

Decision for dispute CAC-UDRP-105363

Case number CAC-UDRP-105363

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Domain names bicycleleatt.com

Case administrator

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

Complainant

Organization Leatt Corporation

Complainant representative

Organization HSS IPM GmbH

Respondent

Name Con ciqw

OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the domain name <bicycleleatt.com> ('the disputed domain name').

IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade marks, in respect of which the Complainant is the owner or sole licensee:

- Chinese trade mark registration no. 21157818, registered on 28 October 2017, for the word mark LEATT, in class 9 of the Nice Classification (held by Xceed Holdings CC);
- Chinese trade mark registration no. 51812992, registered on 14 July 2022, for the word mark LEATT (& logo), in class 25 of the Nice Classification (held by Xceed Holdings CC);
- US trade mark registration no. 3483646, registered on 12 August 2008, for the word mark LEATT, in class 9 of the Nice Classification (held by Xceed Holdings CC);
- EU trade mark registration no. 017952736, registered on 18 January 2019, for the word mark LEATT, in class 9 of the Nice Classification; and
- Australian trade mark registration no. 1372902, registered on 16 July 2010, for the work mark LEATT, in classes 9, 10 and 28 of the Nice Classification.

The Complainant further relies on national trade marks worldwide which are held by the Complainant as owner or licensee.

(Hereinafter, collectively or individually, 'the Complainant's trade mark', 'the Complainant's trade mark LEATT', or 'the trade mark LEATT' interchangeably).

The disputed domain name was registered on 30 September 2022 and, at present, resolves to an online store on which LEATT products appear to be commercialised, the particulars of which are discussed further below ('the Respondent's website').

FACTUAL BACKGROUND

The Complainant's contentions can be summarised as follows:

A. Background history

The Complainant, Leatt Corporation, is a US (Nevada) corporation established in 2005 by Dr Chris Leatt.

The Complainant designs, develops and distributes protection equipment for motor sports and leisure activities worldwide. It offers a wide range of products, including helmets, body armor, knee braces, elbow guards, hydration systems and other cutting-edge products in the world of extreme sports.

The Complainant owns several brands across the globe, including LEATT, and reached a global revenue of c. USD 76m in 2022.

In addition to the trade marks mentioned in the above section 'Identification of Rights', and other trade marks in its portfolio, the Complainant operates its official customer website at <www.leatt.com> (registered in 2002), as well as its official corporate website at <www.leatt-corp.com> (registered in 2008).

The Complainant seeks to obtain the transfer of the disputed domain name <bicycleleatt.com> on the grounds set out in section B.2 below.

B.1 Preliminary Matter: Language of the Proceeding

With respect to the language of the proceedings, the Panel notes the following:

- The Complaint is written in English and the Complainant has made a pre-emptive request that English be the language of this UDRP administrative proceeding;
- The registrar's verification response provided that the language of the registration agreement for the disputed domain name is Chinese; and
- The Complainant's grounds for English to be the language of this UDRP administrative proceeding can be summarised as follows: (i) the disputed domain name uses the Roman script and incorporates the terms 'bicycle' and 'leatt', which are words in the English language; (ii) the Respondent has opted for the most common generic Top-Level Domain (gTLD) <.com> as opposed to a country-code Top-Level Domain (ccTLD), for example <.cn>, where the Respondent is located; (iii) the disputed domain name resolves to a website which displays content in English; (iv) it would be unfair to proceed in Chinese owing to the delay and costs associated with translations; (v) the business language of the Complainant and its authorised representative is English, such that it would otherwise be burdensome to consider this UDRP administrative proceeding in Chinese; and (vi) it is established practice among UDRP panels to take Rule 10(b) and Rule 10(c) of the UDRP Rules into consideration for the purpose of determining the language of the proceeding to ensure fairness and justice to both Parties.

B.2 Substantive grounds

I. The disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights

The Complainant submits that the disputed domain name <bicycleleatt.com> is confusingly similar to the Complainant's trade mark, to the extent that the disputed domain name reproduces the trade mark LEATT in its entirety. The addition of the generic term 'bicycle' to the disputed domain name string does not prevent a finding of confusing similarity with the Complainant's trade mark LEATT. On the contrary, the generic term 'bicycle' enhances the impression that the Respondent is somehow affiliated with the Complainant.

