

ADMINISTRATIVE PANEL DECISION

Henkel AG & Co. KGaA v. Wang Huifeng
Case No. D2023-5052

1. The Parties

The Complainant is Henkel AG & Co. KGaA, Germany, represented by Day Pitney LLP, United States of America (“United States”).

The Respondent is Wang Huifeng, China.

2. The Domain Name and Registrar

The disputed domain name <loctitesale.com> is registered with Gname.com Pte. Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on December 4, 2023. On the following day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 6, 2023, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. On the same day, the Center sent an email communication to the Complainant, 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 December 8, 2023.

On December 6, 2023, the Center informed the parties in Chinese and English, that the language of the registration agreement for the disputed domain name is Chinese. On December 8, 2023, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not submit any comment on the language of the proceeding.

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 of the Complaint in both English and Chinese, and the proceedings commenced on December 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 1, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 12, 2024.

The Center appointed Matthew Kennedy as the sole panelist in this matter on January 18, 2024. 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 produces and markets consumer and industrial adhesive solutions. It uses the mark LOCTITE in connection with these products. The Complainant's subsidiary Henkel IP & Holding GmbH ("Henkel IP") owns multiple trademark registrations in multiple jurisdictions, including the following:

- United States trademark registration number 725497 for LOCTITE, registered on December 26, 1961, specifying goods in class 1;
- United States trademark registration number 1830106 for a semi-figurative LOCTITE mark (the "Loctite logo"), registered on April 12, 1994, specifying goods in class 4; and
- Chinese trademark registration number 10993685 for LOCTITE, registered on September 21, 2013, specifying goods in class 5.

The above trademark registrations are current. The Complainant has registered the domain name <loctiteproducts.com> that it uses in connection with a website where it markets its LOCTITE adhesive solutions.

The Respondent is an individual based in China.

The disputed domain name was created on October 6, 2022. It resolves to a website in English that displays the Loctite logo as its title. The website displays photographs of the Complainant's LOCTITE adhesive solutions and offers them for sale at discount prices. Prices are displayed in USD. The contact address is in the United States.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is confusingly similar to the Complainant's LOCTITE mark. The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has never granted permission nor authorization to the Respondent or anyone else to register or use the disputed domain name, or to sell the Complainant's products at or through the website associated with the disputed domain name. The disputed domain name was registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1 Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint and amended Complaint were filed in English. The Complainant requested that the language of the proceeding be English. Its main reasons are that the disputed domain name is using Latin script, non-Chinese characters, the website associated with the disputed domain name is in English, indicating that the Respondent fully understands English, the contact address on the website is in the United States, not China; and translation of the Complaint would place a high financial burden on the Complainant and cause undue delay.

Despite the Center having sent emails regarding the language of the proceeding and the notification of the complaint in Chinese and English, the Respondent did not make any submission with respect to the language of the proceeding or indicate any interest in participating otherwise in the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English. The Panel would have accepted a Response in Chinese, but none was filed.

6.2 Substantive Issues

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following elements:

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

The burden of proof of each element is borne by the Complainant.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark in which the Complainant has rights and the disputed domain name. See [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of the LOCTITE marks for the purposes of the Policy. The registered proprietor of the trademarks is the Complainant's subsidiary Henkel IP, and the Panel is prepared to infer the existence of an authorization from it for the Complainant, as its holding company, to use the LOCTITE marks and file this case. See [WIPO Overview 3.0](#), section 1.4.1.

The entirety of the LOCTITE mark is wholly reproduced within the disputed domain name as its initial element. Although the disputed domain name adds another term (i.e., the word "sale"), the LOCTITE mark remains clearly recognizable within it. Accordingly, the Panel finds the addition of this term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. See [WIPO Overview 3.0](#), section 1.8.

The only other element in the disputed domain name is a generic Top-Level Domain ("gTLD") extension (.com) which, as a standard requirements of domain name registration, may be disregarded in the assessment of confusing similarity. See [WIPO Overview 3.0](#), section 1.11.

Therefore, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See [WIPO Overview 3.0](#), section 2.1.

In the present case, the disputed domain name resolves to a website that displays the Complainant's Loctite logo (including its design elements) as its title and offers for sale the Complainant's LOCTITE adhesive solutions at discount prices. The website gives the impression that it is operated by the Complainant or an affiliate of the Complainant. No other operator of the website is identified. However, the Complainant submits that it has never granted permission nor authorization to the Respondent to register or use the disputed domain name, or to sell the Complainant's products at or through the website associated with the disputed domain name. These circumstances indicate that the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services. This is not a legitimate noncommercial or fair use of the disputed domain name either.

The Registrar verified that the Respondent's name is "Wang Huifeng", which does not resemble the disputed domain name. Nothing in the record indicates that the Respondent has been commonly known by the disputed domain name.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Based on the present record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The fourth of these is as follows:

“(iv) by using the [disputed] domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent’s] 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 [the respondent’s] website or location”.

In the present case, the disputed domain name was registered in 2022, years after the registration of the Complainant’s LOCTITE mark, including in China, where the Respondent is based. The LOCTITE mark is a coined term and the disputed domain name wholly incorporates it in combination with the word “sale”. The website associated with the disputed domain name displays the Complainant’s Loctite logo (including its design elements and accompanied by the ® symbol) and photographs of the Complainant’s LOCTITE products. In view of these circumstances, the Panel finds that the Respondent had the Complainant’s LOCTITE mark in mind when he registered the disputed domain name.

As regards use, the disputed domain name resolves to a website that gives the false impression that it is operated by the Complainant or an affiliate of the Complainant, and offers what are purported to be the Complainant’s products for sale at discounted prices. In view of these circumstances, the Panel finds that, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of his website or of the products on that website, within the terms of paragraph 4(b)(iv) of the Policy.

Therefore, the Panel finds that the Complainant has established the third element of 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 <loctitesale.com> be transferred to the Complainant.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: January 23, 2024