

## Decision for dispute CAC-UDRP-104771

Case number	CAC-UDRP-104771
Time of filing	2022-08-11 08:30:49
Domain names	celestron-sales.store, celestron-usa.store

### Case administrator

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

Organization	Celestron Acquisition, LLC
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### Complainant representative

Organization	Loza and Loza LLP
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### Respondent

Name	shanwang chen
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#### OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the Disputed Domain Names.

#### IDENTIFICATION OF RIGHTS

Complainant has registered several CELESTRON and CELESTRON-formative marks with the United States Patent and Trademark Office, for example:

##### CELESTRON

Reg. No. 1,139,857

Date of First Use: May 7, 1965

Reg. Date: Sept. 23, 1980

##### CELESTRON

Reg. No.: 3,005,393

Date of First Use: Aug. 15, 2002

Reg. Date: Aug. 11, 2005

CELESTRON

Reg. No.: 4,369,087

Date of First Use: May 20, 2011

Reg. Date: Jul. 16, 2013

CELESTRON

Reg. No.: 4,191,748

Date of First Use: May 20, 2011

Reg. Date: Aug. 14, 2010

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FACTUAL BACKGROUND

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

The Complainant in this administrative proceeding is Celestron Acquisition, LLC, a Delaware limited liability company.

The Respondents for the Disputed Domain Names are the following:

Disputed Domain #1: <celestron-usa.store>

Respondent Name: shanwang chen

Address: fuzhou city fu shan Road fushan ming ju 2-201

Fuzhou, fujian 350001

China

Telephone: 86 . 15259123078

Email: appoinmcb8b22fx@gmail.com

Disputed Domain #2: <celestron-sales.store>

Respondent Name: leo chen

Address: #3-303 Feng Huan Bei District Gu Lou District

Fu Zhou, Fu Jian 350001

China

Telephone: 86 . 13950397302

Email: 472.3sxpvmvjio@gmail.com

This dispute concerns the domain names <celestron-usa.store> created on November 17, 2021 and <celestron-sales.store> created on January 6, 2022.

The registrar with which the Disputed Domain Names are registered is Dynadot, LLC.

This Complaint is based on the following grounds:

The Complaint concerns two different domain names. Complainant believes that the Disputed Domain Names are owned and controlled by the same entity and/or person, based on several indicia of common control.

While the Registrar Verification provided by Dynadot states that <celestron-sales.store> is registered by "leo chen" and <celestron-usa.store> is registered by "shanwang chen" there are in the view of Complainant numerous indicia to indicate this is the same person, or at the very least, that the Disputed Domain Names are subject to common control and ownership, such that the Respondent may be treated as a single domain name holder.

The Complainant states that there is a lot of evidence to demonstrate common control of the Disputed Domain Names. First,

the websites associated with the Disputed Domain Names are carbon copies of one another: this includes and is not limited to:

- (1) homepages that are identically laid out and picturing the exact same products and photos;
- (2) identical product pages;
- (3) identical product pricing, including the same "LIMITED TIME OFFER" and offer of "Free Shipping over \$40;
- (4) identical sign in pages; and
- (5) identical "About Us" pages, which contain Celestron's copyrighted video and text.

Second, the Disputed Domain Names are registered with the same Registrar, Dynadot, and utilize the same privacy service to mask their identity.

Third, the registrant's share an identical surname, city, region, and country of origin.

Fourth, the addresses provided in the WHOIS contact information both appear to be invalid.

Fifth and finally, upon information and belief, the Websites both previously displayed the identical e-mail jennadrewmo@gmail.com as the contact e-mail.

Complainant is therefore of the opinion that consolidation of the proceedings is fair and equitable to all parties.

Complainant is an internationally known optics company that was founded in 1960. Complainant produces high quality telescopes, binoculars, lenses, cameras, GPS systems, and much more. Complainant has continuously used the CELESTRON and CELESTRON-formative family of marks in connection with such goods since at least as early as May 1965.

Complainant has registered several CELESTRON and CELESTRON-formative marks with the United States Patent and Trademark Office.

Complainant states that through intensive use by Complainant, the Celestron Marks are famous both in the United States and throughout the world. Complainant has invested copious amounts of time and money in growing CELESTRON and CELESTRON-formative brands.

Complainant states furthermore that Respondent does not have, and has never had, permission to use the CELESTRON Marks.

Complainant's numerous trademark registrations for the Celestron Marks establish Celestron's prior rights pursuant to paragraph 4(a)(i) of the Policy.

Complainant's trademark rights in the CELESTRON Mark date back to 1965, when the mark was first used in United States commerce and at least as early as 1980, when the mark was registered in the United States; whereas, the <celestron-usa.store> and <celestron-sales.store> Disputed Domain Names were not created until November 2021 and January 2022, respectively, some fifty-five years after Complainant used its CELESTRON Mark in commerce in the United States.

