



## **WIPO Arbitration and Mediation Center**

### **ADMINISTRATIVE PANEL DECISION**

**FEIYUE v. Lhk Gallery**

**Case No. D2009-1070**

#### **1. The Parties**

The Complainant is FEIYUE, Paris, France, represented by Cabinet Moutard, France.

The Respondent is Lhk Gallery, Singapore.

#### **2. The Domain Name and Registrar**

The disputed domain name <feiyue-sneakers.com> is registered with Melbourne IT Ltd (the "Registrar").

#### **3. Procedural History**

The Complaint was brought pursuant to the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), which was adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN") on August 26, 1999, and approved on October 24, 1999, and also in accordance with the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") as approved on October 24, 1999, and the World Intellectual Property Organization ("WIPO") Supplemental Rules for Uniform Domain Name Dispute Resolution Policy in effect as of December 1, 1999 (the "Supplemental Rules").

The Complaint, with accompanying Annexes 1-4, was filed with the WIPO Arbitration and Mediation Center (the "Center") by email on August 10, 2009 and subsequently by hardcopy on August 12, 2009.

Pursuant to paragraph 4(d) of the Policy, the Complainant selected the Center as the ICANN approved administrative dispute resolution service provider to administer this proceeding. Through the Complaint, the Complainant requested a single-member panel.

After receiving the original Complaint, the Center, in accordance with paragraph 5 of the Supplemental Rules, verified that the Complaint complied with the formal requirements of the Rules and the Supplemental Rules. In that regard, on August 11, 2009, the Center requested confirmation from the Registrar as to: whether the Registrar received a copy of the Complaint from the Complainant, contact and registrant information set forth in the Complaint relative to the disputed domain name, and whether the name is indeed registered with the Registrar. The Center also requested the Registrar to specify for the disputed domain name: (a) the dates on which the registration was created or acquired by the registrant, and will expire, (b) whether the Policy applies to that name, (c) the language of the registration agreement, and (d) whether the name will remain “locked” during the proceeding.

Subsequently, on August 14, 2009, the Registrar provided its response to the Center through which it specified name and contact information pertinent to the disputed domain name to the extent, as it then existed, in its WhoIs database. Further, the Registrar stated that: it had not received a copy of the Complaint, the Respondent was listed as the registrant for the name and the name is registered with Melbourne IT Ltd. The Registrar’s response further indicated that: (a) the registration and expiration dates were May 27, 2009 and May 27, 2010, respectively, (b) the Policy applies to the name, (c) the registration agreement is in English, and (d) the name will remain locked during the proceeding.

The Center verified that the Complaint satisfied the formal requirements of the Policy, the Rules and the Supplemental Rules.

On August 18, 2009, the Center formally notified the Respondent of the filing of the Complaint, including an indication that the Center was forwarding a complete copy of the Complaint to the Respondent, together with all its annexes, by post or courier and also, but without the annexes, by email. The Complaint and its accompanying documents, and all subsequent communications associated therewith, were provided in the preferred manners and to the addresses as mandated by paragraphs 2(a), 2(b) and 4(a) of the Rules.

Hence, the notification to the Respondent having occurred on August 18, 2009, under paragraph 4(c) of the Rules, this administrative proceeding is deemed to have commenced on that date. Through its Complaint, the Complainant requested cancellation of the disputed domain name. This requested remedy was confirmed twice by the Complainant’s counsel: once by e-mail on August 18, 2009 in response to a query from the Center acting in its own discretion, and the second verbally on September 28, 2009 to the Center and specifically in response to a specific request issued by the Panel to the Center.

Having reviewed the Complaint and all the correspondence, including that between the Center and the Registrar, the Panel agrees with the determination of the Center that the Complaint and its handling met the requirements of the Rules and the Supplemental Rules.

The Respondent was then provided with a 20 calendar day period, expiring on September 7, 2009 to file its Response with the Center and the Complainant.

As of September 7, 2009, the Center had not received a formal Response to the Complaint from the Respondent; hence, the Center, in an email letter dated September 9, 2009, notified the Respondent of its default.

Accordingly, pursuant to the Rules and Supplemental Rules, by email letter dated September 15, 2009, the Center contacted the undersigned, Mr. Peter L. Michaelson, Esq., requesting his service as sole Panel for this dispute. Subsequently, on the same date, Mr. Michaelson accepted and returned, by email attachment to the Center, a fully executed Statement of Acceptance and Declaration of Impartiality and Independence. The Center, through an email letter dated September 18, 2009, notified the Parties of the appointment of Mr. Michaelson as sole Panelist.

