



ADMINISTRATIVE PANEL DECISION
Case No. DCN-1600698

Complainant:	SnoopyBy Co Ltd.
Respondent :	Zhou Yan (周颜)
Domain Name:	<gentlemonster.net.cn>
Registrar:	Ali Cloud Co., Ltd. 阿里云计算有限公司 (万网)

1. Procedural History

The Complainant, SnoopyBy Co Ltd., is a South Korean company whose address is Baeksang Star Tower 1Cha 604Ho, 65, Digital-ro n-gu, 9-gil, Geumcheon-gu, Seoul Republic of Korea. The Complainant is represented in these administrative proceedings by SILKA Law AB, whose address is 114 56 Stockholm, Sweden.

The Complaint was filed with the Hong Kong International Arbitration Centre ('Centre') on 14 July 2016 in relation to the disputed domain name. On 18 July 2016, the Centre transmitted by email to the Registrar, Ali Cloud Co Ltd., a request for verification of the registered particulars of the disputed domain name <gentlemonster.net.cn>.

On 18 July 2016, the Registrar replied to the Centre and identified the Respondent, Zhou Yan (周颜), whose email address is 1888888888@qq.com, as the Registrant of the disputed domain name.

The Centre confirmed that the Complaint satisfied the formal requirements of the *CNNIC ccTLD Dispute Resolution Policy* ('**CNDRP**') issued by the China Internet Network information Center ('**CNNIC**'); the *CNNIC ccTLD Dispute Resolution Policy Rules* ('**Rules of the CNDRP**'); and the *HKIAC Supplemental Rules for CNDRP and Rules of CNDRP* ('**Supplemental Rules**') issued by the Centre; respectively, each of which became effective on 21 November 2014.

On 28 July 2016, in accordance with Articles 5 and 14 of the Rules of the CNDRP and Article 5(3) of the Supplemental Rules, the Centre formally notified the Respondent of the Complaint. These proceedings commenced. In accordance with Article 17 of the Rules of the CNDRP, the due date for the Respondent's Response was 25 August 2016.

No Response was submitted to the Centre by the Respondent in relation to the disputed domain name, whereupon, the Centre sent a Notice of Default to the parties by email on 26 August 2016.

The Centre appointed Mr David L. Kreider as the sole panelist in this matter on 31 August 2016. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Centre to ensure compliance with Article 9(2) of the Supplemental Rules.

Language

By its email to the Centre on 14 July 2016, the Complainant requests that English be used, exceptionally, as the language of these proceedings. The Complainant argues as grounds that the Domain Name is composed exclusively of English words (GENTLE + MONSTER), the combination of which is distinctive and refers to the Complainant's trademark. The website contains words and phrases in English. The Complainant argues that it would be disadvantaged if required to translate the Complaint and supporting evidence, whereas the defaulting Respondent will suffer no prejudice thereby.

The Complainant further argues that the Respondent's websites are active and do not target necessarily a Chinese speaking audience. Complainant argues that in WIPO Case No. DCC2016-0004 *SnoopyBy Co Ltd. v. Zou Xiaobao*, where the same trademark was involved, which involved a Chinese Registrar and where the Registration agreement was entered into in Chinese, the Panel accepted a Response in either English or Chinese, whereas the Complainant was granted leave to submit the Complaint and supporting evidence in English.

The Panel notes that the WIPO decision in Case No. DCC2016-0004, on which the Complainant seeks to rely, arose under the Uniform Domain Name Dispute Resolution Policy (UDRP), whereas, as has been noted above, the present administrative proceedings were brought under the CNDRP. Although the default position for determining the language of the proceedings under the UDRP is to use the language in which the Registration Agreement is written (Paragraph 11(a) of the UDRP Rules), while the default position in CNDRP proceedings is to use the Chinese language (Article 6 of the Policy and Article 8 of the Rules), both the UDRP and CNDRP afford the Panel discretion to determine that a language other than the default language be used in the proceedings.

Having considered all the circumstances of these proceedings, including, without limitation, Respondent's use of English in the website to which the Domain Name resolves, as well as in various other websites to which other domains shown to have been registered by the Respondent resolve, the Panel finds merit in the Complainant's request and decides, as an exception to the general mandate of Article 6 of the CNDRP and Article 8 of the Rules of the CNDRP, that the present proceedings shall be conducted in English, rather than in Chinese.

2. Factual background

The disputed Domain Name was registered by Respondent on 16 July 2015.

3. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

(1) The disputed domain name is identical with or confusingly similar to the Complainant's name or mark in which the Complainant has civil rights and interests;
(Article 8)

SnoopyBy Co Ltd. (hereinafter referred to as Complainant) is the trademark owner of the GENTLE MONSTER brand which is a designer brand that constantly develops itself under a philosophy of "innovational high-end experiments". The Complainant presents its brand philosophy and value through experimental and differentiated designs, along with various collaborative projects with brands such as TOME, CHRIS HABANA, PUSHBUTTON, JAINSONG, GROUNDZERO, HOOD BY AIR, OPENING CEREMONY and more. Gentle Monster is being sold in over 450 selected shops in over 30 countries including South Korea, China, France, Spain, Italia, Portugal and has opened a branch office in NY, USA.

Complainant's activity in China.

Complainant ships its eye wear overseas including China, which presumably is the source of origin of the Respondent. Its Chinese flag ship store is located in Beijing where a 'Gentle Monster' campaign is currently taking place called the "secret neighbours". Complainant is also active in marketing its eye wear across multiple social media sites such as Facebook, Wechat, Weibo, etc.

Platform	Likes/followers/Fans/Pins	Direct link
Facebook	44 160 likes	https://www.facebook.com/gentlemonsterofficial/
Instagram	89 900 followers	https://www.instagram.com/gentlemonster/
Tumblr	N/A	http://gentlemonsterofficial.tumblr.com/
Pinterest	420 followers and 1700 pins	https://se.pinterest.com/gentle_monster/
Youtube	323 subscribers 76,454 views	https://www.youtube.com/c/gentlemonsterofficial/
Wechat	N/A	https://en.gentlemonster.com/img/common/wechat_qr.jpg
Weibo	48 922 fans	http://www.weibo.com/gentlemonsteraccount

Complainant owns several trademarks consisting or containing the word "GENTLE MONSTER" both in Korea and at an international level, including China where the Respondent likely resides ("hereinafter referred to as the trademark").

Overview of relevant registered trademarks

<u>Trademark</u>	<u>Date of Registration</u>	<u>Registration number</u>	<u>Type of registration</u>
Annex 4.1 - GENTLE MONSTER	2013-10-07	11022899	Chinese National
Annex 4.2 - GENTLE MONSTER	Applied in 2015	18260109, 17618180, 17618131	Chinese National
Annex 4.3 - GENTLE MONSTER	2012-06-07	1124449	International (designated China)
Annex 4.4 - GENTLE MONSTER	2013-03-19	4303384	Justitia Trademark
Annex 4.5 - GENTLE MONSTER	2013-06-20	41-2013-0060184	Korean National

Complainant also owns various registrations for domain names that include its registered trademark such as; www.gentlemonster.com, www.gentlemonster.co.kr, www.gentlemonster.us, www.gentlemonster.org, www.gentlemonster.net, www.gentlemonster.cc. Complainant uses these domain names to connect to websites through which it informs potential customers about its products. Complainant has previously successfully challenged a GENTLE MONSTER domain name through the UDRP process. See WIPO decision DCC2016-0004 *SnoopyBy Co Ltd. v. Zou Xiaobao*. The Panel in that matter recently took a decision in favour of the Complainant where similar facts had been stated.

Identical or confusingly similar:

The domain name gentlemonster.net.cn ("hereinafter referred to as the Domain Name) directly and entirely incorporates Complainant's trademark. The Domain Name would be perceived by Internet users as descriptive of a website where they could find information about Complainant's well-recognized products. See as an example the WIPO Overview on Selected UDRP Questions, Second Edition ("WIPO Overview 2.0"), paragraph 1.2., as well as the recent *International Business Machines Corporation v. Sledge, Inc. / Frank Sledge* WIPO Case No. D2014-0581, where the Panel stated that "In addition, it is generally accepted that the addition of country code top-level suffix in the domain name (e.g., ".cn" and ".com.cn") are to be disregarded under the confusing similarity test". Also see HKIAC Case. No. DCN-1500631 *Bayer AG v. HUO Gai Zhen* where the Panel didn't elaborate further on the use of the actual ".com.cn" extension, yet regarded the disputed domain name to be identical to the Complainant's mark. Based on the above, the Domain Name is regarded as identical to Complainant's registered trademark.

(2) Holder of the disputed domain name has no legitimate right or interest over the domain name or the major part of the domain name;

Complainant has not found that the Respondent is commonly known by the Domain Name. The WHOIS information is the only evidence in the WHOIS record which relates the Respondent to the Domain Name. It identifies the registrant as 周颜 (Zhou Yan)¹, which is not similar to the Domain Name. The Respondent has not provided Complainant with any evidence of its use of, or demonstrable preparations to use the Domain Name in connection with a bona fide offering of goods or services consistent with having rights or legitimate interest in the name “Gentle Monster”. When entering the terms in Google and Baidu search engine, the first returned results point to Complainant’s official website and news articles about Complainant’s business activities all around the globe, including the Chinese market. The Respondent could have easily performed a similar search before registering the Domain Name and would have quickly learnt that the trademark is owned by the Complainant and that the Complainant had long been using its trademark in China and other countries around the world at the time Respondent registered the Domain Name.