Complainant states that a simple comparison of the Disputed Domain Names to the CELESTRON Marks demonstrates that the Disputed Domain Names are essentially identical to Complainant's CELESTRON Marks. The Disputed Domain Name <celestron-usa.store> is comprised of Complainant's CELESTRON trademark (in its entirety) merely adding a 'hyphen' (discussed infra), and the geographic indicator 'usa'. The Disputed Domain Name <celestron-sales.store> is comprised of

Complainant's CELESTRON trademark (in its entirety) merely adding a 'hyphen' (discussed infra), and the generic term 'sales'.

The addition of a 'hyphen' does in the view of Complainant nothing to distinguish the Disputed Domain Names from Complainant's mark. Finally, it is well-settled that the addition of a generic TLD, i.e. '.store', as is the case here, does not prevent a finding of confusing similarity. Thus in the view of Complainant, the <celestron-usa.store> and <celestron-sales.store> domain names are confusingly similar to Complainant's CELESTRON Mark.

Complainant states, that it is clear that Respondent has no rights or legitimate interest in the Disputed Domain Names. Respondent not only registered the Disputed Domain Names many decades after Complainant's rights in the Celestron's Marks arose but is using the Disputed Domain Names to direct Internet users to his websites, which purport to sell Complainant's goods for unreasonably discounted prices, and also to trade off Complainant's goodwill. Complainant's rights predate any registration or use of the Disputed Domain Names by Respondent by some 55 years.

Use of the Disputed Domain Names to commercially benefit from Complainant's goodwill does not in the view of Complainant demonstrate any bona fide offering of goods or services. There is furthermore no evidence that Respondent is commonly known by the Disputed Domain Names. The use of a disputed domain to confuse or divert Internet traffic is in the view of Complainant also not a legitimate use of a domain name.

Respondent is in the view of Complainant clearly attempting to create a likelihood of confusion as to the source, sponsorship, affiliation and/or endorsement of the websites connected to the Disputed Domain Names. Complainant states, that while the infringing use of the CELESTRON Mark within the Disputed Domain Names is enough to lead Internet users to believe that the website is sponsored by, or somehow affiliated with Complainant, Respondent goes even further: Respondent makes unauthorized use of the CELESTRON Mark in the header of the websites, uses the CELESTRON mark rampantly throughout the infringing websites, makes unauthorized use of Celestron's copyrighted images, and even includes a video and promotional blurb about Celestron on the "About Us" page of the websites, all of which serves to dupe Internet users into believing that the websites are owned and operated by Complainant and that the infringing website offers legitimate products, which based on the circumstances does not seem likely.

Moreover, the overall look and feel of the concerned websites is almost identical to the Celestron website. The homepage for each of the websites is comprised of a white background with the CELESTRON logo mark displayed prominently at the top of the page; they display a large banner with a photo promoting Celestron goods; and contain a horizontal menu across the top of the page where users can learn about and purchase Celestron products. Each of these elements are essentially identical to the Celestron website. This is all in addition to the wildly misleading "About Us" page contained on the websites, that is in the view of Complainant almost an exact copy of Celestron's own "About Us" page. Respondent also uses exact copies of Celestron's copyrighted photos without Celestron's permission.

Additionally, Complainant is informed and believes that Registrant is not selling legitimate goods. On the one hand, the prices are so deeply discounted that it would be unreasonable to believe that such goods are legitimate (in some cases offering over a 90% discount). On the other hand, Respondent has a demonstrated history of engaging in Internet scams, preying on unsuspecting consumers, which can be seen from the screenshots from various internet sources linking the email address associated with at least one of the Disputed Domain Names with various online scams. In one instance a consumer stated that Respondent had taken their money and not provided any goods. Respondent is therefore clearly scamming consumers in the view of Complainant.

The foregoing demonstrates in the view of Complainant that Respondent attempting to profit from Complainant's goodwill by confusing consumers into believing that the websites are associated with Complainant, and then scamming consumers by taking their money and potentially other sensitive financial and personal information, and not providing any goods, which amounts to a bad faith use and registration of the Disputed Domain Names.

The use of a confusingly similar domain to operate a website that offers goods similar to those of Complainant indicates that Respondent wilfully registered the Disputed Domain Names primarily to disrupt Complainant's business.

Respondent registered and uses the Disputed Domain Names to direct Internet users to his websites, which purport to sell Complainant's goods. Such use results in a disruption to Complainant's business and demonstrates Respondent's bad faith use and registration of the Disputed Domain Names. The fact that Respondent has undertaken such actions decades after Complainant's trademark rights arose is in the view of Complainant further evidence of a bad faith registration for the sole purpose of disrupting Complainant's business for Respondent's own commercial gain.

