



Asian Domain Name Dispute Resolution Centre

beijing

ADMINISTRATIVE PANEL DECISION

Case No. CN-2401608

Complainant: Shenzhen Smoore Technology Limited

Respondent: Wen Bing Li

Domain Name: vaporesso.com

Registrar: GoDaddy.com, LLC

1. Procedural History

On 18 January 2024, the Complainant submitted a Complaint in Chinese to the Beijing Office of the Asian Domain Name Dispute Resolution Centre (the ADNDRC Beijing Office) and elected this case to be dealt with by a one-person panel, in accordance with the Uniform Domain Name Dispute Resolution Policy (the Policy) and the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules) approved by the Internet Corporation for Assigned Names and Numbers (ICANN), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the ADNDRC Supplemental Rules) approved by the ADNDRC.

On 25 January 2024, the ADNDRC Beijing Office sent to the Complainant by email an acknowledgement of the receipt of the Complaint and transmitted by email to ICANN and the Registrar, GoDaddy.com, LLC, a request for registrar verification in connection with the disputed domain name.

On 26 January 2024, the Registrar sent its verification response to the ADNDRC Beijing Office via email, confirming that the Respondent is listed as the registrant and providing the contact details. The Registrar further pointed out that the language of the Registration Agreement is English. On the same day, the ADNDRC Beijing Office informed the Complainant of the Respondent's information and language of the proceedings, and requested the Complainant to revise the Complaint.

On 1 February 2024, the Complainant revised its submission by including the updated Respondent's information and the contact details.

On 23 February 2024, the ADNDRC Beijing Office notified the Complainant that the Complaint has been confirmed and transmitted to the Respondent and the case

officially commenced. On the same day, the ADNDRC Beijing Office transmitted the Written Notice of the Complaint to the Respondent, which informed that the Complainant had filed a Complaint against the disputed domain name and the ADNDRC Beijing Office had sent the Complaint and its attachments through email according to the Rules and the Supplemental Rules. On the same day, the ADNDRC Beijing Office notified ICANN and registrar, GoDaddy.com, LLC, of the commencement of the proceedings.

The Respondent failed to submit a Response within the specified time period. On 15 March 2024, the ADNDRC Beijing Office notified the Respondent's default. Since the Respondent did not mention the Panel selection in accordance with the time specified in the Rules, the ADNDRC Supplemental Rules, and the Notification, the ADNDRC Beijing Office informed the Complainant and the Respondent that the ADNDRC Beijing Office would appoint a one-person panel to proceed to render the decision.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Dr. Timothy Sze, the ADNDRC Beijing Office notified the parties on 18 March 2024 that the Panel in this case had been selected, with Dr. Timothy Sze acting as the sole panelist. The Panel determines that the appointment was made in accordance with Paragraph 6 of the Rules and Articles 8 and 9 of the Supplemental Rules.

On 18 March 2024, the Panel received the file from the ADNDRC Beijing Office and should render the Decision within 14 days, i.e., on or before 1 April 2024.

Pursuant to Paragraph 11 (a) of the Rules, 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 language of the current disputed domain name Registration Agreement is English, thus the Panel determines English as the language of the proceedings.

2. Factual Background

A. The Complainant

The Complainant in this case is Shenzhen Smoore Technology Limited. The registered address is No. 16, Dongcai Industrial Zone, Gushu Community, Xixiang Street, Bao'an District, Shenzhen, Guangdong Province, China.

B. The Respondent

The Respondent in this case is Wen Bing Li. The registered address is Jie Dong Ou, An Dong Sheng Jie Yang Shi, Guangdong Province, China.

The Respondent is the current registrant of the disputed domain name “vaporesso.com”, which was registered on 23 July 2023 according to the WHOIS information. The Registrar of the disputed domain name is GoDaddy.com, LLC.

3. Parties’ Contentions

A. The Complainant

The Complainant is the owner of “Vaporesso” and “VAPORESSO” trademarks. The Complainant created and first filed its trademark application to China National Intellectual Property Administration on 28 July 2014. The application was granted and the trademark “Vaporesso” in Class 34 was registered on 14 September 2015 (registration No. 14967738). On 14 September 2018, Complainant’s trademark application “VAPORESSO” in Class 34 was granted.

