



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1500802
Complainants:	Retail Royalty Company and American Eagle Outfitters, Inc.
Respondent:	Steely Cao
Disputed Domain Name:	<aeochina.com>

1. The Parties and Contested Domain Name

The Complainants are Retail Royalty Company, of Las Vegas, Nevada, United States of America and American Eagle Outfitters, Inc. of Pittsburgh, Pennsylvania, United States of America.

The Respondent is Steely Cao, of dongdajie, Suzhou, Jiangsu 210000, China.

The domain name at issue is <aeochina.com> (the “Domain Name”), registered by the Respondent with Attila the Hun, LLC, of Irvine, California, United States of America (the “Registrar”).

2. Procedural History

The Complaint was received by the ADNDRC electronically on October 20, 2015, together with the case filing fee. On October 29, 2015, the Registrar confirmed by e-mail to the ADNDRC that the Domain Name is registered with the Registrar and that the Respondent is the current registrant of the Domain Name. The Registrar has verified that the Respondent is bound by the Registrar’s (English language) registration agreement and has thereby agreed to resolve domain disputes brought by third parties in accordance with ICANN’s Uniform Domain Name Dispute Resolution Policy (the “Policy” or the “UDRP”).

On October 30, 2015, the ADNDRC served via e-mail to all entities and persons listed on Respondent’s registration as technical, administrative, and billing contacts, and to postmaster@aeochina.com, a Written Notice of the Complaint, together with the Complaint and a link to all Annexes, setting a deadline of November 19, 2015 by which the Respondent could file a Response to the Complaint.

The Respondent did not submit any Response and the ADNDRC notified the parties of the Respondent’s default on November 24, 2015.

On November 30, 2015, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the ADNDRC appointed Alan L. Limbury as Panelist.

By Administrative Order dated November 30, 2015, pursuant to paragraph 12 of the UDRP Rules, the Panel ordered the Complainant to provide, on or before December 7, 2015, a translation into English of such of the pages of the Exhibits to the Complaint as are presently not in English as the Complainant wishes the Panelist to consider. This order did not apply to copies of trademark registration certificates. On December 8, 2015 the Complainant provided translations which the ADNDRC verified as accurate. Although late, the Panel has taken the translations into account.

3. Factual background

The first Complainant, Retail Royalty Company, is a wholly owned subsidiary of the second Complainant, American Eagle Outfitters, Inc., an apparel and accessories retailer founded in 1977 in the United States of America, now having over 1,000 retail stores worldwide.

American Eagle Outfitters, Inc. registered the trademark AEO in China in 1996 in class 25 (No. 909418). Retail Royalty Company registered the trademark AEO in China in 2009 in class 18 (No. 5620861), in 2010 in class 14 (No. 6602377) and in 2011 in class 35 (No. 5620860). The Complainants have registered the AEO mark in numerous other countries.

The Domain Name was registered on December 29, 2014. As of May 2015 and September 2015, the Domain Name resolved to a website at <jinmi.com> where the Domain Name was offered for sale. The website stated that it is the “professional website specializing in Cybersquatting, Bidding, Exchanging intermediary and Registering international domains”.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

- i. The Domain Name is identical or confusingly similar to the Complainants' AEO marks, which are famous and distinctive.
- ii. The Respondent has no rights or legitimate interests in the Domain Name. It has neither applied to register nor registered as a trademark in China “aechina” or any part thereof; it has no affiliation or permission from the Complainants to use any AEO marks; it is not and cannot claim to be commonly known by the Domain Name and cannot claim to make legitimate noncommercial or fair use of the Domain Name; its only possible motivation for registering the Domain Name is to sell it at a profit.
- iii. The Domain Name was registered and is being used in bad faith. Before putting the Domain Name openly for sale, the Respondent actively tried to sell it to the Complainant or its agent. The Respondent's apparent intent in registering the Domain Name was to profit from its sale or from exploiting the Complainants' rights by diverting customers away from their legitimate website at <www.ae.com>.