Furthermore, the gTLDs, in this case <.com>, are typically disregarded by UDRP panels under this Policy ground (see paragraph 1.11 the WIPO Panel Views on Selected UDRP Questions, Third Edition ('WIPO Jurisprudential Overview 3.0')).

II. The Respondent has no rights or legitimate interests in respect of the disputed domain name

The Complainant avers that the disputed domain name is not being used in connection with a bona fide offering of goods or services. At the time of preparing the Complaint, the disputed domain name hosted an online shop with the infringing use of the Complainant's trade mark LEATT, purporting to sell a variety of goods, namely clothing, goggles, helmets, accessories, and shoes of the Complainant.

The Complainant further avers that the products on the Respondent's website are offered disproportionately below market value, some of which at half or even a third of the Complainant's prices. The Complainant argues that this is an indicium of counterfeit

goods and that UDRP panels have held that the sale of counterfeit goods shall not confer rights on the Respondent or be considered a legitimate interest under paragraph 4 (c) of the UDRP Policy (see paragraph 2.13.1 of the WIPO Jurisprudential Overview 3.0).

The Complainant claims that the Oki Data test is not applicable to this case, given the abusive sale of counterfeit goods, and that the Respondent is not a legitimate distributor or reseller. However, even if the Respondent were selling authentic products, the Complainant claims that the Respondent's use of the disputed domain name would not satisfy any of the Oki Data requirements, namely:

- The Respondent must actually be offering the goods or services at issue: the Respondent offers the goods at far below market prices, such that it can be inferred that the Respondent is selling counterfeit versions of the Complainant's goods. Therefore, the Respondent is not offering the Complainant's actual goods;
- The Respondent must use the site to sell only the trade marked goods or services: although the Respondent offers only the trade marked goods, they are offered at below market prices, which is evidence of counterfeit goods. Moreover, the Respondent's website contains an online form which appears to be an attempt to phish for customers' personal information. Hence, the Respondent is not using the Respondent's website to sell only trade marked goods, but it is using it to steal users' sensitive information;
- The website must accurately and prominently disclose its relationship with a trade mark holder: the Respondent did not disclose or disclaim its total lack of relationship or connection to the Complainant anywhere on the Respondent's website; and
- The Respondent must not try to 'corner the market' in domain names that reflect the trade mark: the Respondent attempts to corner the market because the disputed domain name is composed of a common related and important term for the Complainant such as 'bicycle' and which is relevant to Complainant's segment of business, particularly as it sells clothing and accessories such as helmets and goggles for bicycle riders.

The Complainant further submits that the Respondent apparently uses the disputed domain name to perpetrate a phishing scheme that cannot constitute rights or legitimate interests under the UDRP Policy. In addition, the Respondent is not known by the disputed domain name; the Respondent is not making a bona fide offering of goods or services by means of the disputed domain name, nor is the Respondent using it for legitimate non-commercial or fair use.

In view of the above, the Complainant concludes that the Respondent has no rights or legitimate interests in the dispute domain name.

III. The Respondent registered and is using the disputed domain name in bad faith

Registration

The Complainant contends that the trade mark LEATT long predates the registration of the disputed domain name, and that the Respondent has never been authorised by the Complainant to register the disputed domain name. The Complainant's active business presence worldwide makes it reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trade mark.

Use

Under this ground, the Complainant avers that the Respondent's purpose is to capitalise on the reputation of the LEATT trade mark by diverting Internet users seeking LEATT products to the Respondent's website, for financial gain, by intentionally creating a likelihood of confusion with the LEATT trade mark as to the source, sponsorship, affiliation, or endorsements of the Respondent's website and/or the goods offered or promoted through the Respondent's website (paragraph 4(b)(iv) of the UDRP Policy).

The Complainant further states that the disputed domain name will make consumers believe that the Respondent's website is an official website of LEATT.

The Complainant therefore concludes that the Respondent has registered and is using the disputed domain name in bad faith.

PARTIES CONTENTIONS

The Complainant's contentions are set out above.

The Respondent has failed to serve a Response within the deadline prescribed under Rule 5 of the UDRP Rules, or at all.