Based on the deadline set forth in paragraph 15 of the Rules, a decision is to be issued by the Panel to the Center on or before October 2, 2009.

This dispute concerns one domain name, specifically <feiyue-sneakers.com>.

#### **4. Factual Background**

As indicated in the WhoIs registration records provided in Annex 1 to the Complaint, the disputed domain name was registered on May 27, 2009.

##### **A. Complainant's FEIYUE Mark**

The Complainant owns various trademark registrations for its mark FEIYUE with a design element. The registrations include international; regional, specifically Community Trademark registrations (Europe); and national registrations, in Singapore, the United States and Canada. The Complainant has provided, in Annex 3 to the Complaint, printouts of its registration certificates or entries from the publicly available on-line databases provided by the corresponding trademark registries, including the Intellectual Property Office of Singapore, the Canadian Intellectual Property Office, the United States Patent and Trademark Office and the Office for Harmonization in the Internal Market. Pertinent details of some of those registrations are as follows:

##### **1. FEIYUE (with design)**

Singapore registration T0719470J; filed: September 28, 2007  
registered: January 25, 2008

This mark is registered for use in connection with “footwear; boots; slippers; sports shoes; boots for sports” in international class 25.

##### **2. FEIYUE (with design)**

International registration 948536; registered: November 14, 2007

This mark is registered for use in connection with “Clothing, footwear (except orthopedic footwear), headgear” in international class 25. This mark claims priority of the Complainant's French trademark registration 3 426 388 registered on October 6, 2006.

##### **3. FEIYUE (with design)**

United States registration 3,253,429; filed: May 17, 2006;

registered: June 19, 2007

This mark is registered for use in connection with “Canvas shoes, Leather shoes; Training shoes” in international class 25. The record indicates that both first use and first use in commerce of this mark, when used in conjunction with these goods, commenced at least as of January 1, 2006.

#### **4. FEIYUE (with design)**

Canadian registration TMA735034; filed: July 31, 2006;  
registered: February 24, 2009

This mark is registered for use in connection with “Canvas shoes, vulcanized shoes, sneakers, beach shoes, football shoes, gymnastic shoes, shoes, sport shoes, boots, boots for sports, football boots, ski boots, belts, caps, women’s, men’s and children’s sports clothing, women’s, men’s and children’s sports clothing made of leather, women’s, men’s and children’s sports coats, and women’s, men’s and children’s sports footwear, jackets, jerseys, knitwear, shirts, skirts, socks, sweaters, T-shirts, trousers, underwear, uniforms, vests”.

#### **5. FEIYUE (with design)**

CTM registration 005085873; filed: May 19, 2006;  
registered: May 11, 2007

This mark is registered for use in connection with “Canvas shoes, vulcanized shoes, sneakers, beach shoes, football shoes, gymnastic shoes, shoes, sport shoes, boots, boots for sports, football boots, ski boots, belts (clothing), caps (headwear), clothing, leather clothing, coats, footwear, jackets (clothing), jerseys (clothing), knitwear (clothing), shirts, skirts, socks, sweaters, T-shirts, trousers, underwear, uniforms, vests” in international class 25.

### **B. The Parties and their activities**

The Complainant Feiyue, a French company, manufactures and distributes, on a worldwide basis, various types of shoes, including sneakers, under its FEIYUE Mark. The Complainant also sells its branded sneakers through its <feiyue-shoes.com> website.

The Respondent, LNK Gallery, sells sneakers which appear identical to those offered by the Complainant, including depicting the Complainant’s FEIYUE Mark, and hence directly competes with the Complainant. The Respondent sells its sneakers in various countries, including Singapore, United States, Canada, the countries of European Union and South Korea as well as through its website resolvable through the disputed domain name. That website (copies of pages from that site, including the home page, appear in Annex 4 to the Complaint), apart from exhibiting images of the Respondent’s sneakers, depicts a mark which closely imitates the Complainant’s FEIYUE Mark by including the identical term FEIYUE, in what appears to be the same font as the Complainant uses, and with a design element that only marginally differs from that appearing in the Complainant’s FEIYUE Mark.

## **5. Parties' Contentions**

### **A. The Complainant**

#### **(i) Identical or Confusingly Similar**

The Complainant contends that the disputed domain name is confusingly similar to the Complainant's mark.

Specifically, the Complainant states that the name includes the Complainant's mark FEIYUE followed by a generic term "sneakers". The latter not only fails to adequately distinguish the resulting name from the mark but, given that both the Complainant and Respondent manufacture sneakers with both depicting the FIEYUE Mark, the inclusion of the term sneakers in the disputed domain name actually exacerbates ensuing confusion of Internet users by leading those users to think that the sneakers manufactured and distributed by the Respondent originate from the Complainant -- when in actuality they do not, and are approved by the Complainant -- which in actuality they are not.

