

Decision for dispute CAC-UDRP-103738

Case number	CAC-UDRP-103738
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Time of filing	2021-07-19 09:46:08
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Domain names	stoggles.com
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Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	Stoggles Inc
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Complainant representative

Organization	HSS IPM GmbH
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Respondent

Name	chen da guo
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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 name.

IDENTIFICATION OF RIGHTS

The Complainant has launched the STOGGLES brand on July 29, 2020 and is the owner of the STOGGLES trademark including but not limited to the following:

US TM PARENT (ORIGINAL) APPLICATION: STOGGLES

Serial no. 90090752

Date of application: 04.08.2020

Publication date: 09.02.2021

Notice of allowance date: 06.04.2021

Goods and services: Class 10

US TM CHILD APPLICATION: STOGGLES

Serial no. 90975343

Date of application: 04.08.2020

Publication date: 09.02.2021

Notice of allowance date: 06.04.2021
Notice of acceptance of statement of use: 02.07.2021
Goods and services: IC 009. US 021 023 026 036 038.

AUSTRALIAN TM: STOGGLES
Reg. no. 2162492
Date of Application: 29.01.2021
Date of Registration: 01.06.2021
Convention Priority Claimed: 04.08.2020 United States of America 90090752
Goods and services: IC 010. US 026 039 044.

HONG KONG TM: STOGGLES
Reg no. 305503482
Date of Application: 12.01.2021
Date of Registration: 07.05.2021
Convention Priority Claimed: 04.08.2020 90090752 UNITED STATES OF AMERICA
Goods and services: IC 010. US 026 039 044.

WIPO TM: STOGGLES
Reg no: 1580934
Date of Registration: 29.01.2021
Basic Application: US, 04.08.2020, 90090752
Designations under the Madrid Protocol: AU-CA-CN-EM-GB-JP-KR-MX
Goods and services: IC 010. US 026 039 044.

Due to extensive use, advertising, and revenue associated with its trademarks worldwide, Complainant has established that its STOGGLES mark has become a distinctive identifier which consumers associate with Complainant.

The Complainant runs the official online store at www.wearstoggles.com.

FACTUAL BACKGROUND

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

Stoggles Inc, the Complainant, is a visionary eyewear company leading the movement to reimagine how people care for their eyes. On or around July 2020, ROAV Inc, an affiliate of Complainant commissioned a Chinese factory to produce STOGGLES branded eyewear products.

The STOGGLES brand was successfully launched to the public on July 29, 2020 via one of the world's largest crowdfunding platforms Indiegogo.com, where to date more than 61,000 backers have provided over USD \$3 million in financial support. The Indiegogo launch was so successful that the initial funding goal was reached in less than five minutes. The first STOGGLES branded products were shipped in early October 2020 to consumers in various countries around the world, including China.

Stoggles has been featured in major media outlets such as Forbes, Men's Health, Mashable and Popular Science.

The Respondent is an individual domiciled in Shanghai, China.

The disputed domain name was registered on February 23, 2021.

PARTIES CONTENTIONS

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).

First, the Complainant claims rights in the STOGGLES mark through its trademark registrations. By virtue of its trademark registrations, Complainant has proved that it has rights in the mark under paragraph 4(a) of the Policy. See *Avast Software s. r. o. v Milen Radumilo*, 102384, (CAC 2019-03-12).

Second, the Complainant claims that the prominent part of the disputed domain name is identical to its trademark registrations.

The Panel accepts that the prominent part of the disputed domain name is identical to Complainant's trademark STOGGLES, and the ".com" generic top-level domain ("gTLD") is irrelevant when establishing whether or not a mark is identical or confusingly similar for the purposes of paragraph 4(a)(i) of the Policy, see *CALZATURIFICIO BUTTERO SRL v YANG CHAO WEI*, 103520 (CAC 2021-02-23).

For the foregoing reasons, the Panel finds the Complainant has satisfied 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). More specifically, the Complainant must first make a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name, and the burden of prove then shifts to the Respondent to show it does have rights or legitimate interests. See *PepsiCo, Inc. v Smith power production*, 102378, (CAC 2019-03-08) ("The Panel finds that the Complainant has made out a prima facie case that arises from the considerations above. All of these matters go to make out the prima facie case against the Respondent. As the Respondent has not filed a Response or attempted by any other means to rebut the prima facie case against it, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.").

