registration Agreement of the disputed domain name, which is English.

3. Factual background

A. For the Complainant

The Complainant, ShenZhen USAMS Trading Co., Ltd., (深圳市优胜仕贸易有限公司) was incorporated on 31 March 2011. The Complainant and its affiliated company ShenZhen USAMS Technology Co., Ltd. (深圳市优胜仕科技有限公司) are high-tech enterprises specializing in the R&D, design, production, and sales of consumer electronics. Through its brand "USAMS", it offers a diverse range of stylish accessory products for mobile phones, automotive use, computers, and home life. With a focus on key e-commerce platforms such as Tmall, JD.com, Taobao, Alibaba International, AliExpress, and Amazon, the Complainant has sold its products in over 100 countries and regions, including Europe, the Middle East, the Americas, and Southeast Asia.

The Complainant owns a series of valid trademark registrations incorporating the word "USAMS" in classes 3, 6, 7, 9, 10, 11, 12, 14, 16, 17, 18, 20, 21, 22, 24, 28, 34 or 35 in multiple jurisdictions including Hong Kong, Singapore, Vietnam, Malaysia, Thailand, South Korea, Brazil, Argentina, Ecuador, Turkey, Poland, Costa Rica, Mexico, Cyprus, Kuwait and Albania. (hereinafter collectively referred to as "the USAMS marks").

B. For the respondent

The Respondent, Bibo Liu is a natural person. The Respondent registered the domain name USAMS.com in 2004.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

- i. The domain name in dispute is identical or confusingly similar to the Complainant's registered trademarks

The registered trademark of the Complainant, "USAMS," is fully integrated within the disputed domain name. Furthermore, the "Contact Information" section of the disputed domain name website displays the Complainant's company name (ShenZhen USAMS Trading Co., Ltd.) and company address (601, Building 3, Yunli Business Park, Bantian Street, Longgang District, Shenzhen City, Guangdong Province, China)

- ii. The Respondent has no rights or legitimate interests in the registration of the domain name in dispute

The Complainant contends that the Respondent has not provided sufficient evidence indicating that the Respondent enjoys any prior rights or legitimate interests in respect of the disputed domain name.

- iii. The Respondent has acquired and used the domain name in bad faith.

The Complainant contends that the Respondent has acquired and used the disputed domain name in bad faith under paragraph 4(a)(iii) of the Policy.

Firstly, the Respondent is not the original registrant of the disputed domain name. The Respondent purchased the disputed domain name for the purpose of clinging to the goodwill of the Complainant after the USAMS trademark was registered.

Secondly, the Respondent used the disputed domain name to establish a website, which utilizes the Complainant's trademark without authorization and also copies the Complainant's website, design to offer the same products as the Complainant. The small transaction volume, as well as the fact that the Respondent shut down the website permanently, indicate that the Respondent has an intent of infringement. Moreover, the Respondent's claim that they purchased the USAMS goods through legitimate channel is unsubstantiated because the Complaint did not find any records in their system.

Thirdly, after being contacted by the Complainant, the Respondent alleged that "Yes, we are USAMS China" and offered to sell the disputed domain name and website to the Complainant. After the communication, the Respondent changed the setting of the disputed domain name website so that it could only be accessed by users outside mainland China in order to evade legal responsibility.

Thirdly, the Respondent has used the disputed domain and website to the damage of the Complainant and gained an unfair competitive advantage. In January 2024, in an effort to verify the Respondent's details, the Complainant placed phishing orders on the disputed website. However, despite repeated requests and urging, the Complainant never received the goods they had ordered and was unable to secure a refund. It is important to note that the layout of the Respondent's website, as well as the products offered, bear a striking resemblance to those found on the Complainant's official website. This similarity has the potential to mislead consumers into believing that the disputed website is operated by the Complainant. Consequently, the Respondent's alleged fraudulent activities have severely tarnished the Complainant's reputation and are likely to result in a decline in the volume of transactions involving the Complainant's products.

B. Respondent

The Respondent's contentions may be summarized as follows:

- i. The Respondent's domain "USAMS.COM" was registered in 2004, prior to the Complainant's trademark registration.
- ii. Even though the Respondent had sold the Complainant's products, all these products were procured through legitimate channels (such as Huaqiangbei stalls, 1688, Taobao, Pinduoduo, etc.) The Respondent did not engage in any form of trademark forgery or replication. After realizing these actions could lead to disputes, the Respondent has shut down the website permanently.
- iii. The Respondent denies the Complainant's allegations of non-delivery fraud, claiming that all orders have tracking records, according to which all products have been delivered. Regarding the Complainant's phishing orders, the Respondent claims that the products have been duly shipped and the recipient has been signed.
- iv. The Respondent did not intentionally plagiarize or imitate the Complainant's website content.