Hence, the Complainant believes that it has satisfied the confusing similarity/identity requirement in paragraph 4(a)(i) of the Policy.

#### **(ii) Rights or Legitimate Interests**

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name pursuant to paragraph 4(a)(ii) of the Policy.

First, before the Respondent received notice of the present dispute, there is no evidence of record that the Respondent ever used the disputed domain name in connection with a *bona fide* offering of goods or services.

Second, the Respondent has not been nor is commonly known by the disputed domain name.

Lastly, the Respondent is using the disputed domain name in a manner that is an illegitimate commercial use and does not constitute fair use. Specifically, Internet users are misled by the disputed domain name into mistakenly believing that the Respondent and the Complainant are related, when they are not, and that the Respondent's sneakers originate from the Complainant, when they do not.

#### **(iii) Registered and Used in Bad Faith**

Lastly, the Complainant contends that the Respondent registered and is now using the disputed domain name in bad faith under paragraph 4(a)(iii) of the Policy.

Specifically, the Complainant alleges that the Respondent intentionally registered and is using the name to attract, for commercial gain, Internet users to its own website by creating a likelihood of confusion with the Complainant's FEIYUE Mark. By virtue of seeing that name, those users will think that: (a) the Complainant has approved or is related, in some manner, to the Respondent, and (b) the Complainant has approved or supplies the sneakers which the Respondent sells through its site and that depict the Complainant's FEIYUE

Mark -- when, in actuality, neither of these assumptions is true.

## **B. The Respondent**

The Respondent failed to file any Response to the contentions raised in the Complaint.

## **6. Discussion and Findings**

In view of the lack of a Response filed by the Respondent as permitted under paragraph 5 of the Rules, this proceeding has proceeded by way of default. Hence, under paragraphs 5(e), 14(a) and 15(a) of the Rules, the Panel may in its discretion decide this administrative proceeding on the basis of the Complainant's undisputed factual representations.

### **A. Identical or Confusingly Similar**

The Panel finds that the disputed domain name is confusingly similar to the Complainant's FEIYUE Mark.

From a simple comparison of the disputed domain name to the Complainant's mark FEIYUE, no doubt exists that the name is confusingly similar to the Complainant's mark.

The primary difference between the disputed domain name and the mark FEIYUE is the addition of the generic word "sneakers" to form a separate corresponding composite term along with, secondarily, appending the gTLD (generic top level domain) ".com" to that term to form the name with the last addition being irrelevant in assessing confusing similarity or identity under paragraph 4(a) of the Policy and thus ignored. The Respondent has also inserted a hyphen between the mark "FEIYUE" and the word "sneakers", however this difference is inconsequential and will be ignored.

It is now very well-established in UDRP precedent, including numerous decisions previously rendered by this Panel, that a minor variation, such as adding short letter or number groups or even generic or highly descriptive words to a mark, is usually insufficient in and of itself, when used in forming a domain name that results from modifying the mark, to confer requisite and sufficient distinctiveness to that name to avoid user confusion. Here, adding such a word, that being "sneakers", in the manner which the Respondent specifically did, to the mark FEIYUE clearly resulted in such a minor variation. See, e.g., *Burberry Limited v. Domain Admin*, WIPO Case No. D2009-0703 (August 11, 2009); *Krispy Kreme Doughnuts, Inc. v. John Sharp*, WIPO Case No. D2009-0099 (April 20, 2009); *MasterCard International Incorporated v. Global Prepaid*, WIPO Case No. D2008-2008 (March 25, 2009); *HRB Innovations Inc., Express Tax Service Inc. v. Calvin Brown*, WIPO Case No. D2008-1072 (September 4, 2008); *Dreamworks Animation, LLC v. Creahq, Mike Furlong*, WIPO Case No. D2008-0505 (May 28, 2008); *Marvel Manufacturing Company Inc. v. Koba Internet Sales, LP*, WIPO Case No. D2008-0265 (May 5, 2008); *MySpace, Inc. v. Edwin De Jesus, EDJ Associates Inc.*, WIPO Case No. D2007-1878 (March 12, 2008); *Blackrock, Inc. v. blackrockfinancialservices.com*, WIPO Case No. D2007-1627 (January 4, 2008); *F. Hoffmann-La Roche AG v. Transliner Consultants*, WIPO Case No. D2007-1359 (November 14, 2007); *National Football League v. Peter Blucher d/b/a BluTech Tickets*,

