

Decision for dispute CAC-UDRP-105927

Case number CAC-UDRP-105927

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Domain names ridgeus.com

Case administrator

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

Complainant

Organization The Ridge Wallet LLC

Complainant representative

Organization Stobbs IP

Respondent

Name Ding Chao

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 name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of trademarks:

- word trademark RIDGE WALLET no. 2299129 registered in Australia from September 8, 2022;
- word THE RIDGE no. 23937266 registered in China from June 21, 2019;
- figurative trademark THE RIDGE no. 5001780 registered in United States (Federal) from July 19, 2016;
- word RIDGE no. 5964856 registered in United States (Federal) from January 21, 2020;
- word THE RIDGE no. 4470705 registered in United States (Federal) from January 21, 2014

The disputed domain name <ridgeus.com> was registered on July 25, 2023.

PARTIES CONTENTIONS

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

The Complainant was formed in 2014 and after two Kickstarter campaigns, nine years of research and development, and over two million wallets sold, the Complainant's products have become category defining. The Complainant has built a significant reputation and has built up a vast amount of goodwill in the RIDGE trade marks in the US and abroad in relation to compact wallet and related consumer goods and services. The RIDGE brand has extensive reach offering its products and services worldwide.

The Complainant has an active online presence including owning the domain names <ridge.com>; <ridgewallet.eu>; <ridgewallet.co.uk>; and <ridgewallet.ca>, and the various regional versions to serve respective local consumers. The Complainant is also active on social media.

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

The Complainant relies on the general consensus principle held by prior panellists, that, provided a Complainant has a trade mark (in any jurisdiction) at the time of commencing proceedings, they will satisfy the threshold of holding 'rights', for the purpose of Policy, Paragraph 4(a)(i). The Complainant's registered marks substantially pre-date the registration of the disputed domain name. Furthermore, the Complainant has built up substantial recognition in the public domain for the RIDGE marks, supported by their endorsement on social media.

The disputed domain name incorporates the RIDGE trade mark verbatim. The disputed domain name includes the Complainant's registered marks as the dominant element, along with non-distinctive term, which is either descriptive, generic, or geographic. These do nothing to alter the overall impression in the eyes of the average Internet user. Prior panels have consistently held that the addition of other terms does not avoid a finding of confusing similarity.

In fact, the addition term "US" reinforces the connection the Complainant and attempts to pass off as the Complainant, as it is likely country code for United States of America, the domicile and principal place of business of the Complainant.

Further, the Respondent makes extensive use of the Complainant's registered marks, including on the websites the disputed domain name resolves to. The RIDGE mark is clearly recognisable as the dominant element within the disputed domain name. Prior panelists have made the same conclusions regarding the addition of descriptive and/or non-distinctive terms in paragraph 4(a)(i).

The TLD suffix '.com' should be omitted when assessing the disputed domain name, as it is merely a technical requirement, used for domain name registrations.

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

The Complainant submits that the Respondent does not have any rights or legitimate interests in the disputed domain name. Based on the considerable reputation of the RIDGE brand, there is no credible, believable, or realistic reason for registration or use of the disputed domain name other than to take advantage of the Complainant's rights and brand reputation. The disputed domain name was registered 25 July 2023. By this point, the Complainant already had rights (both registered and unregistered) in RIDGE, including but not limited to, in the USA and China.

The Respondent is using the disputed domain name to resolve to an active website which offers for sale and/or advertise the sale of counterfeit and knockoff product infringing various intellectual property rights held by the Complainant. These website's impersonate/pass off as the Complainant, claiming to be official, licensed, or at a minimum affiliated with the Complainant by way of use of the Complainant's registered marks and official copyright protected imagery within the website's content. This website has never been authorised by the Complainant. Using domain names for illegal activity (in this case the sale of counterfeit goods and impersonation) is high evidence of illegitimate intent.

It is clear that the Respondent is not using the disputed domain name in relation to a bona fide offering of goods or services.

The Complainant submits that the Respondent has never legitimately been known by the name RIDGE at any point in time.

This factor leads the Complainant to conclude that the only reason why the Respondent registered the disputed domain name was to take advantage of the Complainant's goodwill and valuable reputation.

