

ADMINISTRATIVE PANEL DECISION

Hochtief Aktiengesellschaft v. 吴清儒 (wu qing ru)

Case No. D2023-5094

1. The Parties

The Complainant is Hochtief Aktiengesellschaft, Germany, represented by Kümmerlein, Simon & Partner Rechtsanwälte mbB, Germany.

The Respondent is 吴清儒 (wu qing ru), China.

2. The Domain Name and Registrar

The disputed domain name <hochtief.info> 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 December 6, 2023. On December 7, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 8, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. The Center sent an email communication to the Complainant on December 8, 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 December 13, 2023.

On December 8, 2023, the Center sent another email communication to the Parties in Chinese and English regarding the language of the proceeding. On December 11, 2023, the Complainant requested English to be the language of the proceeding. On December 8 and 11, 2023, the Respondent objected to the Complainant’s request and requested Chinese to be 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 in Chinese and English of the Complaint, and the proceedings commenced on December 18, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 7, 2024. The Respondent did not submit any formal response. However, the Respondent sent email communications to the Center and to the Complainant in Chinese on December 19, 2023, proposing settlement. The Respondent's settlement proposal was rejected by the Complainant on the same day. Accordingly, the Center notified the Commencement of Panel Appointment Process on January 15, 2024.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on January 19, 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

A. Complainant

The Complainant is a company founded in Germany in 1873, operating in the global construction, engineering and infrastructure industry under the (word and device) trade mark HOCHTIEF (the "Trade Mark").

The Complainant is the owner of numerous registrations for the Trade Mark in jurisdictions worldwide, including Chinese registration No. 49183306, with a registration date of March 28, 2021; and European Union registration No. 000060061, with a registration date of October 13, 1998.

B. Respondent

The Respondent is located in China.

C. The Disputed Domain Name

The disputed domain name was registered on November 2, 2023.

D. Use of the Disputed Domain Name

The disputed domain name is resolved to an English language website hosted by Dan.com and offering the disputed domain name for sale for USD 950 (the "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 names.

B. Respondent

Apart from the above-mentioned email communications from the Respondent regarding the language of the proceeding and the proposal of settlement, the Respondent did not formally 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 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 names comprise Latin characters and not Chinese characters; that the content of the Website demonstrates the Respondent is familiar with the English language; that translating the Complaint into Chinese would involve high costs and delay the proceeding; and that the Respondent has been the respondent in several prior decisions under the Policy in which it was determined that the language of the proceeding would be English.

The Respondent requested that the language of the proceeding be Chinese, contending that he has not agreed to English as the language of the proceeding; although he has a basic understanding of English, Chinese is his native language and the language of the Registration Agreement; the content of the Website being English and the disputed domain name comprising Latin characters do not mean that the Respondent is familiar with the English language; each case is unique, therefore, the panels' findings in other cases should not be automatically applied to this case; and procedural fairness dictates that the language of the proceeding should be Chinese.

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).

The Respondent has not filed any response and, other than its language request and settlement offer, has not taken any part in this proceeding. The Respondent does not contend that he does not understand English, and, furthermore, the content of the Website suggests a level of proficiency with English.

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 Elements of the Policy

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 trade mark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the Trade Mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the Trade Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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. To the contrary, the Respondent has offered the disputed domain name for sale for USD 950 via the Website; and in his settlement offer, the Respondent has offered to sell the disputed domain name to the Complainant for USD 500.

In addition, the Panel notes the nature of the disputed domain name (being identical to the relevant Trade Mark), which carries a high risk of implied association. [WIPO Overview 3.0](#), section 2.5.1.

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 Respondent’s offers to sell the disputed domain name that incorporates the prior registered Trade Mark in its entirety amount to bad faith under paragraph 4(b)(i) of the Policy.

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 <hochtief.info> be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Date: January 26, 2024