Decision for dispute CAC-UDRP-106121

Case number	CAC-UDRP-106121
Time of filing	2024-01-05 09:45:01
Domain names	thewooblesus.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Low Tech Toy Club, LLC dba The Woobles

Complainant representative

Organization	Stobbs IP

Respondent

Name	LinShan Jin

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 registered proprietor US Federal trade mark 90041769 for THE WOOBLES [figurative]. The Registered Mark was registered 09 February 2021 in International Class 26 protecting knitting kits. The Complainant has an active online presence including owning the domain name <TheWoobles.com>, which is used as the Complainant's main operating website at (https://thewoobles.com/), being live since at least as early as 26 June 2019. The Complainant is also active on social media and has generated a significant level of endorsement.

The Respondent has not submitted any Response to identify any right associated with the current Complaint.

FACTUAL BACKGROUND

The Complainant is an innovative and educational consumer goods company. The Complainant's beginner pre-made kits combine everything needed with digital tutorials to create a seamless experience for first-time crocheters.The Complainant was formed in 2019 with the simple belief that the company could make beginner crochet kits more accessible. After two years of rapid growth, the Complainant's product range has grown to include collaborations with Bandai Namco Entertainment Inc. to product a range of officially licenced THE WOOBLES x PAC-MAN, Miffy, BT21, HARRY POTTER and Snoopy.

The disputed domain name was registered on December 5, 2023.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

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

The Complainant requests that the language of this administrative proceeding be English. Complainant makes this request in light of the potential Chinese language Registration Agreement of the disputed domain name involved at this Complaint.

Pursuant to UDRP Rule 10(b): “In all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case.” Paragraph 10 of the UDRP Rules vests a Panel with authority to conduct the proceedings in a manner it considers 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. UDRP panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios were summarized into WIPO Jurisprudential Overview 3.0, 4.5.1. In this particular instance, the Complainant tried to request change of languages of proceedings in light of Chinese language Registration Agreement by showing that 1) the Complainant’s website is written entirely in English; 2) The suffix of the dispute domain name (“US”) and products offered on the Respondent’s offered in USD shows that the Respondent understands English; and 3) the translation of the Complaint would unfairly disadvantage and burden the Complainant and delay the proceedings and adjudication of this matter.

In light of the scenarios and equity, the Panel is of the view that conducting the proceeding in English is unlikely to heavily burden the Respondent, and it is likely that the Respondent can understand the English language based on a preponderance of evidence test. Without further objection from the Respondent on the issue, the Panel will proceed to issue the decision in English.

PRINCIPAL REASONS FOR THE DECISION

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

The Complainant, Low Tech Toy Club, LLC dba The Woobles, is an innovative and educational consumer goods company. It offers beginner pre-made kits combine everything needed with digital tutorials to create a seamless experience for first-time crocheters. The Complainant has an active online presence including owning the domain name <TheWoobles.com>, which is used as the Complainant’s main operating website at (https://thewoobles.com/), which has been live since at least as early as 26 June 2019. The Complainant is the registered proprietor US Federal trade mark 90041769 for THE WOOBLES [figurative]. The WOOBLES figurative mark was registered 09 February 2021 in International Class 26 protecting knitting kits. The right has also been recognized in previous CAC decisions (See Low Tech Toy Club, LLC dba The Woobles v Nanci Nette, CAC-UDRP-105775).

The disputed domain name “thewooblesus.com” wholly incorporates the WOOBLES Mark. In addition to fully incorporating the term "WOOBLES", the addition of the suffix “us” – which is the country abbreviation of the United States, the home jurisdiction of the

Complainant, reinforces the connection between the disputed domain name and the Complainant, and are attempts to pass off as the Complainant. Previous UDRP Panels have consistently stated in this regard that “minor alterations cannot prevent a finding of confusing similarity between the trademark and the domain name” (See LinkedIn Corporation v. Daphne Reynolds, WIPO Case No. D2015-1679).

gTLDs such as “.com” are commonly viewed as a standard registration requirement, and as such they are disregarded under the first element confusing similarity test (WIPO Overview 3.0, section 1.11).

The Panel therefore concludes that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

II. The Respondent has no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

Although the Respondent did not file an administratively compliant (or any) response, the Complainant is still required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant in the present case has not licensed or authorized the Respondent to register or use its trademark or the disputed domain name. There is no evidence that the Respondent is known by the disputed domain name or owns any corresponding registered trademarks. The organization of the Respondent, “LinShan Jin”, or its address, also has no connection with “Woobles” or “WooblesUS”. The Complainants did not grant any license or authorization to the Respondent to register or use the disputed domain name, nor to use the Complainant’s trademark on web page of the disputed domain name.

On the basis of preponderance of evidence, and in the absence of any evidence to the contrary or any administratively compliant response being put forward by the Respondent, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy.

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

The use and registration of the disputed domain name by the Respondent has been done in bad faith.

First of all, the registration of the disputed domain name by the Respondent was done in bad faith. UDRP panels have consistently held that the mere registration of a domain name that is confusingly similar to a famous trademark by an unaffiliated entity can by itself create a presumption of bad faith. Like the Complainant puts forward, the "WOOBLES" is not merely a dictionary word or generic phrase. THE WOOBLES mark enjoys a high level of distinctiveness and has develop a wide reputation. With the reputation of the “THE WOOBLES” trademark, the presumption arises that the disputed domain name was registered with the intention to attract Internet users by creating a likelihood of confusion with the well-known “THE WOOBLES” trademark.

Secondly, the use of the disputed domain name was in bad faith. The Complainant bases its argument mainly on paragraph 4(b)(iii) and (iv) of the Policy. “(iii) you [Respondent] have registered the domain name primarily for the purpose of disrupting the business of a competitor; or(iv) by using the domain name, you [Respondent] have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location,” If found by the Panel, shall be evidence of the registration and use of a domain name in bad faith. The Complainant notes and provides evidence showing that that the “the Respondent’s use of the THE WOOBLES mark to sell counterfeit product”. Thus, the disputed domain name operates by creating a likelihood of confusion with the Complainant’s trademark as to the source, sponsorship, affiliation or endorsement of the Respondent’s website. This use is intentional. It is more likely than not that the website operates for the commercial gain of the Respondent. Therefore, the facts satisfy the requirements of paragraph 4(b)(iii) and 4b(iv) of the Policy.’

Therefore, in the absence of any evidence to the contrary (or any administratively compliant response) being put forward by the Respondent, the Panel determines that the Complainant has provided sufficient evidence that the disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **thewooblesus.com**: Transferred

PANELLISTS

Name	Carrie Shang

DATE OF PANEL DECISION 2024-02-12

Publish the Decision