

Decision for dispute CAC-UDRP-101748

Case number	CAC-UDRP-101748
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Time of filing	2017-11-20 09:26:48
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Domain names	philipp-pleins.com
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Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)
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Complainant

Name	philipp plein
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Complainant representative

Organization	Barzano&Zanardo Milano S.p.A.
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Respondent

Name	Chen JieQing
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OTHER LEGAL PROCEEDINGS

The Panel is aware of no other legal proceedings, pending or decided, which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant states and provides evidentiary documentation that is the owner of a number of trade marks containing or consisting of the words PHILIPP PLEIN. For example:

EU Registration No. 002966505 PHILIPP PLEIN filed in 2002 for various goods in classes 3, 14, 18, 20, 21, 24, 25 and 28 including clothing and footwear; and

EU Registration No. 012259503 PHILIPP PLEIN (and logo device) filed in 2013 for various goods in classes 3, 14, 18, 20, 21, 24, 25 and 28 including clothing and footwear.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:**I. Language of the Proceeding**

The Complainant states "it has not been possible to find a copy of the applicant Registration Agreement on the Registrar's

website". It further stated that the Registrar's website was in Chinese and therefore conceded that it was "likely" the Registration Agreement was also in Chinese.

The Complainant then further requested that the Panel adopt English as an alternative language in this proceeding in accordance with paragraph 11(a) of the Rules for the following reasons:

- neither the Complainant, nor its representatives, understand Chinese. And it would therefore be quite burdensome and expensive for the Complainant to translate the Complaint with all its annexes into Chinese. Moreover, requiring a Chinese translation of all documents would, in the Complainant's view, create unnecessary delay to this procedure, while one of its main advantages is its short time frame. Further, the Complainant stated the alleged abusive use of the disputed domain name has already created substantial damages to the Complainant's image and reputation and extending the deadlines of this UDRP procedure would unduly increase these damages;
- the website to which the domain name redirects contains English words; this circumstance shows that the Respondent has an understanding of this language;
- the disputed domain names is registered in Latin characters, rather than Chinese script, most probably, in the Complainant's view, to attract international potential customers;
- English is the primary business and commercial language and is therefore widely spoken and understood in these fields. Since the disputed domain name was used for business/commercial purposes, it is most likely that its owner knows English;

As the Respondent would not be jeopardized by the adoption of English as an alternative language of these UDRP proceedings, while the adoption of Chinese would be troublesome for the Complainant.

II. The Complainant

The Complainant is the German fashion designer Philipp Plein founder of a fashion brand consisting of his own name.

The Complainant participates in fashion shows around the world including in Milan, Paris and New York. And he currently promotes the PHILIPP PLEIN brand globally in 36 of his own branded stores and with over 500 retail clients. His retail clients include those with stores located in China and Hong Kong. From such sales the Complainant currently generates a turnover of over one hundred million Euros.

The Complainant also promotes the PHILIPP PLEIN brand through several sponsorship agreements, including with AS Roma (Italian soccer team), Mauro Icardi, (footballer) and Nico Hulkenberg (Formula one driver).

The Complainant is active on several social networks, such as facebook (<https://www.facebook.com/>), twitter (<https://twitter.com/>) and Instagram (<https://www.instagram.com/>).

III. The Respondent

The disputed domain name was registered on April 5, 2017 in the name of Chen JieQing. Currently, the disputed domain name resolves to a website displaying the Complainant's PHILLIP PLEIN word mark and his PHILLIP PLEIN logo that is the subject of EU Registration No. 012259503.

Screenshots of that website contain numerous references to clothing and footwear. They also evidence the display of a prominent banner stating "Official Philipp Plein Outlet Online up to 80%". Despite these claims the Complainant denies finding any evidence that the Respondent actually offers the Complainant's goods for sale. Further, despite the use of the trade marks, including the PHILLIP PLEIN logo, the Complainant expressly denies the Respondent is an authorized dealer, agent, distributor, wholesaler or retailer of Philipp Plein. In fact, the Complainant states he has never authorized Chen JieQing to include his

trademark in the disputed domain name, nor to make any other use of his trademark in any manner whatsoever. Complainant also confirms that it is not in possession of, nor aware of the existence of, any evidence tending to demonstrate that the Respondent is commonly known by the Domain Name, as individual, business, or other organization.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

A. The Language of the Proceeding

The Complainant has made a request under paragraphs 11(a) of the Rules that the language of this administrative proceeding be English. That paragraphs of the Rules reads:

(a) 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.

The Complainant has, in its Complaint, accepted the likelihood that the Registrar Agreement is in Chinese and not English.

It is a well established principal that a panel in a UDRP proceeding may use its general powers granted by Rule 10(a) of the Rules to perform limited factual research into matters of public record to assist in assessing the merits of a case and reaching a decision (WIPO Overview 3.0 at paragraph 4.8). In the present case the Panel considered it entirely appropriate to review the Registrar's website at <http://www.cndns.com> and ICANN's list of accredited registrars at <https://www.icann.org/> Through doing so the Panel has concluded that it also could not locate the Registrar Agreement on the Registrar's Chinese language website but it has concluded the Registrar is a signatory to the 2013 Registrar Accreditation Agreement and that its contact email address is freely available on ICANN's website.