There is no evidence that the Respondent has a history of using, or preparing to use, the Domain Name in connection with a bona fide offering of goods and services. It is clear that the Complainant has become a distinctive identifier associated with the term “gentle monster” and that the intention of the Domain Name is to take advantage of an association with the business of the Complainant.

The website:

The Domain Name is pointing to a website that is an imitation of the Complainant’s official website. Further, there is no visible disclaimer that the website is not endorsed or sponsored by Complainant to explain the non-existing relationship with the trademark holder. Instead, there is a copyright text displayed at the bottom of the website; “Copyright © GENTLE MONSTER All rights reserved”, which could be read as Respondent has copyrights in the GENTLE MONSTER mark. By not accurately disclosing the relationship with Complainant, Respondent fails to meet the requirements for making a bona fide offering of goods or services. The website also displays a sign-up form where the Internet user / customer is encouraged to submit highly sensitive user information, such as username and password. The Complainant does not have control over the website linked to the Domain Name and cannot guarantee the safety of its customers.

The Respondent’s website has been used to offer for sale identical goods to those offered by the Complainant and clearly shows the use of the Complainant’s GENTLE MONSTER trademark. There are various “incriminating” pieces of evidence - the copying of the Complainant’s GENTLE MONSTER trademark on the Respondent’s website, the sale of suspected counterfeit goods bearing the Complainant’s GENTLE MONSTER mark, the copying of portions from the Complainant’s website, and the overall false impression deliberately created by the Respondent to mislead consumers into thinking that the

¹ The phoneticized English spelling of the Respondent’s full name in parentheses, was added by the Panel. The Respondent’s surname appears in capital letters.

Respondent's website is the Complainant's or that of an authorized agent or licensee. Clearly, the Respondent is not known by the Domain Name, nor does the Respondent claim to have made legitimate, non-commercial use of the Domain Name. The Respondent is likely to sell counterfeit goods under the Complainant's GENTLE MONSTER trademark. Complainant only resells its products through authorized resellers and the prices indicated on the Respondent's website are far less than original price, which is typically in the range of USD 250 – USD 450 for a pair of sunglasses. The Respondent lists the sunglasses for USD 170 (RMB 1180).

Pattern of abusive registrations:

Besides the present disputed Domain Name, the Respondent has to the knowledge of the Complainant registered at least five additional 'gentle monster' domain names, such as gentlemonster.me, gentlemonster.mom, gentlemonster.top, gentlemonster.wang and gentlemonster.xyz. The email connected to those domain name registrations, either as registrant or administrative email (1888888888@qq.com), is identical to the email listed in the current proceedings. At a minimum, it appears that there is some exercise of mutual control over the domain names by Respondent. This mutual control can also be demonstrated by proving that at least one of the websites is identical to the dispute Domain Name's website, e.g., those to which the domains www.gentlemonster.wang, www.gentlemonster.me resolve. The remaining three websites are currently inactive.

In addition to the above registrations, the Complainant has performed a reverse WHOIS search and has identified that the email address 1888888888@qq.com is connected to nearly 300 other domain name registrations. It appears that the registrant details for the respective domain name differs slightly, but that the email address and the Registrar is still the common component. See, for example, the domain name registration <christianlouboutin.wang> which incorporates the well-known trademark CHRISTIAN LOUBOUTAIN® which is displaying the identical website of the currently disputed Domain Name. The fact that a Respondent registers well-known trademarks as domain names can be taken into account as an indication of bad faith. See for instance *Starwood Hotels & Resorts Worldwide Inc., The Sheraton LLC, Sheraton International IP, LLC v. Name Supply*, WIPO Case No. D2014-1054, where the panelist stated that "...as an additional circumstance evidencing bad faith, the Respondent's registration of several domain names identical or confusingly similar to trademarks used by third parties in connection with renown hotels and casinos, as highlighted above and in Annex K to the Complaint, suggests that the owner has engaged in a pattern of domain name registrations corresponding to trademarks, likely for profit, by preventing the legitimate trademark owners to reflect their distinctive signs in the corresponding domain names." The same principle applies in the current case.

(3) The Holder of disputed domain name registers or uses the disputed domain name in bad faith.

Article 9 of the CNDRP

The Domain Name reproduces Complainant's official website without permission and is fully functional, even requesting that user's enter their names and password details on the sign-up page. Considering the complete absence of any control of Respondent's

website by the Complainant, such use cannot constitute a good faith use or registration of the Domain Name. See WIPO Case No: D2014-1222 *The Football Association Premier League Limited v. c/o Woitrustee.com Limited / Domain Administrator, Beyond the Dot* where the Respondent plagiarized the Complainant's official website. The Panel in that case stated that the identical reproduction of a complainant's website by a respondent, cuts against any finding of a bona fide offering or legitimate non-commercial or fair use. The same principle must apply in the current case.

