Decision for dispute CAC-UDRP-102131

Case number	CAC-UDRP-102131
Time of filing	2018-08-20 10:22:40
Domain names	3shapedesigner.com

Case administrator

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

Complainant

Organization	3Shape A/S

Complainant representative

Organization	BrandIT GmbH

Respondent

Name	Yong Sheng Zhu

OTHER LEGAL PROCEEDINGS

There are no other legal proceedings related to the disputed domain name. .

IDENTIFICATION OF RIGHTS

The Complainant is the registered proprietor of several trademarks comprising or including the word “3SHAPE“ for imaging apparatus for medical and dental purposes, including:

- International registration 109 5013 for 3SHAPECOMMUNICATE, registered on August 3, 2011 in Class 9, designating China;

- United States registration 5130811 for 3SHAPE, registered on January 31, 2017 in International Class 10;

- Taiwan registration No. 1658565 for 3SHAPE, registered on August 1, 2014 in International Classes 9 and 42.

FACTUAL BACKGROUND

Founded in 2000, the Complainant is a developer & manufacturer of 3D Scanners and CAD/CAM software solutions for the dental and audio industries with production facilities and offices in China, Europe, Latin America and the USA. The Complainant is the owner of the registered trademark 3SHAPE in several classes in various of countries including China, where the Respondent is located.

The disputed domain name was registered on April 30, 2017. Prior to a cease and desist letter to the Respondent from the Complainant in May, 2018, the disputed domain name resolved to a website featuring the following text in the English language:

“About us
3 Shape (2016) dental designer from China Design Company. We mainly supply our best design service to the dentall [sic] laboratory in the U.S.A. We are specialized in dental digital design, and providing state-of-art dental CAD/CAM service…We charge only USD$4 for each tooth...”

Following the Complainant’s cease and desist letter, the disputed domain name does not resolve to a website.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT

Although the Registration Agreement is in Chinese, the language of the proceeding should be English. The disputed domain name is confusingly similar to the Complainant's mark; the Respondent has no rights or legitimate interests with respect to the disputed domain name, which was registered and is being used in bad faith.

RESPONDENT

The Respondent contends it has a legitimate interest in the disputed domain name, saying (in English): "We just registered for personal use, and I'm really a 3shape designer, and we used TeamViewer to jump to other companies' computers. Registering this domain name is just for easier remembering. If it is improper, I can give up the domain name."

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.

Although the Registration Agreement is in English, the website to which the disputed domain name resolved prior to the cease and desist letter was in English and the Response was also in English. Accordingly it is appropriate that English be the language of the proceedings.

PRINCIPAL REASONS FOR THE DECISION

The disputed domain name contains the entirety of the Complainant's “3SHAPE“ trademark, together with the term “DESIGNER“, which is descriptive of the Complainant's business and does nothing to detract from the distinctiveness of that

mark. The gTLD .com may be disregarded. Accordingly the disputed domain name is confusingly similar to the Complainant's trademark.

The Complainant's assertions suffice to establish a prima facie case of absence of rights or legitimate interests in the disputed domain name on the part of the Respondent, whose response that the disputed domain name was registered for personal use and "just for easier remembering" is inconsistent with the commercial content of the website prior to the cease and desist letter.

That content shows that the Respondent was well aware of the Complainant's use of its mark in the dental business and that the disputed domain name was registered in bad faith in order to trade off the Complainant's reputation. This use of the disputed domain name prior to the cease and desist letter was clearly use in bad faith and the fact that the website has since been taken down does not alter the conclusion that the disputed domain name is currently being used in bad faith, albeit passively.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **3SHAPEDESIGNER.COM**: Transferred

PANELLISTS

Name	**Alan Limbury**

DATE OF PANEL DECISION 2018-09-28

Publish the Decision