

ADMINISTRATIVE PANEL DECISION

Delaval Holding AB v. Ding Dan Yang (丁丹阳)
Case No. D2023-4347

1. The Parties

The Complainant is Delaval Holding AB, Sweden, represented by Aera A/S, Denmark.

The Respondent is Ding Dan Yang (丁丹阳), China.

2. The Domain Name and Registrar

The disputed domain name <delaval.top> 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 October 19, 2023. On October 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 23, 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 (Hidden contact information) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 25, 2023, 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 October 30, 2023.

On October 25, 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 October 29, 2023, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

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 Chinese and English of the Complaint, and the proceedings commenced on October 31, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 20, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 21, 2023.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on December 1, 2023. 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 DeLaval Group is a full-service supplier to dairy farmers, headquartered in Sweden. The Complainant develops, manufactures and markets equipment and complete systems for milk production and animal husbandry worldwide. The company was founded in 1883 and has grown into a world leading company within its field, employs more than 4,500 people and is operative in more than 100 countries worldwide.

The Complainant is the proprietor of an international trademark portfolio for the DELAVAL marks, including, but not limited to European Union Trade Mark Registration for the word mark DELAVAL with registration number 001785583, registered on October 16, 2002 and International Trademark Registration for the word mark DELAVAL, with registration number 748395, registered on July 27, 2000. The Complainant also has a strong online presence and is the owner of a large domain name portfolio comprising more than 150 domain name registrations containing the mark DELAVAL.

The disputed domain name was registered on May 16, 2023. Based on the Complainant's evidence, it previously resolved to a website prominently displaying the mark DELAVAL and the Complainant's copyrighted material. However, on the date of this Decision, the Panel notes that the disputed domain name directs to an inactive website.

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 identical to its trademarks for DELAVAL, 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 claims that its trademarks are intensively used and provides printouts of its official website and of its marketing and related materials. The Complainant also refers to prior decisions under the Policy which have recognized the reputation of the Complainant and its trademarks (see for instance *DeLaval Holding AB v. Registration Private, Domains by Proxy LLL/craig Kennedy*, WIPO Case No. [D2015-2135](#)). Moreover, the Complainant provides evidence that the disputed domain name is linked to an active website impersonating the Complainant by prominently displaying the mark DELAVAL and the Complainant's copyrighted material. The Complainant further claims that the Respondent is using YouTube channels to direct users to the disputed domain name. In this context, the Complainant also essentially argues that the Respondent is unlawfully misrepresenting its website as operated by the Complainant, by using the Complainant's trademarks and copyrighted works for commercial gain. The Complainant also contends that the Respondent is using the disputed domain name in a phishing scheme. The Complainant essentially contends that the registration and use of the disputed domain name in such circumstances constitutes registration and use in bad faith.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue: 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 was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that the disputed domain name is written in Latin characters and that the website at the disputed domain name gave the impression of originating from the Complainant as the graphical setup was copied from the Complainant's website, the fact that the Complainant is unable to communicate in Chinese and hence the translation of the Complaint would unfairly be a disadvantage and burden for the Complainant which also will delay the proceedings and adjudication of this matter.

The Respondent did not make any specific submissions with respect to the language of 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.

6.2 Substantive Issues

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 Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain name with no added elements. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, 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. [WIPO Overview 3.0](#), section 2.1.

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.

Upon review of the facts of the case, the Complainant provides evidence that the disputed domain name was linked to an active website impersonating the Complainant by prominently displaying the mark DELAVAL and displaying the Complainant’s copyrighted material. The Panel also provides evidence from which it appears that the Respondent was using the disputed domain name in a phishing scheme.

Panels have held that the use of a domain name for illegal activity, in this case phishing and impersonation/passing off, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

However, the Panel notes that on the date of this Decision, the disputed domain name directs to an inactive website. In this regard, the Panel finds that holding a domain name passively, without making any use of it, also does not confer any rights or legitimate interests in the disputed domain name on the Respondent (see in this regard earlier UDRP decisions such as *Bollore SE v. 赵竹飞 (Zhao Zhu Fei)*, WIPO Case No. [D2020-0691](#) and *Vente-Privee.Com and Vente-Privee.com IP S.à.r.l. v. 崔郡 (jun cui)*, WIPO Case No. [D2021-1685](#)).

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

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, 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.

In the present case, the Panel notes that the Respondent has registered a domain name which is identical to the Complainant’s internationally well-known, intensely used and distinctive trademarks (see also earlier decisions under the Policy such as *DeLaval Holding AB v. Registration Private, Domains by Proxy LLL/craig Kennedy*, WIPO Case No. [D2015-2135](#)). The Panel deducts from this fact that by registering the disputed domain name, the Respondent deliberately and consciously targeted the Complainant’s prior trademarks for DELEVAL. The Panel finds that this creates a presumption of bad faith. In this regard, the Panel refers to the [WIPO Overview 3.0](#), section 3.1.4, which states “[p]anels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith.” The Panel also notes that the Complainant’s trademarks in this case predate the registration date of the disputed domain name by several years, and that the Respondent could not have been reasonably unaware of them. The Panel considers that the Respondent has intentionally and opportunistically targeted the Complainant’s trademark for DELEVAL. The Panel deducts from these efforts to consciously target the Complainant’s prior registered trademarks that the Respondent knew, or at least should have known, of the existence of the Complainant’s trademarks

at the time of registering the disputed domain name. The Panel also notes 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 DELEVAL. In the Panel's view, these elements clearly indicate bad faith on the part of the Respondent, and the Panel therefore finds that it has been demonstrated that the Respondent registered the disputed domain name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

The Panel notes that according to the Complainant's evidence the disputed domain name was linked to an active website impersonating the Complainant by prominently displaying the mark DELAVAL and by displaying the Complainant's copyrighted material. The Panel therefore considers that the Respondent has used the disputed domain name to intentionally attract, for commercial gain, Internet users to such web site, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of such web site (Paragraph 4(b)(iv) of the Policy).

However, the Panel notes that on the date of this Decision, the disputed domain name directs to an inactive website.

Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness and reputation of the Complainant's trademark, the composition of the disputed domain name and the unlikelihood of any *bona fide* use of the disputed domain name by the Respondent, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Based on the available record, 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 <delaval.top> be transferred to the Complainant.

/Deanna Wong Wai Man/

Deanna Wong Wai Man

Sole Panelist

Date: December 15, 2023