In addition, the Complainant also owns registered trademarks “Vaporesso” or “VAPORESSO” in United Kingdom, United States, Russia, Philippines, South Korea, Australia, Paraguay, Saudi Arabia and Venezuela. All those trademarks were granted before the registration date of the domain name in dispute.

(i) The disputed domain name is identical or confusingly similar to the Complainant’s trademarks

The Complainant firstly applied for “Vaporesso” trademark on 28 July 2014. The registration of “Vaporesso” trademark in Class 34 was approved on 14 September 2015 in China. The Complainant was approved to register “VAPORESSO” trademark in Class 34 on 14 September 2018 in China. In addition, the Complainant registered “Vaporesso” or “VAPORESSO” trademarks and has trademark rights in the United Kingdom, the United States, Russia, Philippines, South Korea, Australia, Paraguay, Saudi Arabia and Venezuela. All those trademarks are within the validity period. The Complainant enjoys exclusive rights of those trademarks in accordance with the law and has great popularity and reputation in the industry. The Respondent registered the disputed domain name on 23 July 2023, later than the registration date of Complainant’s trademarks. Therefore, the Complainant has prior rights in “VAPORESSO” and “Vaporesso” trademarks.

“Vaporesso” is not a common word with actual meaning. The distinctive part of the disputed domain name “vaporesso.com” is “vaporesso”. Except for an extra letter “o”, the rest is identical to the Complainant’s trademark “vaporesso”. The Complainant’s registered trademark was completely included in the disputed domain name, which leads the disputed domain name confusingly similar to the Complainant’s registered trademark.

(ii) the Respondent have no rights or legitimate interests in respect of the disputed domain name

Upon those information, the Respondent has no rights for the distinctive part of the disputed domain name “vaporessoo” or “vaporesso”. There were no records related to the Respondent’s prior actual use of “vaporessoo” or “vaporesso”. The Respondent does not have any legitimate rights or interests in the distinctive part of the disputed domain name. Moreover, there was no relationship between the Complainant and the Respondent. The Complainant did not license nor transfer “vaporesso” trademark to the Respondent, and the Complainant did not authorize the Respondent to register the disputed domain name.

To sum up, the Respondent has no rights or legitimate interests in respect of the disputed domain name “vaporessoo.com”.

(iii) the disputed domain name has been registered and is being used in bad faith

There are counterfeit products bearing trademark “VAPORESSO” circulating in the market. When the Complainant scanned the QR code printed on the packaging of counterfeit products, it leads us to a webpage “www.vaporessoo.com/a/b/c/verify.html?code=6B430838661AF8”. The content of the page is exactly the same as Complainant’s genuine official website. The domain name “www.vaporessoo.com/a/b/c/verify.html?code=6B430838661AF8” is a subdomain of disputed domain name “vaporessoo.com”. The disputed domain name “vaporessoo.com” reflects a counterfeit webpage titled “National Commodity Anti-Counterfeiting Information Verification Center”. The evidence demonstrates that the disputed domain name is used to infringe the exclusive rights of Complainant’s registered trademarks “vaporesso”, and the person who keeps and runs the disputed domain name is selling counterfeit products which infringe Complainant’s registered trademark. The disputed domain name has been registered and used in bad faith.



Figure 1: The left side shows the outer packaging of counterfeit product, and the right side shows the outer packaging of genuine product.



Figure 2: The left side shows a counterfeit product and the right side shows a genuine one.



Figure 3: The left side shows the anti-counterfeiting code of counterfeit product. Scanning the QR code of counterfeit product and the website links to the disputed domain name “vaporesso.com”, which has one more “o” than the genuine website. The right side of the figure shows the verification code of genuine product. Scan the genuine verification code and the web page links to genuine website “vaporesso.com”.

The Complainant focuses on building the world’s leading atomization technology platform. Complainant’s business includes research, design and manufacturing of closed vaping devices and vaping components, as well as research, design,

manufacturing and sales of advanced personal vaporizer (APV). The Complainant is the world's largest e-cigarette manufacturer. The Complainant received "High-tech Enterprise Certificate" "District Governor Quality Award". The Complainant owned "National Intellectual Property Advantage Enterprise" "Shenzhen Intellectual Property Advantage Enterprise" "Shenzhen Top 500 Enterprises". In addition, the Complainant also won industry awards such as "E-cigarette Industry Pegasus Award" and "German Design Communication Award". The above evidence demonstrates that the Complainant has a high degree of influence and reputation.

