

ADMINISTRATIVE PANEL DECISION

Tronox LLC v. 曾小程 (Zeng Xiao Cheng)

Case No. D2022-4307

1. The Parties

The Complainant is Tronox LLC, United States of America (“Unites States”), represented by SafeNames Ltd., United Kingdom.

The Respondent is 曾小程 (Zeng Xiao Cheng), China.

2. The Domain Name and Registrar

The disputed domain name <tronox.vip> is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on November 11, 2022. On November 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 15, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on November 15, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint in English on November 21, 2022.

On November 15, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On November 17, 2022, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding within the specified due date.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent in English and Chinese of the Complaint, and the proceedings commenced on November 25, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 15, 2022. The Respondent's informal communications were received by the Center between November 17 and December 17, 2022, and the Respondent also filed a Response in English, dated November 21, 2022. On November 26, 2022, the Respondent expressed his willingness to explore settlement options, ideally in Chinese. On November 28, 2022, the Center informed the Parties in English and Chinese that if the Parties would like to explore settlement options, the Complainant should submit a request to suspend the proceeding. On December 6 and 17, 2022, the Respondent indicated that he would not settle unless he has been compensated, and he requested to use Chinese to defend himself. The Center notified the Commencement of Panel Appointment Process to the Parties on December 16, 2022.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on December 27, 2022. 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 Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a subsidiary of Tronox Inc, which is a vertically integrated mining and inorganic chemical manufacturing business, publicly listed on the New York Stock Exchange. The Complainant and its affiliates process various minerals – primarily titanium ore – to produce titanium dioxide pigments that add brightness and durability to paints, plastic, paper, and other products. The Complainant is one of the world's largest suppliers of titanium chemicals, developing a variety of chemically formed and high purity products. The Complainant and its group have approximately 6,500 employees across six continents and as of May 18, 2022, their business was valued at USD 2.72 billion.

The Complainant owns an international portfolio of trademark registrations for TRONOX, including but not limited to, United States trademark registration number 0769354, for the word mark TRONOX, registered on May 12, 1964; and European Union trademark registration number 000256677, for the word mark TRONOX, registered on March 2, 1999. The abovementioned trademarks were both registered before the registration date of the disputed domain name, which was registered on March 4, 2022.

The disputed domain name is linked to an active, parked page on the "Dan.com" domain name resales platform, offering the disputed domain name for sale. The Complainant also provides evidence that it attempted to resolve this proceeding amicably by sending a cease-and-desist letter. Replies were received which stated that the disputed domain name was registered in good faith, not related to the Complainant, however, the Complainant could buy the disputed domain name if they were interested in it.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical to its prior registered trademarks for TRONOX, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name was registered, and is being used in bad faith. The Complainant also refers to an earlier UDRP case in which the respective panel has recognized the Complainant's rights in its trademarks for TRONOX and the reputation of such marks (see *Tronox LLC v. PrivacyDotLink Customer 4613466 / Domain to be deleted*, WIPO Case No. [D2022-1929](#)).

In its Complaint and amended Complaint, the Complainant essentially contends that the Respondent chose to register the disputed domain name which is identical to the Complainant's trademarks for TRONOX. The Complainant also contends that the disputed domain name was clearly calculated to capitalize on the

reputation of the Complainant's TRONOX marks and can therefore not constitute good faith use within the meaning of paragraph 4(c)(i) of the Policy. The Complainant also argues that the top search results for the term "tronox" on various online search engines clearly pertain to the Complainant's offerings and that an online search therefore would have also made the Respondent aware of the Complainant's rights in the TRONOX marks. Furthermore, the Complainant argues that, based on the current and previous contents of the website linked to the disputed domain name, the Respondent has primarily registered the disputed domain name for the purpose of selling it to the Complainant for consideration in excess of the documented costs of the disputed domain name. Finally, the Complainant also argues that the Respondent has engaged in a pattern of abusive conduct by registering other domain names which encompass the marks of distinctive third-party brands.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

The Respondent sent informal communications in English, received by the Center between November 17, and December 17, 2022. Furthermore, the Respondent also filed a Response in English, dated November 21, 2022.

