



Asian Domain Name Dispute Resolution Centre

hong kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK 1600871
Complainant:	Paul Smith Group Holdings Limited
Respondents:	Shang Qi
Disputed Domain Name:	<shoppaulsmithclearanceonline.com>

1. The Parties and Contested Domain Name

The Complainant is Paul Smith Group Holdings Limited, The Poplars, Lenton Lane, Nottingham NG7 2PW, GB (hereinafter (“Complainant”).

The Respondent is Shang Qi, Chaoyanglu, Hangzhou, Jiangshu, 214000 CN (hereinafter referred to as “Respondent”).

The domain name at issue is <shoppaulsmithclearanceonline.com>, registered by Respondent with GoDaddy.com, LLC., 14455 N. Hayden Road, Suite 226, Scottsdale, AZ 85260 USA (the “Registrar”).

2. Procedural History

On 24 May 2016 Complainant filed the Complaint in this matter concerning the domain name at issue. On 25 May 2016 the Asian Domain Name Dispute Resolution Centre (hereinafter referred to as the “Centre”) notified the Registrar of the filing of the complaint and requested that the Registrar confirm that the domain name at issue was registered with the Registrar, that the identified Respondent is the registrant of the domain name, and that the Registrar had received a copy of the Complaint. Also on that date the Centre sent the Complainant an Acknowledgement of Receipt of Complaint.

On 26 May 2016 the Registrar informed the Centre that the registration of the domain name at issue was currently held by Respondent, that the language of the registration agreement was English, and that the Registrar had not received a copy of the Complaint. On 27 May 2016, Complainant notified the Centre that it was filing the required fees in the case. On 1 June 2016 the Centre notified the Complainant that it had received the required filing fees in the case. On that same date, the Centre notified Complainant of deficiencies in the Complaint. On that same date the Centre sent to Respondent a formal written Notice of Complaint announcing commencement of the Proceedings as of that date and advising Respondent that a formal response was due on or before 21 June 2016, and transmitting to Respondent a Notice of the Complaint together an additional copy of the Complaint and the annexes thereto. Not having

received a response within the required time, on 22 June 2016 the Centre notified the parties of Respondent's default.

On 28 June 2016 the Centre appointed M. Scott Donahey as the sole panelist in conformity with the Policy and the Rules. On that same date the Centre transferred the file to the panel. As the registration agreement is in the English language, the Panel finds that the language of the proceedings is English. Uniform Rules, Rule 7(a).

3. Factual background

Complainant is the holder of numerous trademarks in the mark PAUL SMITH in the U.S., U.K., E.U., with WIPO, and in China which registrations date back to as early as 20 November 1984. Complaint, Annex of Trademark Registrations. Complainant has been using the domain name in conjunction with its commercial activities since 1999.

Complainant is a designer of clothing and related products whose goods are sold around the world and has an international reputation in the trade and with the buying public. Respondent is using the domain name at issue to resolve to a web site at which Respondent offers counterfeit goods bearing Complainant's well-known mark.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

Complainant contends that the domain name at issue is confusingly similar to Complainant's PAUL SMITH mark, adding only the word "shop" before the mark and then appending the words "clearance" and "online" to the end of the mark, an indication that Complainant is offering its goods online at reduced prices. Complainant contends that Respondent has no connection to Complainant whatsoever and has not been authorized or licensed to use Complainant's distinctive mark. Complainant argues that Respondent is using the domain name at issue to confuse Internet users into believing that Complainant offering its goods online at reduced prices on the web site to which the Domain Name at issue resolves. In fact the goods offered on the web site to which the domain name at issue resolves are counterfeit.

B. Respondent has failed to respond to the Complaint

Respondent failed to deny Complainant's contentions, or to produce evidence contrary to Complainant's assertions.

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 must be 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 Similarity

The domain name at issue consists of the Complainant's well-known and internationally registered PAUL SMITH mark preceded by the English word "shop" and followed by the English words "clearance" and "online" to which the .com gTLD suffix is appended. The Panel finds that the domain name at issue is confusingly similar to Complainant's trademark.

B) Rights and Legitimate Interests

The consensus view of WIPO panelists concerning the burden of a complainant to rebut rights or legitimate interests in respect of the domain name is as follows:

While the overall burden of proof rests with the complainant, panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. Therefore, a complainant is required to make out an initial *prima facie* case that the respondent lacks rights or legitimate interests. Once such *prima facie* case is made, respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP.

WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition ("WIPO Overview, 2.0"), Section 2.1.

As there are WIPO panelists among the panelists in the ADNDRC, and as there are ADNDRC panelists among the panelists in WIPO, as this panelist is a member of both panels, and as all panelists are interpreting the same Rules and Policy, this panelist believes that the consensus view of WIPO panelists is equally applicable at the ADNDRC.

In the present case the Complainant alleges that Respondent has no rights or legitimate interests in respect of the domain name and Respondent has failed to assert any such rights. Accordingly, the Panel finds that Respondent has no rights or legitimate interests in respect of the domain name at issue.

C) Bad Faith

In the present case Respondent uses the domain name at issue resolves to a web site at which counterfeit goods represented to be those of Complainant are offered to the Internet user who arrives at the site. It is fair to assume that Respondent is using the domain name at issue to confuse Internet users who are searching for Complainant and who arrive at Respondent's web site and to obtain commercial gain as a result of such user confusion. Therefore, the Panel finds that Respondent has registered and is using the domain name at issue in bad faith.

6. 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 <shoppaulsmithclearanceonline> be transferred to the Complainant.

M. Scott Donahey
Panelist

Dated: 18 July 2016