Complainant's trademark "Vaporesso" is an original and highly distinctive word created by the Complainant and is not an ordinary word. Through Complainant's long-term use and publicity, "Vaporesso" as a trademark has acquired a high degree of distinctiveness and influence. VAPORESSO products won 2022 "American MUSE Design Award" (one of the most influential international awards in global creative design field). The Complainant's market covered more than 50 countries and regions around the world. "Vaporesso" is the first brand of open electronic atomization equipment in France, Spain, Australia, the United Arab Emirates and Israel. There are more than 7,500 member stores and 628 brand stores of "Vaporesso" around the world. In 2023, "Vaporesso" conquers new heights with 130+ prestigious awards for its product innovation and design, showcasing a remarkable improvement compared to the previous year. The Complainant's relentless dedication to pushing the boundaries of vaping technology has gained global recognition and led to numerous accolades, with the highly esteemed Golden Leaf Award for Innovation standing out as a standout achievement.

The Respondent registered the disputed domain name which is confusingly similar to Complainant's trademark without reasonable grounds. The main distinctive part of the disputed domain name is highly similar to Complainant's trademark "Vaporesso", which cannot be described as a coincidence. The Respondent attempts to make use of Complainant's reputation and influence in bad faith. The unauthorized disputed domain name registration has seriously damaged Complainant's normal business activities and affected Complainant's business reputation. The Respondent used the domain name to trick consumers into accessing the Respondent's website or other online addresses to obtain commercial interests. The Respondent's behavior fulfills the condition of Article 4 of the Policy, and should be deemed as a clear illegal act.

B. The Respondent

The Respondent did not reply to the Complainant's contentions.

4. Discussions and Findings

Paragraph 4(a) of the Policy provides that in order to be entitled to a transfer of the

disputed domain name, the complainant shall prove the following three elements:

- (i) The disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) The registrant has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) The disputed domain name has been registered and is being used in bad faith.

Paragraph 4(b) of the Policy states that the following circumstances in particular, but without limitation, shall be evidence of registration and use of a domain name in bad faith:

- (i) Circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name; or
- (ii) The respondent registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) The respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the domain name, the respondent has intentionally attempted to attract, for commercial gain, internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location.

Respondent in Default

The Policy and the Rules provides that “[i]f a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint.” The Panel finds that no exceptional circumstances exist. Accordingly, the Panel will decide the dispute based upon the Complaint and the evidence submitted therewith.

A. Identity or Confusing Similarity

The evidence submitted by the Complainant demonstrates that they successfully registered the trademark “VAPORESSO” as early as 2015, which is much earlier than the time the Respondent registered the disputed domain names. The Complainant has also registered multiple “VAPORESSO” series trademarks in China, as well as in United Kingdom, United States, Russia, Philippines, South Korea, Australia, Paraguay, Saudi Arabia and Venezuela where they have production facilities. The registration

date of the disputed domain names “vaporesso.com”, which were registered on 23 July 2023, later than the application and completion of the registration of the aforementioned trademarks by the Complainant.

The disputed domain name “vaporesso.com” reproduces the Complainant’s trademark “VAPORESSO” in its entirety, the addition of the character “o” or “vaporesso” does not provide distinctiveness to the domain name; or as the Complainant suggested, reproduces the trademark “VAPORESSO” that belongs to others. Despite the extra letter “o”, it is likely that internet users will associate “vaporesso” with the Complainant’s “VAPORESSO” or perceive it as related to the scope of their activities. Even if internet users are not familiar with the brand “VAPORESSO”, the similarity between the dominant part of the disputed domain name, “vaporesso”, and the Complainant’s trademark “VAPORESSO” is significant due to their identical appearances, pronunciations, and lengths. Furthermore, the gTLD “.com” holds no legal significance in this case as the use of a top-level domain (TLD) is technically required for domain name operation.