The Respondent essentially argues that the Respondent did not know the Complainant and its representative; that the Respondent registered and holds the disputed domain name in good faith; that "tronox" is similar to "Toronto", and the Respondent chose the disputed domain name because "tronox" has a good pronounce and look; that the Complainant does not own trademark registrations in China for the mark TRONOX and there are 41 classes of goods and services can be registered in China; that the Respondent holds the disputed domain name on a non-profit, individual basis for a private website; that the Respondent has the right to offer the disputed domain name for sale on a legal platform; and that a selling price of USD 2,000-12,000 is a correct price for the disputed domain name.

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

Pursuant to paragraph 11(a) of the Rules, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

According to the Registrar's verification response, the language of the Registration Agreement for the disputed domain name is Chinese. Nevertheless, the Complainant filed its Complaint and its amended Complaint in English, and requests that English be the language of the proceeding. The Panel notes that although the Respondent did not comment on the language of the proceeding within the specified due date, and filed his Response in English, the Respondent requested to explore settlement options in Chinese and to defend himself in Chinese.

The Panel has carefully considered all elements of this case, in particular, the Complainant's request that the language of the proceeding be English; the fact that the Respondent sent several email communications in English, and filed his Response in English; the fact that the Respondent appears to understand the Complaint based on his Response and email communications; and the fact that the disputed domain name resolves to a website in English offering it for sale. The Panel finds that the Respondent is able to communicate in English while requesting the Complainant to translate the Complaint would unnecessarily delay the proceeding. In view of these elements, the Panel decides that the language of the proceeding shall be English.

6.2 Discussion and Findings on the Merits

The Policy requires the Complainant to prove 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 Respondent 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.

Based on the evidence and arguments submitted, the Panel's findings are as follows:

A. Identical or Confusingly Similar

The Panel finds that the Complainant has provided sufficient evidence that it has valid and prior rights in the mark TRONOX, based on its international trademark portfolio of such marks, including the registered trademarks mentioned above. The Panel disagrees with the Respondent's arguments that such marks obtained outside of China would not be sufficient, and refers in this regard to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.1.2, which states "[n]oting in particular the global nature of the Internet and Domain Name System, the jurisdiction(s) where the trademark is valid is not considered relevant to panel assessment under the first element."

Furthermore, as to whether the disputed domain name is identical or confusingly similar to the Complainant's trademarks, the Panel notes that the disputed domain name contains only the Complainant's TRONOX trademark, followed by the generic Top-Level Domain ("gTLD"), namely ".vip" in this case. The Panel considers the applicable gTLD as a standard registration requirement, which is, as such, disregarded by the Panel. See in this regard the [WIPO Overview 3.0](#), section 1.11.1.

Accordingly, the Panel finds that the disputed domain name is identical to the Complainant's trademarks for TRONOX and finds that the Complainant has satisfied the requirements of the first element under the Policy.

B. Rights or Legitimate Interests

On the basis of the evidence and arguments submitted, the Panel finds that the Complainant makes out a *prima facie* case that the Respondent is not, and has never been, an authorized reseller, service provider, licensee, or distributor of the Complainant, is not a good faith provider of goods or services under the disputed domain name and is not making legitimate noncommercial use or fair use of the disputed domain name. The Panel also notes that the Respondent is not commonly known by the disputed domain name. As such, the Panel finds that the burden of production regarding this element shifts to the Respondent (see [WIPO Overview 3.0](#), section 2.1).

The Respondent essentially argues, without providing any evidence, that he registered and is holding the disputed domain name in good faith for a non-profit, individual and private website, that he chose "tronox" due to its good pronounce and look, and that he has the right to offer the disputed domain name for sale.