WIPO Case No. D2007-1064 (September 24, 2007); *Toilets.com, Inc. v. Rons Porta Johns*, WIPO Case No. D2007-0952 (August 27, 2007); *Associated Bank Corp. v. Texas International Property Associates*, WIPO Case No. D2007-0334 (June 28, 2007); *Gerber Childrenswear Inc. v. David Webb*, WIPO Case No. D2007-0317 (April 24, 2007); *SPX Corporation v. Hevun Diversified Corporation*, NAF Claim No. 791657 (November 13, 2006); *Google Inc. v. Jennifer Burns*, NAF Claim No. 726096 (August 16, 2006); *The Cheesecake Factory Inc. and The Cheesecake Factory Assets Co., LLC v. Say Cheesecake*, WIPO Case No. D2005-0766 (September 12, 2005); *Napster, Inc. v. Giovanni Vinscani*, WIPO Case No. D2005-0531 (July 19, 2005); *Caesars Entertainment, Inc. v. Nova Internet Inc.*, WIPO Case No. D2005-0411 (June 22, 2005); *Lockheed Martin Corporation v. The Skunkworx Custom Cycle*, WIPO Case No. D2004-0824 (January 18, 2005); *Lockheed Martin Corporation v. Deborah Teramani*, WIPO Case No. D2004-0836 (December 1, 2004); *National Collegiate Athletic Association v. Dusty Brown*, WIPO Case No. D2004-0491 (August 30, 2004); *Lane-Labs USA, Inc. v. Powell Productions*, NAF Claim No. 155896 (July 1, 2003); and particularly *Cable News Network LP, LLP v. Elie Khouri d/b/a Channel News Network et al.*, NAF Claim No. 117876 (December 16, 2002).

Moreover, by including the word “sneakers” with the Complainant’s mark FEIYUE to form the corresponding disputed domain name, the potential for user confusion is greatly exacerbated, not reduced. By appending that word to the Complainant’s mark, an Internet user would clearly be deceived into thinking that the Respondent’s site and the products offered there through were somehow affiliated, related to or sponsored by or even originating from the Complainant when, in fact, they are not. This clearly is the Respondent’s intended result inasmuch as both parties manufacture sneakers but Respondent’s website depicts a mark that is a rather close and likely infringing replica of Complainant’s FEIYUE Mark and that Respondent’s sneakers identically depict the Complainant’s mark.

Thus, the Panel finds that that the disputed domain name here, which contains the word “sneakers” along with the Complainant’s mark FEIYUE , tends to aggravate, rather than ameliorate, user confusion and does so to the Respondent’s ultimate benefit. See *Burberry, Krispy Kreme, Dreamworks* and *MySpace*, cited *supra*.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s FEIYUE Mark as to cause confusion; hence, the Complainant has satisfied its burden under paragraph 4(a)(i) of the Policy.

## **B. Rights or Legitimate Interests**

Based on the evidence of record here, the Panel finds that no basis exists which would appear to legitimize a claim by the Respondent -- were one made -- to the disputed domain name under paragraph 4(c) of the Policy.

The Panel has inferred, from the lack of any response, that the Complainant has never authorized the Respondent to utilize its mark FEIYUE in conjunction with any of the goods with which the Complainant uses that mark or for similar goods, nor does the Complainant apparently have any relationship or association whatsoever with the Respondent. As such, any use to which the Respondent were to put the Complainant’s mark FEIYUE or one confusingly similar thereto in connection with the identical or even

similar goods to those currently provided by the Complainant, as recited in its any of its trademark registrations, may in circumstances as are present here violate the exclusive trademark rights now residing with the Complainant. See, e.g., *Burberry*, *HRB Innovations Inc.*, *Dreamworks*, *MySpace*, *Blackrock*, *F. Hoffmann-La Roche AG*, *National Football League*, *Toilets.com, Inc.*, and *Associated Bank*, all cited *supra*; also *Starline Publications, Inc. v. Unity*, WIPO Case No. D2008-1823 (February 2, 2009); *GoDaddy.com, Inc., v. GoDaddysDomain.com*, *Clark Signs*, *Graham Clark*, WIPO Case No. D2007-0303 (May 7, 2007); *Citgo Petroleum Corporation v. Richard Antinore*, WIPO Case No. D2006-1576 (March 14, 2007); *New Destiny Internet Group, LLC and Xplor Media, Inc. v. SouthNetworks*, WIPO Case No. D2005-0884 (October 14, 2005); *The Cheesecake Factory Inc.*, *Napster* and *Caesars Entertainment, Inc.*, all cited *supra*; *Pelmorex Communications Inc. v. weathernetwork*, WIPO Case No. D2004-0898 (December 28, 2004); *Sybase, Inc. v. Analytical Systems*, WIPO Case No. D2004-0360 (June 24, 2004); *Caesars World, Inc. and Park Place Entertainment Corporation v. Japan Nippon*, WIPO Case No. D2003-0615 (September 30, 2003); *Leiner Health Services Corp. v. ESJ Nutritional Products*, NAF Claim No. 173362 (September 16, 2003); *AT&T Corp. v. Roman Abreu d/b/a Smartalk Wireless*, cited *supra*; *MPL Communications, Limited et al v. 1WebAddress.com*, NAF Claim No. 97092 (June 4, 2001); *Treeforms, Inc. v. Cayne Industrial Sales, Corp.*, NAF Claim No. 95856 (December 18, 2000); and *America Online, Inc. v. Xianfeng Fu*, WIPO Case No. D2000-1374 (December 11, 2000). Consequently, in the Panel's view, the Respondent could not legitimately acquire any public association between it and either the mark FEIYUE or one similar thereto, at least for the goods rendered by the Complainant, in the manner so used here.