- iv. The Complainants seek the transfer of the Domain Name to the first Complainant, Retail Royalty Company.

B. Respondent

There was no Response.

5. Findings

Since each of the two Complainants has registered the AEO trademark, both are entitled to bring these proceedings.

In accordance with paragraph 4(a) of the Policy, a complainant requesting the transfer of a domain name must prove the following three elements: (i) the respondent's domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; (ii) the respondent has no rights or legitimate interests in the domain name; and (iii) the respondent has registered the domain name and is using it in bad faith.

Under paragraph 15(a) of the UDRP Rules, "A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, asserted facts may be taken as true and reasonable inferences may be drawn from the information provided by the complainant. See *Reuters Limited v. Global Net 2000, Inc*, WIPO Case No. D2000-0441.

A) Identical / Confusingly Similar

As mentioned, each of the Complainants has registered the AEO mark in China and elsewhere. The Domain Name comprises that mark together with the geographic name CHINA and the inconsequential gTLD ".com".

In determining confusing similarity, evidence of actual confusion is not required. The test is an objective one, confined to a comparison of the Domain Name and the trademark alone, independent of the products or services for which the Domain Name may be used, or other marketing and use factors usually considered in trademark infringement (see *Arthur Guinness Son & Co. (Dublin) Limited v. Dejan Macesic*, WIPO Case No. D2000-1698; *AT&T Corp. v. Amjad Kausar*, WIPO Case No. D2003-0327). Confusion in this context, in the sense of bewilderment or failing to distinguish between things, may be regarded as a state of wondering whether there is an association, rather than a state of erroneously believing that there is one. An appropriate formulation might be: "Is it likely that, because of the similarity between the domain name on the one hand and the Complainant's trademark on the other hand, people will wonder whether the domain name is associated in some way with the Complainant?": *SANOFI-AVENTIS v. Jason Trevenio*, WIPO Case No. D2007-0648.

In *Microsoft Corporation v. Microsof.com aka Tarek Ahmed*, WIPO case No. D2000-0548, contributing factors to the likelihood of confusion were held to be the visual similarity

between the domain name and the complainant's mark and the mark being strong and immediately recognizable.

Applying these principles, the Panel finds the Domain Name to be confusingly similar to the Complainants' AEO mark, which is both strong and immediately recognizable.

The Complainants have established this element.

B) Rights and Legitimate Interests

The Complainants' AEO trademark is distinctive and well-known. The Complainants' assertions are sufficient to constitute a *prima facie* showing of absence of rights or legitimate interests in respect of the Domain Name on the part of the Respondent. The evidentiary burden therefore shifts to the Respondent to show by concrete evidence that it does have rights or legitimate interests in the Domain Name. See *Cassava Enterprises Limited, Cassava Enterprises (Gibraltar) Limited v. Victor Chandler International Limited*, WIPO Case No. D2004-0753. The Respondent has made no attempt to do so.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

The Complainants have established this element.

C) Bad Faith

Paragraph 4(a)(iii) of the Policy sets out the conjunctive requirement that the Complainants establish both that the Respondent has registered the Domain Name in bad faith and that the Respondent is using the Domain Name in bad faith.

The evidence provided with the Complaint establishes that the Complainants' AEO marks were registered in China many years before the Domain Name was registered by the Respondent and that the AEO brand was by then famous in that country and elsewhere. The only evidence of use of the Domain Name has been to offer it for sale on a website claiming to specialize in cybersquatting.

The Panel finds that the Respondent had the AEO mark in mind when registering the Domain Name and did so primarily for the purpose of selling the Domain Name for profit to one or other of the Complainants. Pursuant to the Policy, paragraph 4(b)(i), this finding constitutes evidence of both bad faith registration and bad faith use for purposes of paragraph 4(a)(iii).

The Complainants have established this element.

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 Domain Name <aeochina.com> be transferred to the Complainant Retail Royalty Company.

Alan L. Limbury

Alan L. Limbury
Panelist

Dated: December 14, 2015