Complainant is also informed and believes that Respondent is using the Disputed Domain Names to disrupt Complainant's business by using the associated infringing websites to "phish" for highly sensitive personal information under the guise of providing selling Celestron's goods.

Many panels have ruled that "phishing" activity disrupts business within the provisions of paragraph 4(b)(iii) of the Policy.

Respondent has created a "login" page on both Infringing Websites requesting consumers provide sensitive information, including location, name, and telephone number. If a consumer purchases a product, they will likely also provide sensitive financial information.

Clearly Respondent is not operating a legitimate business, else it would not need to rely on duping consumers into believing that it was associated with Complainant through rampant use of the Celestron Marks, mimicking the Celestron website, and using Complainant's copyrighted materials. Nor would Respondent's email be listed on a numerous websites that identify consumer scams. Any resulting consumer blowback that results from Respondent's actions will no doubt cause a disruption to Complainant's business and damage Complainant's goodwill in the Celestron Marks.

Complainant states, that there is no question Respondent was aware of Complainant and the Celestron Marks. The Disputed Domain Names were created more than five decades after Complainant's rights in the Celestron Marks arose. Moreover, Respondent has made liberal infringing use of the Celestron Marks to scam unsuspecting customers amounting in bad faith use and registration of the Disputed Domain Names.

Thus, it is clear that Respondent in the view of Complainant knowingly registered and has used the Disputed Domain Names to not only confuse customers as to the source of the websites, but also to disrupt Complainant's business, evidencing Respondent's bad faith use and registration of the Disputed Domain Names.

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#### PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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#### RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Disputed Domain Names are 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).

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#### 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).

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#### 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).

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#### 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.

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#### PRINCIPAL REASONS FOR THE DECISION

#### PRELIMINARY ISSUE: COMMON CONTROL AND OWNERSHIP OF THE DISPUTED DOMAINS

The instant Complaint properly identifies two domain names. Complainant states that the Disputed Domain Names are owned and controlled by the same entity and/or person, based on several indicia of common control.

Common control can be found where “circumstances in the record indicate that the respondents are related or that a sufficient unity of interests otherwise exists that they may be essentially treated as a single domain name holder for purposes of paragraph 3(c) of the Rules.” (Speedo Holdings B.V. v. Programmer, Miss Kathy Beckerson, John Smitt, Matthew Simmons, Case No. D2010-0281 (WIPO May 18, 2010).

The Panel has carefully reviewed all elements of this case, giving particular weight to the following elements and facts:

First, the websites associated with the Disputed Domain Names are carbon copies of one another: this includes and is not limited to:

- (1) homepages that are identically laid out and picturing the exact same products and photos;
- (2) identical product pages;
- (3) identical product pricing, including the same “LIMITED TIME OFFER” and offer of “Free Shipping over \$40;
- (4) identical sign in pages; and
- (5) identical “About Us” pages, which contain Celestron’s copyrighted video and text.

Second, the Disputed Domain Names are registered with the same Registrar, Dynadot, and utilize the same privacy service to mask their identity.

Third, the registrant’s share an identical surname, city, region, and country of origin.

Fourth, the addresses provided in the WHOIS contact information both appear to be invalid.

Fifth and finally the most convincing argument, the websites both previously displayed the identical e-mail jennadrewmo@gmail.com as the contact e-mail.

The Panel also notes that the Respondents did not submit any arguments and did not contest the request for consolidation.

In view of these elements, the Panel finds that the Respondents are the same or connected and the websites linked to the Disputed Domain Names are under common control, that in this case consolidation would be fair and equitable to all Parties involved and would safeguard procedural efficiency.

The Panel therefore decides to grant the request for consolidation of the Respondents and shall hereafter refer to the Respondents jointly as “the Respondent”.

#### IDENTICAL OR CONFUSINGLY SIMILAR DOMAIN NAME

The Complainant demonstrated that it owns the asserted trademark registrations for the word marks "CELESTRON" which were registered long before the registration of the Disputed Domain Names by the Respondent. It is well established that a nationally or regionally registered trademark confers on its owner sufficient rights to satisfy the requirement of having trademark rights for the purposes of standing to file a UDRP case. Therefore, the Panel finds that the Complainant has established such rights.

It is also well established that the generic top-level suffix may be disregarded when considering whether a disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights, as it is a necessary technical requirement of a domain name. This is true also for the so-called new generic top-level suffixes like ".store".

The Disputed Domain Names incorporates the Complainant's trademark "CELESTRON" in its entirety, merely adding a 'hyphen', and the geographic indicator 'usa' or the generic term 'sales'. It is therefore easy for the Panel to find that the Disputed Domain Names are confusingly similar to the trademark in which the Complainant has rights.