First, the Complainant claims that it has never authorized the Respondent to register the disputed domain name or use its trademarks or contents in any manner, so the use of the disputed domain name could not be considered as a legitimate use. In addition, there is no evidence to support that the Respondent is commonly known by the disputed domain name nor the major part of it.

Second, the Complainant further argues that STOGGLES is a made-up term coined by itself, with no meaning as shown by the online dictionary. Furthermore, the Google search engine returns results point to the Complainant and its business activities when performing searches for the term "STOGGLES". In light of the content of the website previously associated with the disputed domain name, it is inconceivable that the word "STOGGLES" in the disputed domain name is not a deliberate and calculated attempt to benefit from the Complainant's rights improperly.

The Panel finds that the Complainant has established a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name. The burden of proof has been shifted to the Respondent to prove that it has right or legitimate interests to the disputed domain name. However, the Respondent has not submitted any response to rebut the assertion.

For the foregoing reasons, the Panel finds the Complainant has satisfied 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).

Registration of the disputed domain name in bad faith

The Complainant points out that its use of the STOGGLES mark, applied for and registered STOGGLES trademarks predate

the registration of the disputed domain name, and the Complainant has never authorized the Respondent to register it. In light of the content of the website previously associated with the disputed domain name, it is inconceivable that the word "STOGGLES" in the disputed domain name is not a deliberate and calculated attempt to benefit from the Complainant's rights improperly. The Panel accepts that the Respondent had actual knowledge of Complainant's STOGGLES brand during the registration of the disputed domain name and the use of the disputed domain name further evinces the Registration of the disputed domain name was in bad faith.

Use of the disputed domain name in bad faith

The Complainant claims that the disputed domain name resolved to an active website having the look and feel of the Complainant's website, displaying Complainant's trademarks, copyrighted images, fonts and style. The content directly related to the Complainant's stylish protective eyewear business with the claim "Shop now and save 40%". The website and the Complainant's legitimate site are very similar which a casual visitor would be unlikely to distinguish a difference. Furthermore, the website also included a "Contact Us" page seeking to fraudulently induce visitors to submit their personal information, in the misapprehension that they were corresponding with Complainant. The Complainant further adds that after the Complaint was initially submitted, the "iStoggles" website is replaced by a page that showing the disputed domain name is listed for sale at US \$ 100k.

Despite the brand on the website is amended to "iStoggles", the Panel compared the images on both the website resolved by the disputed domain name and Complainant's official website, and accepts that the websites are very similar which may easily confuse Internet users to believe that the website resolved by the disputed domain name is an official website of the Complainant, see *TOD'S S.p.A. v Wei Xifeng*, 103839 (CAC 2021-06-28). The Panel also accepts that Respondent's ignorance of Complainant's C&D and listing the disputed domain name for sale at US \$ 100k further evince the use of the disputed domain name in bad faith.

For the foregoing reasons, the Panel finds the Complainant has satisfied paragraph 4(a)(iii) of the Policy.

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.

PRELIMINARY FINDINGS - LANGUAGE OF PROCEEDING:

The Panel notes that the language of the Registration Agreement is Chinese as confirmed by the Registrar. The official Complaint was submitted in English and no Response was received within the required period of time. Pursuant to paragraph 11 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 Complainant requests to use English as the language of proceeding, with the arguments that the disputed domain name is registered in Roman script and both the previous and current website resolved by the disputed domain name are in English.

The Panel is bilingual and is well equipped to deal with the proceeding in both Chinese and English. Having considered the circumstances, it is obvious that the Respondent knows English. Panel believes that it would be fair to both parties to use English as the language of proceeding and it can also uphold the principle of UDRP being a swift dispute resolution process. On this basis, the Panel determines that the language requirement has been satisfied, and decides that the language of proceeding to be English.

PRINCIPAL REASONS FOR THE DECISION

Having established all three elements required under the UDRP Policy, the Panel concludes that relief shall be granted.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINANT IS

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **STOGGLES.COM:** Transferred
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PANELLISTS

Name	Mr Paddy TAM
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DATE OF PANEL DECISION	2021-08-16
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Publish the Decision