5. Findings

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent's domain name 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 domain name; and
- iii. Respondent's domain name has been registered and is being used in bad faith.

A) Identical / Confusingly Similar

In the present case, the Complainant has adduced evidence to show that it and its affiliated companies have maintained valid registrations for the USAMS marks in multiple classes in

several jurisdictions, including China. The disputed domain name is <USAMS.com>, which entirely incorporates the Complainant's registered trademark. When assessing whether the disputed domain name is identical or confusingly similar to the Complainant's trademark, it has been well established that the generic top-level part ".com" should not be considered. Therefore, the distinctive part in the disputed domain name is "USAMS", which is identical to the Complainant's trademark " **USAMS** ".

Under such circumstances, the Respondent's use of the disputed domain name would easily mislead the public into believing that the Respondent is authorized by the Complainant to carry out the Complainant's business on the disputed website. Therefore, the Panel finds that the disputed domain name is identical or confusingly similar to the Complainant's registered trademark as stipulated by Paragraph 4(a)(i) of the Policy.

B) Rights and Legitimate Interests

There is no evidence suggesting that the Respondent has been commonly referred to by the disputed domain name. The Respondent's name and other information provided by the Registrar do not show the Respondent has any association with "USAMS", and thus there is no justification or apparent need for the Respondent to use "USAMS" in the disputed domain name. In the Response submitted to the Centre, the Respondent failed to adduce evidence to prove it has any right or legitimate interest in the disputed domain name since the Respondent does not use the domain name to provide its own products or services. It is therefore inferred that the Respondent in this case does not have any right or legitimate interest in the disputed domain name as stipulated by Paragraph 4(a)(ii) of the Policy.

C) Bad Faith

Paragraph 4(a)(iii) of the Policy requires the Complainant to establish the disputed domain name has been registered and is being used in bad faith. The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", being the Panel prepared to draw certain inferences in light of the particular facts and circumstances of the case. *See* Section 4.2, WIPO Overview 3.0. Paragraph 4(b) of the ICANN Policy specifies four types of circumstances that could be evidence of the registration and use of a domain name in bad faith. They include: (i) circumstances indicating that the holder of the domain name has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or (ii) the holder of the domain name has registered the 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 you have engaged in a pattern of such conduct; or (iii) the holder of the domain name has registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, the holder of the domain name has intentionally attempted to attract, for commercial gain, Internet users to his web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of his web site or location or of a product or service on his web site or location. In accordance with this stipulation, the Complainant is tasked with demonstrating that the disputed domain name has been both registered and utilized in a manner indicative of bad faith by the respondent. It is important to note that these requirements are

interdependent, and the fulfillment of both is imperative for a complaint to be deemed successful: *see e.g., Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd*, WIPO Case No. D2010-0470.

Generally speaking, a finding that a domain name has been registered and is being used in bad faith necessitates inferring that the respondent in question has purposefully registered and is exploiting the disputed domain name to capitalize on its association with the complainant's trademark. In the present case, the registration of the disputed domain name predates the Complainant's registration of the USAMS trademarks. Section 3.8.1 of the WIPO Overview 3.0 provides that where a respondent registers a domain name before the complainant's trademark rights accrue, panels will not normally find bad faith on the part of the respondent. Panels typically would not treat merely "formal" changes or updates to registrant contact information as a new registration if the respondent provides satisfactory evidence of an unbroken chain of possession. However, in the case of a transfer of a domain name registration from a third party to the respondent, the date on which the current registrant acquired the domain name is the date a panel will consider in assessing bad faith. In situations where the registration of a domain name is concealed by a privacy or proxy service, and the complainant presents a credible allegation of a significant alteration in registration, it becomes the responsibility of the respondent to furnish compelling evidence of an uninterrupted chain of registration. Failure on the part of the respondent to do so has led panels to infer an intention to conceal the true underlying registrant subsequent to a change in the relevant registration. Such attempts to obfuscate may, in certain instances, contribute to a larger narrative whereby the application of UDRP paragraph 4(b)(iv), in conjunction with paragraph 4(a)(ii), can substantiate an inference of bad faith registration that the respondent must endeavor to refute. Facts or circumstances supporting an inference that a change in registrant has occurred may typically include a change in the content of the website to which a domain name directs to take advantage of the complainant's mark or unsolicited attempts to sell the domain name to the complainant only following such asserted change in registrant.