#### LACK OF RIGHTS OR LEGITIMATE INTERESTS

The Respondent has not filed a Response and has neither provided any other information that would oppose the Complainant's allegations. Therefore, the Panel holds that the Complainant successfully presented its prima facie case that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names.

In particular, the Respondent is not in any way connected with the Complainant nor is it authorized to use the Complainant's trademarks for its commercial activities. In addition, the Respondent is not commonly known by the Disputed Domain Names pursuant to Paragraph 4(c)(ii) of the Policy.

Considering the facts of this case, it seems obvious to the Panel that the Respondent knew (or should have known) about the Complainant and its trademarks when it registered the Disputed Domain Names.

The Panel, therefore, finds that the Respondent has no rights or legitimate interest in the Disputed Domain Names.

#### REGISTRATION AND USE OF THE DISPUTED DOMAIN NAMES IN BAD FAITH

The overall look and feel of the concerned websites are almost identical to the Celestron website. The homepage for each of the websites is comprised of a white background with the CELESTRON logo mark displayed prominently at the top of the page; they display a large banner with a photo promoting Complainant goods; and contain a horizontal menu across the top of the page where users can learn about and purchase Celestron products. Each of these elements are essentially identical to the Complainant website. This is all in addition to the wildly misleading "About Us" page contained on the websites, that is also in the view of the Panel almost an exact copy of Celestron's own "About Us" page. Respondent also uses exact copies of Celestron's copyrighted photos without Celestron's permission.

The Panel agrees with Complainant that Respondent is not selling legitimate goods. The prices are so deeply discounted that it would be unreasonable to believe that such goods are legitimate (in some cases offering over a 90% discount).

Respondent has furthermore a history of engaging in Internet scams, preying on unsuspecting consumers, which can be seen from the screenshots from various internet sources linking the email address associated with at least one of the Disputed Domain Names with various online scams. In one instance a consumer stated that Respondent had taken their money and not provided any goods. Respondent is therefore clearly scamming consumers.

The use of a confusingly similar domain to operate a website that offers goods similar to those of Complainant indicates that Respondent wilfully registered the Disputed Domain Names primarily to disrupt Complainant's business.

Respondent registered and uses the Disputed Domain Names to direct Internet users to his websites, which purport to sell Complainant's goods. Such use results in a disruption to Complainant's business and demonstrates Respondents bad faith use and registration of the Disputed Domain Names. The fact that Respondent has undertaken such actions decades after Complainant's trademark rights arose is further evidence of a bad faith registration for the sole purpose of disrupting Complainant's business for Respondents own commercial gain.

Respondent is furthermore using the Disputed Domain Names to disrupt Complainant's business by using the associated infringing websites to "phish" for highly sensitive personal information under the guise of providing selling Celestron's goods.

Phishing activity disrupts business within the provisions of paragraph 4(b)(iii) of the Policy.

Respondent has created a "login" page on both Infringing Websites requesting consumers provide sensitive information, including location, name, and telephone number. If a consumer purchases a product, they will likely also provide sensitive financial information.

Clearly Respondent is not operating a legitimate business, else it would not need to rely on duping consumers into believing that it was associated with Complainant through rampant use of the Celestron Marks, mimicking the Celestron website, and using Complainant's copyrighted materials. Furthermore, Respondent's e-mail is listed on numerous websites that identify consumer scams. Any resulting consumer blowback that results from Respondent's actions will no doubt cause a disruption to Complainant's business and damage Complainant's goodwill in the Celestron Marks.

There is no question Respondent was aware of Complainant and the Celestron Marks. The Disputed Domain Names were created more than five decades after Complainant's rights in the Celestron Marks arose. Moreover, Respondent has made liberal infringing use of the Celestron Marks to scam unsuspecting customers amounting in bad faith use and registration of the Disputed Domain Names.

Thus, it is clear that Respondent knowingly registered and has used the Disputed Domain Names to not only confuse customers as to the source of the websites, but also to disrupt Complainant's business, evidencing Respondent's bad faith use and registration of the Disputed Domain Names.

Respondent has furthermore been using privacy shield to conceal its identity. The Panel considers such behaviour as for the purpose to hide the registrant's identity, which contributes to the proof of bad faith.

Therefore, the Panel holds that the Disputed Domain Names have been registered and have been used by the Respondent in bad faith.

In conclusion, the Panel finds that all three elements required by Paragraph 4(a) of the Policy were met.

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FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. CELESTRON-SALES.STORE: Transferred
2. CELESTRON-USA.STORE: Transferred

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## PANELLISTS

Name	Jan Christian Schnedler, LL.M.
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DATE OF PANEL DECISION 2022-09-10

Publish the Decision

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