In the current case, examples of what may be cumulative circumstances found to be indicative of bad faith include the Complainant having a trademark that predates the registration of the Domain Name² and that the website connected to the Domain Name reproduces the Complainant's official website.

To summarize, the identical nature of the Domain Name to the Complainant's trademark, for the purpose of preventing the Complainant from reflecting the mark in corresponding Domain Name under the ccTLD ".net.cn", which is closely connected to Complainant's business presence, further demonstrates a lack of good faith. Respondent is also notoriously registering well-known trademarks in domain names, which further supports that Respondent has no interest in the Domain Name other than capitalizing on them. Finally, Complainant's international and Chinese trademark registrations predates the Respondent's Domain Name registration and it is highly unlikely that the Respondent was not aware of the rights Complainant has in the trademarks and the value of said trademark, at the point of the Domain Name registration. Consequently, the Respondent should be considered to have registered and to be using the Domain Name in bad faith.³

B. Respondent

The Respondent's contentions may be summarized as follows:

The Respondent failed to submit a Response to the Complaint within the specified time period.

4. Findings

As to the case, Article 8 of CNDRP provides that a complaint against a registered domain name shall be supported if the following conditions are fulfilled:

² The Panel finds that Complainant's "gentle monster" trademark was registered in P.R. China with an effective date no later than 7 October 2013, whereas, according to the WHOIS information and as confirmed by the Registrar, Respondent registered the Domain Name on 16 July 2015.

³ Article 9 of the CNDRP requires a complainant to prove that "the disputed domain name holder has registered or has been using the domain name in bad faith". That is, in contrast to Article 4(a) of the UDRP, which requires a showing that a disputed domain name "has been registered and is being used in bad faith", the CNDRP requires a showing of either bad faith registration or bad faith use by a respondent, not both.

- i. The disputed domain name is identical with or confusingly similar to the Complainant's name or mark in which the Complainant has civil rights or interests;
- ii. The disputed domain name holder has no right or legitimate interest in respect of the domain name or major part of the domain name;
- iii. The disputed domain name holder has registered or has been using the domain name in bad faith.

Article 7 of CNDRP states that the complainant and the respondent shall bear the burden of proof for their own claims. With reference to the complaint and the attached documents, the Panel of this case considers that:-

Identical or Confusing Similarity

The disputed domain name <gentlemonster.net.cn> incorporates the Complainant's highly distinctive trademark in its entirety. The Complainant correctly asserts that the mere addition of the ccTLD “.NET.CN” is not sufficient to escape the finding that the domain name is identical to its trademark GENTLE MONSTER. Another panel has so held in a UDRP proceeding on similar facts brought by the Complainant in WIPO Case No. DCC2016-0004 *SnoopyBy Co Ltd. v. Zou Xiaobao*.

This panelist finds that the disputed domain name is identical to the Complainant's trademark.

Rights or Legitimate Interests of the Respondent

The name “GENTLE MONSTER” is highly distinctive and is obviously connected with the Complainant and its products and is not a word any market participant or other domain registrant would legitimately choose unless seeking to create an impression of an association with the Complainant. The Complainant has alleged that it has not licensed or otherwise permitted the Respondent to use its trademark. The Respondent, on its part, has defaulted and has filed no Response in these proceedings.

The Respondent has not used the disputed domain name, or a name corresponding to the domain name, in connection with a bona fide offering of goods or services. Rather, the disputed domain name resolves to a website that is highly similar to Complainant's official website and which offers for sale products that are identical or similar to Complainant's fashionable eyeglass frames and accessories, at prices that are substantially lower than those of Complainant's authorized goods. The Panel finds that Respondent deliberately intended to mislead consumers into thinking that the Respondent's website is that of the Complainant, or that of an authorized agent or licensee of the Complainant.

The Panel finds that the Respondent has no legitimate right or interest in respect of the disputed Domain Name.

Bad Faith

As the panel observed in WIPO UDRP Case No. DCC2016-0004, the Complainant's products and trademark have been reproduced on the Respondent's website and made to look as if the Respondent's website is the genuine website of, or is authorized by, the Complainant.

The Panel finds that Respondent registered or acquired the domain name in bad faith, for the purpose of damaging the Complainant's reputation, disrupting the Complainant's normal business or creating confusion with the Complainant's name or mark so as to mislead the public.

The Panel finds compelling the Complainant's evidence that the Respondent is involved in a pattern of making abusive domain name registrations.

5. Decision

The Panel orders that the disputed domain name <gentlemonster.net.cn> be transferred to the Complainant.

Panelist: David L. Kreider

Date: 11 September 2016