Nothing about the disputed domain name suggests that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name.

The disputed domain name was registered and is being used in bad faith

The Complainant submits that the disputed domain name was registered and used in bad faith. The registered marks for RIDGE pre-date the registration of the disputed domain name and RIDGE enjoys a wide reputation. Furthermore, the Respondent was unequivocally aware of the RIDGE brand given the Respondent's significant use of the registered marks on the website under the disputed domain name, and that this website is set up to impersonate/pass off as the Complainant in order to sell counterfeit product of the Complainant's product. Therefore, the Respondent had knowledge of RIDGE and that the disputed domain name was registered with the sole purpose of targeting the Complainant's registered marks.

The Respondent has registered the disputed domain name in bad faith by intentionally attempting to attract, for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with the Complainant's registered marks as to the source, sponsorship, affiliation, or endorsement of the Infringing Websites.

The Respondent has registered the disputed domain name in order to drive Internet traffic in order to impersonate/pass off as the Complainant to sell counterfeit product. Using a trade mark to divert traffic to the Respondent's own website is consistently held by panellists to amount bad faith registration and use under Policy.

Based on the Respondent's use of the RIDGE mark to sell counterfeit product, the Respondent has actual knowledge of the Complainant's rights in the RIDGE registered marks at the time of registering the disputed domain name. Actual knowledge of a complainant's rights in a mark prior to registering a confusingly similar domain name evinces bad faith.

The Respondent disrupts the Complainant's business by diverting potential customers to its website selling counterfeit goods. Using a confusingly similar domain name in a manner disruptive of a Complainant's business by trading upon the goodwill of a Complainant for the commercial gain evinces bad faith.

RESPONDENT:

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

Paragraph 11 of the Rules provides that: "(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 Panel's discretion must be exercised judicially in the spirit of fairness and justice to both parties taking into consideration matters such as command of the language, time and costs. It is important that the language finally decided by the Panel for the proceeding is not prejudicial to either one of the parties in his or her abilities to articulate the arguments for the case. (WIPO Case No. DCC2006-0004).

The Panel found in CAC Case no. 102911 that the following should be taken into consideration upon deciding on the language of the proceeding:

- i. domain name consists of Latin letters, rather than Chinese letters;
- ii. when the Panel accessed the disputed domain names, the pages that the disputed domain names resolved to offer their respective domain names for sale in the English language;
- iii. the Complainant may be unduly disadvantaged by having to conduct the proceeding in the Chinese language; and
- iv. the Respondent did not object to the Complainant's request that English be the language of the proceeding. Upon considering the above, the Panel determined that English be the language of the proceeding.

WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 4.5.1, states: "panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios include (i) evidence showing that the respondent can understand the language of the complaint, (ii) the language/script of the domain name particularly where the same as that of the complainant's mark, (iii) any content on the webpage under the disputed domain name, (iv) prior cases involving the respondent in a particular language, (v) prior correspondence between the parties, (vi) potential unfairness or unwarranted delay in ordering the complainant to translate the complaint, (vii) evidence of other respondent-controlled domain names registered, used, or corresponding to a particular language, (viii) in cases involving multiple domain names, the use of a particular language agreement for some (but not all) of the disputed domain names, (ix) currencies accepted on the webpage under the disputed domain name, or (x) other indicia tending to show that it would not be unfair to proceed in a language other than that of the registration agreement."

The language of the Registration Agreements for disputed domain name is Chinese. The Complainant requested that the language of the proceeding be English. The Respondent did not respond to the Complainant's language request. The content of the website accessible through the disputed domain name was completely in English language prior the commencement of the dispute. It is evident, that the disputed domain name (through the associated website) was targeted to the English-speaking visitors as the products offered on the website were described in English. It is therefore evident, that the Respondent is capable to communicate in English and it would be inappropriate to order the Complainant to translate the Complaint to Chinese. Upon considering the above mentioned, the Panel determines English to be the language of the proceeding.

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

For the complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

1. The domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
2. The respondent has no rights or legitimate interests in respect of the domain name; and
3. The domain name has been registered and is being used in bad faith.
- 4.