Further, there is absolutely no evidence of record that the Respondent has ever been commonly known by the disputed domain name or more generally the mark FEIYUE. Nor could the Respondent in this case likely ever become commonly known by either the disputed domain name or the mark, in light of the Complainant's exclusive trademark rights, with its mark having registration dates that predate the registration of the disputed domain name by several years, without infringing on the exclusive trademark rights of the Complainant. See, e.g., *Burberry*, *Starline Publications*, *HRB Innovations Inc.*, *MySpace* and *Treeforms, Inc.*, all cited *supra*.

Hence, based on the evidence before the Panel, the Respondent does not fall within paragraph 4(c)(ii) of the Policy.

Lastly, the record is devoid of any evidence which would persuade the Panel that the Respondent has made or is making demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services prior to its having received notice of this dispute. Specifically, as indicated in the record, the name resolves to a website through which the Respondent offers sneakers which are seemingly identical to those offered by the Complainant, including the depiction of the Complainant's FEIYUE Mark. Given the lack of any authorization by the Complainant to the Respondent for the latter to utilize the FEIYUE Mark, the Panel can only infer that the Respondent's sneakers are unauthorized imitations of those of the Complainant. Such misappropriation can never be legitimate and hence can never constitute a *bona fide* offering.

Nor does such use constitute either a legitimate noncommercial or fair use of the name, without intent on the Respondent for commercial gain to misleadingly divert consumer or tarnish any of the Complainant's FEIYUE Mark. Consequently, the Respondent's conduct



does not fall within paragraph 4(c)(i) or 4(c)(iii) of the Policy either.

Accordingly, the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain name within paragraph 4(a)(ii) and 4(c) of the Policy.

### **C. Registered and Used in Bad Faith**

The Panel finds that the Respondent's actions, with respect to the disputed domain name, constitute bad faith registration and use.

The Panel infers, from the lack of any Response, that the Respondent was well aware of the Complainant's mark FEIYUE when the former registered the domain name. Yet, in spite of that knowledge, the Respondent intentionally registered the name in an effort to exploit the Complainant's reputation and goodwill in that mark. The result of this is rather evident in the Respondent manufacturing and distributing goods which directly compete with those of the Complainant and which bear -- without authorization from the Complainant -- an identical replica of the Complainant's FEIYUE Mark. Obviously, the Respondent has done so to intentionally divert legitimate sales from the Complainant for its own pecuniary benefit. This illicit use of the Complainant's mark clearly disrupts the Complainant's sales, causes significant financial loss to the Complainant as well as considerable damage to its goodwill and reputation.

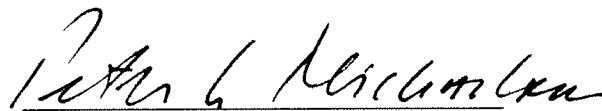
Hence, the Panel concludes that the Respondent violated paragraph 4(a)(iii) of the Policy including specifically paragraphs 4(b)(iii) and 4b(iv) thereof.

Thus, the Panel concludes that the Complainant has provided sufficient proof of its allegations, with respect to the disputed domain name, to establish a case under paragraph 4(a) of the Policy upon which the relief it now seeks can be granted.

## **7. Decision**

Accordingly, under paragraphs 4(i) of the Policy and 15 of the Rules, the Panel grants the relief sought by the Complainant.

The Registrar is ordered to cancel the registration for the disputed domain name, <feiyue-sneakers.com>.



Peter L. Michaelson  
Sole Panelist

Dated: September 29, 2009