Decision for dispute CAC-UDRP-102550

Case number	CAC-UDRP-102550
Time of filing	2019-06-27 11:40:22
Domain names	wellingtondw.com, dwjapan.com, danieldw.com, danieljapan.com, wellingtonja.com, danielja.com, wellingtonsale.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	Daniel Wellington AB

Complainant representative

Organization	SILKA Law AB

Respondent

Name	Zheng Zebiao

OTHER LEGAL PROCEEDINGS

The Panel is unaware of other legal proceedings which relate to any of the disputed domain names.

IDENTIFICATION OF RIGHTS

The Complainant is the proprietor of International Trademark No. 1135742, DANIEL WELLINGTON, registered on July 3, 2012 and International design mark No. 1260501 DW DANIEL WELLINGTON (with the D reversed), registered on March 11, 2015, in each case designating (inter alia) China and Japan.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

Since its inception in 2011, the Complainant has established DANIEL WELLINGTON as a very well known brand of watches and bracelets, marketed through social media platforms and brand ambassadors. The Complainant has a significant presence on Facebook, Youtube, Instagram, Snapchat, Pinterest and Twitter. In China, where the Respondent resides, the Complainant operates through its website https://www.danielwellington.cn/. In 2018 it opened its first Chinese shop in a Chinese airport. In Japan, which is the country referenced on the Respondent's websites and also the language of the websites, the Complainant operates through its website https://www.danielwellington.com/. The Complainant has also registered several domain names under Top-Level Domains containing the term “danielwellington” and “dw”.

The disputed domain names were all registered between March 6, 2019 and May 3, 2019. Other than <danielja.com> and <wellingtonja.com>, which were active and are presently inactive, they resolve to active websites.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that each of the disputed domain names is confusingly similar to a trademark 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 names (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 names have been registered and are 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 Respondent resides in China and the language of the websites to which the active disputed domain names resolve is Japanese, the language of the Registration Agreement is English. Accordingly, in the absence of any contrary agreement between the parties, pursuant to the Rules, paragraph 11(a), the language of these proceedings is English.

PRINCIPAL REASONS FOR THE DECISION

In accordance with paragraph 4(a) of the Policy, to obtain transfer of the disputed domain names, the Complainant must prove the following three elements: (i) the Respondent's domain names are 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 names; and (iii) the Respondent has registered the domain names and is using them in bad faith.

Under paragraph 15(a) of the 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.

The Panel finds that each of the disputed domain names is confusingly similar to a trademark in which the Complainant has rights. They all incorporate as their initial component elements of the Complainant's trademarks either as the short version "DW" which stands for Daniel Wellington or in conjunction "Wellington + DW" or "Daniel + DW" or "Daniel" or "Wellington" standing alone. The initial component is followed in four of the disputed domain names by the readily identifiable geographic terms "japan" or "ja" which refer to the country Japan and in one of the disputed domain names by the descriptive word "sale". The addition of the geographic or descriptive words does not prevent the disputed domain names from being confusingly similar to the Complainant's trademarks. The addition of the generic Top-Level Domain (gtld) ".com" may be

ignored. Based on the foregoing the Complainant has demonstrated that the disputed domain names are confusingly similar to its trademarks.

The <wellingtondw.com> and <danieljapan.com> domain names (registered on April 2 and May 3, 2019 respectively) resolve to websites having the look and feel of an official website of the Complainant, displaying the Complainant's word and logo marks and displaying watches bearing the Complainant's logo at a 50% discount. The <dwjapan.com> domain name (registered on March 6, 2019) resolves to a website displaying the Complainant's word and logo marks and displaying watches and bracelets without logos. The bracelets are offered at a 90% discount. The <danieldw.com> domain name (registered on April 2, 2019) resolves to a website having the look and feel of an official website of the Complainant, displaying a watch and bracelet without logos. The <wellingtonsale.com> domain name (registered on April 18, 2019) resolves to a website having the look and feel of an official website of the Complainant. The <danielja.com> and <wellingtonja.com> domain names (registered on April 9 and 10, 2019 respectively) are presently inactive.

The Complainant submits that DANIEL WELLINGTON is a well-known trademark in the fashion industry including in China and Japan. It is highly unlikely that the Respondent was unware of the rights the Complainant has in the trademark and its value at the point of the registrations. The Respondent bears no relationship to the trademark. The disputed domain names coupled with their content have no other meaning than as a reference to the Complainant's name and trademarks. There is no way in which the disputed domain names could be used legitimately under the current circumstances. Consequently, the Respondent should be considered to have registered and to be using the disputed domain names in bad faith.

The Panel finds that the clear tendency and purpose of the disputed domain names is to mislead consumers into believing that the disputed domain names belong to or are endorsed by the Complainant and to induce in consumers visiting the active websites the misapprehension that they are places where the Complainant offers its watches. It follows that the Respondent, who is not known by the name "Daniel Wellington", was well aware of the Complainant and its trademarks when registering the disputed domain names, including those presently inactive, and did so in order to trade off the Complainant's reputation.

Accordingly the Panel accepts the Complainant's submission that the Respondent has no rights or legitimate interests in respect of the disputed domain names, which were registered and are being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **WELLINGTONDW.COM**: Transferred
2. **DWJAPAN.COM**: Transferred
3. **DANIELDW.COM**: Transferred
4. **DANIELJAPAN.COM**: Transferred
5. **WELLINGTONJA.COM**: Transferred
6. **DANIELJA.COM**: Transferred
7. **WELLINGTONSALE.COM**: Transferred

PANELLISTS

Name	**Alan Limbury**

DATE OF PANEL DECISION 2019-07-22

Publish the Decision