I. Identical or Confusingly Similar

The Complainant has established the fact that it has valid rights for the numerous RIDGE trademark registrations while the first trademark registrations are from 2014. The disputed domain name <ridgeus.com> was registered on July 25, 2023, i.e. almost 10 years after the first of the RIDGE trademark registrations, and fully incorporates the Complainant's trademark RIDGE in its first part. It is therefore confusingly similar to the trademark for purposes of UDRP (WIPO Jurisprudential Overview 3.0, Section 1.7).

The term "US" seems to be an abbreviation or country code for the United States (of America). This term is, therefore, a geographical term that does not distinguish the disputed domain name from the Complainant's trademark. The term "RIDGE" used in the disputed domain name is placed in the beginning of the domain name and is the dominant element of the domain name. The addition of the geographical term "US" does not change the overall impression of the designation as being connected to the Complainant or its trademark and more likely could lead to the connection of the Complainant or its business to United States territory. Moreover, according to presented evidence, the disputed domain name resolved to a webpage with either Complainant's or similar products.

The addition of the generic top-level domain ".COM" does not change the overall impression of the designation as being connected to Complainant's trademark.

The Panel therefore considers the disputed domain name <ridgeus.com> to be confusingly similar to the Complainant's trademark RIDGE which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

II. Rights or Legitimate Interests

As stated in the WIPO Jurisprudential Overview 3.0 at Section 2.1, while the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

The Complainant has established a prima facie case (not challenged by the Respondent who did not file any response to the complaint) that the Respondent has no rights or legitimate interests in the disputed domain name.

There is no available evidence that the Respondent is engaged in, or have engaged in any activity or work, i.e. legitimate or fair use of the disputed domain name, that demonstrates a legitimate interest in the disputed domain name. Moreover, the disputed domain name resolved to a webpage with either Complainant's or similar products.

There is further no evidence, that the Respondent is known by the disputed domain name or that it has a legitimate interest over the disputed domain name. It has not been proved by the Respondent that he has rights or legitimate interests in the disputed domain name or the Respondent is related with the Complainant. Neither license nor authorization has been proven to be granted to the Respondent to make any use of the Complainant's trademark or apply for registration of the disputed domain name.

The Panel therefore considers that the Respondent has no rights or legitimate interests in respect of the disputed domain name <ridgeus.com> within the meaning of paragraph 4(a)(ii) of the Policy.

III. Registered and Used in Bad Faith

The Respondent has registered the disputed domain name which consists of the full content of the Complainant's trademark "RIDGE" and geographical term "US" that refers to the territory of United States (of America). There are no doubts that the Respondent had the Complainant and its trademark in mind when registering the disputed domain name as he redirected the disputed domain name to the webpage similar to the Complainant's own website offering the same (or at least similar) products as the products of the Complainant.

Therefore, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site by creating a likelihood of confusion with the Complainant's (Paragraph 4(b)(iv) of the Policy).

The Complainant has established the fact, that the disputed domain name creates direct association to the Complainant and is therefore capable of creating a likelihood of confusion of the internet users. The registration and usage of the disputed domain name could therefore potentially harm Complainant's business.

Considering the confusing similarity between the Complainant's trademark and the disputed domain name, long time between the registration of the Complainant's trademark and the disputed domain name, resolving of the disputed domain name to a webpage with the offer of the same or similar products as the products of the Complainant, distinctiveness of the Complainant's trademark and failure to submit a response in the UDRP proceedings and to provide any evidence of good faith use, the Panel finds that the disputed domain name has been registered and is being used in bad faith.

The Panel therefore considers that the disputed domain name <ridgeus.com> has been registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

The Panel finally considers that the Complainant has shown that the disputed domain name <ridgeus.com> is confusingly similar to a trademark in which the Complainant has rights, the Respondent has no rights or legitimate interests in respect of the disputed domain name and the disputed domain name has been registered and is being used in bad faith. The Complainant has thus established all three elements of paragraph 4(a) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. ridgeus.com : Transferred

PANELLISTS

Name Petr Hostaš

DATE OF PANEL DECISION 2023-12-13

Publish the Decision