In *Tau Ceramica Solutions, S.L.U. v. Wyatt Miller*, WIPO Case No. D2023-3996, the complainant argued that the disputed domain name had undergone a transfer to a Privacy Service subsequent to its initial registration, and then to the respondent. However, the complainant was unable to ascertain the precise moment when the respondent became the registrant of the disputed domain name. The panel, in its ruling, emphasized that a change in registrant could be more confidently inferred if there was evidence indicating a shift in the usage of the disputed domain name at the time of the registration change, specifically with the Privacy Service being identified as the registrant. Nonetheless, as the panel found no satisfactory evidence of such a nature presented by the complainant, it concluded that it would be inappropriate to base a finding of bad faith solely on the complainant's assertions.

In the present case, the submission from the Respondent, in conjunction with the WHOIS information, indicates that the disputed domain name was registered in 2004, a notable nine years prior to the registration of the Complainant's trademark and seven years before the Complaint companies were incorporated. In its supplementary submission, the Complainant contended that the initial registrant of the disputed domain name was not the Respondent, and that the Respondent acquired it solely to capitalize on the Complainant's goodwill after the registration of the USAMS trademark. However, the Complainant did not provide sufficient supporting evidence to substantiate this claim.

Although the WIPO rules and precedents mentioned above suggest that a change in registrant may be inferred in exceptional cases, depending on the specific facts and circumstances, the evidence presented to the Panel fails to demonstrate that any changes in the content of the disputed website occurred only *after* the alleged change in registrant. Furthermore, it does not sufficiently establish an “unsolicited” attempt by the Respondent to sell the disputed domain name to the Complainant following such an asserted change. While the Complainant asserts that the Respondent offered to sell the disputed domain and website to them as a package, these attempts were made only after the parties had already engaged in communication regarding the alleged infringement. Therefore, they do not qualify as an “unsolicited attempt” as stipulated by Section 3.8.2 of the WIPO Overview 3.0.

Given the above, considered that the Complainant was well aware that the disputed domain name was registered before the date of the Complainant’s registered trademarks when it filed the Complaint, it was incumbent on the Complainant to include in its Complaint and place before the Panel evidence corroborating its claim that the Respondent acquired the disputed domain name *after* the Complainant’s registration of the first USAMS mark. In the absence of concrete evidence substantiating the alleged transfer of the disputed domain name from the initial registrant to the Respondent, as well as the date on which the Respondent acquired it, there is no basis to conclude that the Registrant registered or acquired the disputed domain name with malicious intent to sell it to the Complainant, disrupt the Complainant’s business, or prevent the Complainant from registering its trademark as a domain name.

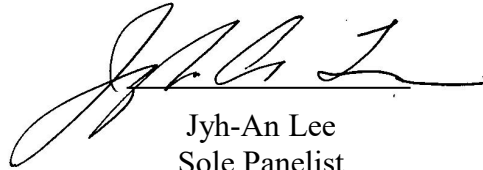
As of the date of this decision, the disputed website is no longer active or accessible. However, the Complainant has submitted evidence, including screenshots of the disputed website, to show that the Respondent had been engaged in the same businesses as the Complainant had and offered the Complainant’s products bearing the USAMS mark by using the disputed domain name. The alleged offering and sales of the Complainant’s products are acknowledged by the Respondent. Nevertheless, the Respondent contends that he has procured all disputed products from legitimate sources. After the Complainant communicated with the Respondent about the confusing domain and website issue, the Respondent proposed to sell to the Complainant “the domain name and website as a package”. The Complainant contends that this indicates that the Respondent’s primary purpose for registering the domain is to sell it for profits as described under Paragraph 4(b)(i) of the ICANN Policy.

The Panel concurs with the Complainant regarding the determination of bad faith use. Although the disputed website is currently inactive, it has been established by previous UDRP cases that non-use of a domain name does not preclude a finding of bad faith under the principle of passive holding. WIPO Overview 3.0 Section 3.3 grants panels the discretion to consider the overall circumstances of each case when assessing passive holding. In this particular case, it is evident that the Respondent intended to use the disputed domain name and website to offer the Complainant’s products, causing confusion among consumers. Furthermore, the fact that the offered products were obtained from legitimate sources does not negate the crucial fact that they were acquired from unauthorized markets. Nor does it provide any plausible explanations for the Respondent’s use of the disputed domain name, other than attempting to attract Internet users for personal gain by creating a likelihood of confusion with the Complainant’s trademark regarding the source, sponsorship, affiliation, or endorsement of the Respondent’s website. Consequently, the Panel determines that the disputed domain name is being used in bad

faith. However, as previously stated, while the evidence presented to the Panel supports a finding of bad faith use, it does not support a finding of bad faith registration. Therefore, the Panel concludes that the Complainant has not met the requirements of the third element of Paragraph 4(a) of the Policy.

6. Decision

For all of the foregoing reasons, the request made by the Complainant for transfer of the domain name <USAMS.COM> is denied.



Jyh-An Lee
Sole Panelist

Dated: 26 August 2024