RIGHTS

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

PROCEDURAL FACTORS

A. Complainant's Language Request

The Panel is given discretion under Rule 11 of the UDRP Rules to determine the appropriate language of the UDRP administrative proceeding. The Panel notes Rule 10 of the UDRP Rules, which vests the Panel with authority to conduct the proceedings in a manner it deems appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case.

With regard to this particular matter, the Panel takes the liberty to adopt the language of proceeding test applied in CAC Case no. 104144, *Writera Limited v. alexander ershov*, which helpfully sets out the following six guiding factors:

- (i) the language of the disputed domain name string: the Panel considers that English is the only identifiable language in the disputed domain name string;
- (ii) the content of the Respondent's website: the Respondent's website hosts content in English only, which suggests to the Panel that the Respondent has knowledge of the English language;
- (iii) the language(s) of the Parties: the Complainant is incorporated in US and the Respondent appears to a Chinese national residing in China. Neither English nor Chinese would not be considered neutral for both Parties. Consequently, this factor is immaterial to the Panel's determination on this occasion;
- (iv) the Respondent's behaviour: the Panel notes that the Respondent has shown no inclination to participate in this UDRP administrative proceeding;
- (v) the Panel's overall concern with due process: the Panel has discharged its duty under Rule 10 (c) of the UDRP Rules; and
- (vi) the balance of convenience: while determining the language of the UDRP administrative proceeding, the Panel has a duty to consider who would suffer the greatest inconvenience as a result of the Panel's determination. On the one hand, the determination of English as the language of this UDRP administrative proceeding – a widely spoken language – is unlikely to cause the Respondent any inconvenience, not least given that the Respondent's website hosts content in English only. The determination of Chinese as the language of this UDRP administrative proceeding, on the other hand, is very likely to cause the Complainant inconvenience, and to interfere with the overall due expedition of the proceedings under the UDRP Rules.

In view of the above factors, the Panel has decided to accept the Complainant's language request, such that the decision in the present matter will be rendered in English.

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. UDRP Threshold

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy sets out the following threshold for the Complainant to meet for the granting of the relief sought (transfer of the disputed domain name):

1. The disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
2. The Respondent has no rights or legitimate interests in respect of the disputed domain name; and

3. The disputed domain name has been registered and is being used in bad faith.

It is incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP administrative proceedings is the balance of probabilities and, on that basis, the Panel will now proceed to determine each of the three UDRP Policy grounds in turn.

B. Identical or Confusingly Similar

The Complainant has established registered rights in the mark LEATT since as early as 2008.

The disputed domain name <bicycleleatt.com> was registered on 30 September 2022, and consists of the joint terms 'bicycle' and 'leatt'.

The Panel notes that the Complainant's trade mark LEATT is wholly incorporated into the disputed domain name, the only difference being the additional word 'bicycle' contiguous with the term 'leatt'. In the Panel's view, the generic word 'bicycle' is rather immaterial to produce any distinctive character and, in turn, insufficient overall to dispel the textual, auditory, and visual confusion with the trade mark LEATT.

The Panel therefore finds that the Complainant has met the requirement under paragraph 4(a)(i) of the UDRP Policy.

C. Rights or Legitimate Interests

The Respondent has defaulted in this UDRP administrative proceeding. Nevertheless, the Panel is empowered to draw adverse inferences from the Respondent's silence (Rule 14 (b) of the UDRP Rules).

The Panel notes that the Respondent does not carry out any activity for, or has any business or relationship of any nature with, the Complainant. There is no contractual arrangement between the Parties to that effect, nor has the Complainant otherwise authorised the Respondent to make any use of the Complainant's trade mark. Moreover, there is no evidence on the record to suggest that the Respondent (as an individual, business, or other organisation) has been commonly known by the disputed domain name.

The Complainant claims that, if the Panel were to apply the Oki Data test to the present matter, the Respondent would have failed to meet the requirements for the reasons set forth above in section B.2.II.