And the disputed domain name use “vaporesso.com” as the part of the disputed domain names, while “VAPORESSO” is the trademark that the Complainant has been continually and widely using in worldwide scope. No matter the Respondents add extra letter of “o” or “vaporesso”, it will easily cause confusion to the consumers. Furthermore, the use of the gTLD “.com” holds no legal significance in this case as it is technically required for domain name operation. The disputed domain name uses “VAPORESSO” as part of its composition, which is the trademark that the Complainant has been using widely and continually on a global scale. Regardless of the addition of the letter “o” or “vaporesso”, it is likely to cause confusion among consumers.

The Panel notes that the Complainant has provided evidence of its registered trademarks for “VAPORESSO” in connection with e-cigarette products and related services.

Therefore, the Panel finds that the Complainant has proven the element required by the Policy, paragraph 4(a)(i), that the disputed domain name is confusingly similar to the Complainant’s registered trademarks.

B. Rights or Legitimate Interests of the Respondent

Based on the Complainant’s allegation and the relevant Trademark Office database, it appears that the Respondent does not possess any rights related to the disputed domain names. The Complainant has therefore established a *prima facie* case that the Respondent does not have any rights or legitimate interests in the disputed domain names and thereby the burden of proof shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the disputed domain name.

The Panel finds that the Respondent has failed to produce any evidence to establish his rights or legitimate interests in the disputed domain names. The Panel also could not find any rights or legitimate interests under paragraph 4(c) of the Policy.

Accordingly, the Panel finds that the Complainant has satisfied the second condition under paragraph 4(a)(ii) of the Policy.

C. Bad Faith

According to paragraph 4(b) of the Policy, the following circumstances, in particular but without limitation, shall be evidence of registration and use in bad faith:

(i) circumstances indicating that the Respondent has registered or the Respondent has acquired the domain names primarily for the purpose of selling, renting, or otherwise transferring the domain names registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the domain names; or

(ii) the Respondent has registered the domain names in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct; or

(iii) the Respondent has registered the domain names primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain names, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on its website or location.

The examples of bad faith registration and use set forth in paragraph 4(b) of the Policy are not meant to be exhaustive of all circumstances from which such bad faith may be found. The overriding objective of the Policy is to curb the abusive registration of domain names in circumstances where the registrant seeks to profit from and exploit the trademark of another.

For the reasons discussed under this and the preceding heading, the Panel considers that the Respondent's actions in this case constitutes both the bad faith registration and use of the disputed domain names within the meaning of paragraphs 4(b)(iii) and 4(a)(iii) and (iv) of the Policy. The Respondent clearly was aware of the Complainant and had the Complainant's "VAPORESSO" mark in mind. The Complainant argues that the Respondent cannot ignore the fact that "VAPORESSO" is a well-recognized company and its trade and service marks are commonly known, alleging that the Respondent was aware of that mark when it registered the disputed domain name. As an ordinary consumer, the Respondent should have known "VAPORESSO". The

Respondent's registration of the disputed domain name was clearly malicious.

The disputed domain names can easily mislead ordinary consumers into believing that they represent the official website of the Complainant or have some form of association with the Complainant.

The inclusion of the letter "o" in the disputed domain name does not provide adequate differentiation from the Complainant's trademarks, especially given that "vaporesso" lacks a distinctive distinction from "VAPORESSO" within the same industry. The Complainant's brand is widely acknowledged as a market leader, which further contributes to the potential confusion between the disputed domain names and the Complainant's brand.

The Panel finds it highly likely that the Respondent registered the domain names with the Complainant's mark in mind. The term "VAPORESSO" is uncommon and distinctive, and the redirection of the disputed domain names to content that is similar to the Complainant's products indicates an act of bad faith.

The Panel finds that the Complainant has established that the Respondent registered and is using the disputed domain name in bad faith pursuant to paragraph 4(b)(iii) and (iv) of the Policy. The failure of the Respondent to respond to the Complainant further supports a finding of bad faith registration and use.

5. Decision

Based on the above analysis, the Panel decides that:

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

Accordingly, pursuant to paragraph 4(a) of the Policy and 15 of the Rules, the Panel decides that the disputed domain names "vaporesso.com" should be transferred to the Complainant, Shenzhen Smoore Technology Limited.



(Signature)

(Timothy Sze)

Dated: 1 April 2024