The Panel disagrees with the Respondent's arguments. Firstly, it is the settled view of panels applying the Policy that the mere registration of a domain name does not establish rights or legitimate interests *per se* in such domain name (see in this regard for instance *Alain Afflelou Franchiseur v. lihongbo*, WIPO Case No. [D2020-2074](#) and *National Football League Properties, Inc. and Chargers Football Company v. One Sex Entertainment Co., a/k/a chargergirls.net*, WIPO Case No. [D2000-0118](#)). Furthermore, upon review of the facts, the Panel notes that neither the current, nor the historical use made of the disputed domain name points to the Respondent's offer of any *bona fide* goods or services or any other rights or legitimate interests. Instead, upon review of the evidence submitted, the Panel notes that the Respondent only ever connected the disputed domain name to parked pages offering it for sale for amounts between USD 2,000 and

USD 12,000, which are amounts most likely far in excess of out-of-pocket costs relating to the disputed domain name. The Panel concludes that the Respondent is using the disputed domain name to divert Internet users to the website linked to the disputed domain name for commercial gain, by taking unfair advantage of the goodwill and reputation of the Complainant's trademarks for TRONOX and that the Respondent cannot derive any rights or legitimate interests from such use.

On the basis of the foregoing, the Panel considers that none of the circumstances of rights or legitimate interests envisaged by paragraph 4(c) of the Policy apply, and that the Complainant has satisfied the requirements of the second element under the Policy.

C. Registered and Used in Bad Faith

The Panel finds that the registration of the disputed domain name, which is identical to the Complainant's intensively used trademark which has been registered decades before the registration date of the disputed domain name, by the Respondent, who is entirely unaffiliated with the Complainant, is by itself sufficient to create a presumption of bad faith of the Respondent (see in this regard also *Randstad Holding nv v. Pinaki Kar*, WIPO Case No. [D2013-1796](#) and *Alain Afflelou Franchiseur v. Lihongbo, Lihongbo*, WIPO Case No. [D2020-2075](#)). Furthermore, the Panel has reviewed the Complainant's evidence of the top search results for "Tronox" on various online search engines (including both a China-based and a United States-based search engine), from which the Panel concludes that such results clearly refer to the Complainant's business. The Panel concludes that even a cursory Internet search at the time of registration of the disputed domain name would have made it clear to the Respondent that the Complainant owned prior rights in its trademarks for TRONOX. Further, the Panel disagrees with the Respondent's assertion that "Tronox" is similar to "Toronto", and doubts that the Respondent registered the disputed domain name simply due to its look and pronounce. In the Panel's view, the preceding elements clearly indicate the bad faith of the Respondent, and the Panel therefore finds that it has been demonstrated that the Respondent registered the disputed domain name in bad faith.

As to use of the disputed domain name in bad faith, both the evidence of current and historical use of the website linked to the disputed domain name and the email communications from the Respondent during the proceeding demonstrates that the Respondent is attempting to sell the disputed domain name for an amount most likely far in excess of the Respondent's out-of-pocket costs, *i.e.*, between USD 2,000 and 12,000. This leads the Panel to conclude that the Respondent is using the disputed domain name to try to sell it to the Complainant, who is the owner of the corresponding trademark for TRONOX, or to a competitor of the Complainant, and to obtain unjustified benefits through such sale. The Panel notes that this constitutes direct evidence of the bad faith of the Respondent under paragraph 4(b)(i) of the Policy. Finally, the Panel also finds that the Complainant sufficiently proves that the Respondent has been engaged in a pattern of trademark abusive domain name registrations. In this regard, the Panel refers to the reverse Whois evidence submitted by the Complainant, from which it can be concluded that the Respondent has registered several trademark-abusive domain names corresponding to the distinct marks of individual brand owners, such as <promach.cn> and <epigen.cn> (see in this regard also [WIPO Overview 3.0](#), section 3.1.2). In the Panel's view, the preceding elements clearly establish the bad faith of the Respondent.

The Panel therefore finds that the Complainant has satisfied the requirements of the third element under the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name, <tronox.vip>, be transferred to the Complainant.

/Deanna Wong Wai Man/

Deanna Wong Wai Man

Sole Panelist

Date: January 10, 2023