On this point, the Panel alludes to the jurisprudential view formed by domain name disputes under the UDRP Policy and UDRP Rules (see WIPO Jurisprudential Overview 3.0, paragraph 2.8), according to which resellers and distributors using a domain name containing a complainant's trade mark to undertake sales related to the complainant's goods or services may be making a bona fide offering of goods and services, and thus have a legitimate interest in such domain name. UDRP panels have termed this as the 'Oki Data test' (Oki Data Americas, Inc. v. ASD, Inc., WIPO Case No. D2001-0903), which comprises the following four cumulative requirements:

- The Respondent must actually be offering the goods or services at issue;
- The Respondent must use the website associated with the disputed domain name to sell only the trade marked goods or services;
- The Respondent's website must accurately and prominently disclose its relationship with the Complainant; and
- The Respondent must not try to 'corner the market' in domain names that reflect the trade mark.

The Parties are reminded that the above requirements are cumulative, so that the failure to satisfy any of them would result in a finding for the Complainant regarding this UDRP Policy ground.

The Panel has considered the evidence on the record and notes that the Respondent would have failed to meet the Oki Data test, the Panel being unable to locate a disclaimer regarding the relationship between the Respondent and the Complainant.

In light of the Panel's determination of item 3) above, the Panel shall not consider the other requirements of the Oki Data test as any such finding would consequently be immaterial to the outcome of this UDRP administrative proceeding under this UDRP Policy ground.

The Panel is furthermore unconvinced that, before any notice of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services.

In addition, the Panel is of the view that the choice of a domain name which incorporates a complainant's trade mark wholly or nearly wholly, and is unaccompanied or unsupported by any credible explanation as to the reason for such coincidence, could further evidence a lack of rights or legitimate interests.

Lastly, there is evidence on the available record suggesting that the Respondent has attempted to impersonate the Complainant, as discussed in section III. below.

For the foregoing reasons, and noting that the Respondent has not provided a Response to refute any of the allegations and evidence adduced by the Complainant in this UDRP administrative proceeding, the Panel finds that the Complainant has made prima facie showing of the Respondent's lack of rights or legitimate interests in the disputed domain name under the UDRP Policy.

The Panel therefore finds that the Complainant has succeeded under paragraph 4(a)(ii) of the UDRP Policy.

III. Registered and Used in Bad Faith

- The Panel has looked at the totality of the evidence and considers it to be sufficient to give rise to a finding of bad faith registration and use of the disputed domain name by the Respondent, for the following reasons:
- The disputed domain name <bicycleleatt.com> incorporates the Complainant's trade mark LEATT in its entirety. The presence of the generic word 'bicycle' is insufficient to dispel the textual, auditory, and visual confusion established between the disputed domain name and the Complainant's trade mark LEATT;
- The Complainant operates its official customer website using the domain name <leatt.com>, which was registered in 2002;
- There is no credible explanation for the Respondent's choice of the disputed domain name, which was registered in 2022, bearing in mind that the Complainant has arguably been in operation since as far back as 2005. The Panel does not look favourably upon the Respondent, and finds it that the Respondent was well aware of the Complainant given, most notably, the use on the Respondent's website (as discussed further below);
- The Respondent has not provided a Response within the time prescribed under the UDRP Rules, or at all, and has thus failed to offer any explanation or justification to the matters raised by the Complainant in the context of this UDRP administrative proceeding;
- There is nothing on the record suggesting that the Respondent is affiliated or otherwise connected with the Complainant and the Complainant denies any association;
- The Respondent's website appears to commercialise LEATT products in an unauthorised manner, and absent any disclosure as to the relationship between the Respondent and the Complainant. The Panel finds that the Respondent has attempted to suggest an affiliation with, or a connection to, or an endorsement of the Complainant or, rather likely, to impersonate the Complainant through the use of the trade mark LEATT on the Respondent's website. The Respondent's behaviour would consequently fall in the realm of paragraph 4(b)(iv) of the UDRP Policy;
- The Respondent did not provide any evidence of actual or contemplated evidence good faith use of the disputed domain name; and
- Taken the above together, the overall unlikelihood of any good faith use of the disputed domain name.

In view of the above, the Panel finds that the Complainant has succeeded under paragraph 4(a)(iii) of the UDRP Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **bicycleleatt.com**: Transferred

PANELLISTS

| | |
|------|-----------|
| Name | Yana Zhou |
|------|-----------|

DATE OF PANEL DECISION 2023-05-27

Publish the Decision