The Panel further notes there is no evidence submitted by the Complainant that it used the said ICANN website list to obtain an email address for the Registrar and attempt to use it to obtain a copy of the Registrar Agreement. Such evidence may have been of assistance to the Panel. Nevertheless there are sufficient facts to satisfy the Panel that the Registrar Agreement exists in Chinese.

For the reasons set out above the Panel accepts that the Registrar Agreement exists, binds the Registrant to the Policy and is in Chinese.

The next matter for the Panel to consider is the request that the proceeding be held in a different language to that of the Registrar Agreement, namely in English.

It has been stated that the discretion to decide upon the language of the proceeding under Rule 11(a) "must be exercised in the spirit of fairness and justice to both parties taking into consideration matters such as command of the language, time and costs" (please see *Transtrands Handelsaktiebolag v. Jack Terry*; WIPO Case No. D2005-0057). However it is without doubt that the command of language is the most vital consideration in the sense that if a Respondent has no understanding of the language of the complaint, and therefore is unable to even understand that a type of complaint which calls upon a response has been made against them, then there would be an obvious injustice to proceed in a language other than that of the Registrar Agreement to which the Respondent agreed.

However the vital nature of this consideration does not require overwhelming evidence from a Complainant that a Respondent is in fact highly proficient in the language in order for the Panel to deem it the appropriate language of the proceeding. No words indicating such a high onus exist in paragraph 11(a) of the Rules. Further it is the Panel's view that if the preliminary matter of the language of the proceeding can be decided on the facts fairly without delaying the proceeding then such a decision ought to be made.

The Panel finds in the present matter on the question of whether the Respondent has sufficient command of the English language that is enough that the facts show a likelihood that the Respondent had sufficient knowledge of this language to;

- (a). understand that a complaint had been made against it; and
- (b). be able to make the decision, as it did, to refrain from filing a response.

Such facts have been shown by the registration of the disputed domain name in latin characters together with the use of the disputed domain name to redirect to a website which displayed many full sentences in the English language. The above question has therefore been answered in the affirmative. It is unnecessary to investigate the proficiency of the Respondent's understanding of English any further. The Respondent has sufficient knowledge to satisfy the above. With such sufficient knowledge, if the Respondent believed it was prejudiced by the Complainant's request that the language of the proceeding be in English it ought to have filed a response saying so and setting out its reasons. It has not done so, in any language.

As to the remaining relevant factors the Panel accepts that the Complainant would incur costs and delay if proceeding were to be conducted in Chinese which, given the facts set out above, are unjustified. The domain name has clearly been used to communicate to consumers through a website in the English language and it is entirely appropriate for the proceedings to be conducted in that same language. As the Respondent has chosen not to file a response, it is not prejudiced in the same manner even if its preferred language was Chinese.

B. Substantive Issues

The Complainant has demonstrated to the satisfaction of the Panel that it has registered rights in the trade mark PHILIPP PLEIN that predates the registration of the disputed domain name by the Respondent.

The disputed domain name varies from this trademark only by way of the addition of a "-" and a "s", which are unlikely to distinguish the disputed domain name in the eyes of an internet user from the trademark.

Reliance on registered rights in a single jurisdiction is sufficient for the purposes of establishing rights referred to in paragraph 4(a)(i) of the UDRP (please see *Koninklijke KPN N.V. v. Telepathy, Inc.*, WIPO Case No. D2001-0217; WIPO Case Nos. D2012-0141 and D2011-1436).

In relation to the Respondent the Panel finds it has no rights or interest in the disputed domain name. The Panel further finds the Respondent has registered and used the disputed domain name in bad faith.

In particular, the Respondent has, without authority from the Complainant, used the latter's official logo (that is the subject of EU Registration No. 012259503) and word trademark prominently in the banner of the website to which the domain name directs. In this banner the Respondent also uses the words "Official Philipp Plein Outlet". The website also refers to the sale of clothing and footwear goods. Such use provides an overall false and misleading impression that the Respondent has an official connection with the Complainant, which is clearly bad faith use of the recently registered disputed domain name (please see Bayerische Motoren Werke Aktiengesellschaft, Rolls-Royce Motor Cars Limited v. Mr David Redshaw, Auto Crowd, Auto Crowd Group / MEDIAGROUP24/ WhoisGuard Protected / WhoisGuard, Inc., WIPO Case No. D2015-0589). The Respondent is clearly misleading consumers into believing such a connection exists with the Complainant's well known brand.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

- 1. **PHILIPP-PLEINS.COM**: Transferred

PANELLISTS

Name	Mr Andrew Norman Sykes
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DATE OF PANEL DECISION 2017-12-28

Publish the Decision