

ADMINISTRATIVE PANEL DECISION

Lam Research Corporation v. 牟丹 (mou dan), 深圳市欧维实业有限公司
(shen zhen shi ou wei shi ye you xian gong si)
Case No. D2023-5246

1. The Parties

The Complainant is Lam Research Corporation, United States of America (“United States”), represented by Gamma Law, P.C., United States.

The Respondent is 牟丹 (mou dan), 深圳市欧维实业有限公司 (shen zhen shi ou wei shi ye you xian gong si), China.

2. The Domain Name and Registrar

The disputed domain name <lamresearchus.com> 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 16, 2023. On December 18, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 19, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 19, 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 21, 2023.

On December 19, 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 21, 2023, the Complainant requested English to 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 English and Chinese of the Complaint, and the proceedings commenced on December 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 17, 2024. The Respondent did not submit any formal response. On January 8, 2024, the Center received an email communication in English on January 8, 2024, consenting the transfer of the disputed domain name to the Complainant. Although the email communication was not sent from the email address of the Respondent as confirmed by the Registrar, the person who signed off the email was “mou dan”. The Center sent an email to the Parties on January 8, 2024, regarding possible settlement. The Complainant did not request for suspension of the proceeding before the due date. Accordingly, the Center notified the commencement of panel appointment process on January 18, 2024. On February 2, 2024, the Center received another email communication in English from the same sender of the email dated January 8, 2024, consenting the transfer of the disputed domain name to the Complainant. In this email communication, the Respondent’s company “ou wei” was mentioned.

The Center appointed Karen Fong as the sole panelist in this matter on January 23, 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, a publicly traded company, is a manufacturer of semiconductors based in the United States and with offices in Asia, Europe, and the Middle East. The Complainant’s products are sold under the mark LAM RESEARCH.

The Complainant has trade mark registrations for LAM RESEARCH including the following:

- United States Trade Mark Registration No. 2171618 for LAM RESEARCH registered on July 7, 1998;
- United States Trade Mark Registration No. 2159332 for LAM RESEARCH registered on May 19, 1998; and
- United States Trade Mark Registration No. 4738400 for LAM RESEARCH registered on May 19, 2015.

(together, individually and collectively referred to as the “Trade Mark”).

The Respondent appears to be based in China. The disputed domain name was registered on November 29, 2023. The disputed domain name is not connected to an active website. The Respondent has used the disputed domain name as an email address to impersonate the Complainant by requesting from a vendor through its “Contact Us” form quotes for specific parts through someone purporting to be an individual from the Complainant.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to the Trade Mark, that the Respondent has no rights or legitimate interests with respect to the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith. The Complainant requests transfer of the disputed domain name to the Complainant.

B. Respondent

The Respondent did not formally reply to the Complainant’s contentions. However, in correspondences received by the Center on January 8 and February 2, 2024, the Respondent agreed to transfer the disputed

domain name to the Complainant. In particular, the email of February 2, 2024 was addressed to the Panel, it was stated that: “We can give up the domain name and transfer it to the other company. Due to poor management, the company Ouwei is already applying deregistration. Please confirm and let us know. Thanks,”

6. Discussion and Findings

6.1 Preliminary Issues

A. Informal / Unilateral Consent for Transfer

As a threshold matter, the Panel must decide whether to address the conditions for transfer under paragraph 4(a) of the Policy, or rather to grant a “unilateral transfer” as requested by the Respondent. Prior decisions illustrate that it is within the Panel’s discretion to choose either approach (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 4.10).

Although the Panel has the authority to order a transfer based on the Respondent’s consent without further analysis, the Panel has decided to address the merits. This is a case where allegations of fraud in relation to a phishing scam have been made. The Respondent has not addressed this. The Panel believes that a discussion of this may be helpful to other complainants and panels in the future should the Respondent be involved in other UDRP cases.

B. Language of the Proceeding

The language of the Registration Agreement for the disputed domain names 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 the following main reasons:

- The Respondent’s emails have been in English indicating that the Respondent understands English;
- The disputed domain name is an English language trade mark and includes the characters “us” the common acronym for the United States which again is evidence of familiarity of the English language;
- The Complainant having to translate the Complaint into Chinese would unfairly disadvantage and burden the Complainant in terms of additional costs and time.

The Respondent has not challenged the Complainant’s language request and the emails consenting to the transfer of the disputed domain name were in English showing that it is familiar with the English language.

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 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 trade mark 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 trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

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

While the addition of the other term here, "us" after the Trade Mark in the disputed domain name may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the Trade Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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.

While 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 often impossible 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. 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 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. Furthermore, use of a domain name for illegal activity can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.

Moreover, the nature of the disputed domain name is inherently misleading as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

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 must have been aware of the Trade Mark when it registered the disputed domain name given the Trade Mark was registered prior to registration of the disputed domain name, the reputation of the Trade Mark and the disputed domain name has been used as an email address as a phishing scam by impersonating the Complainant. It is therefore implausible that the Respondent was unaware of the Complainant when it registered the disputed domain name.

In the [WIPO Overview 3.0](#), section 3.2.2 states as follows:

“Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant’s mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant’s mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent’s claim not to have been aware of the complainant’s mark.”

The fact that there is a clear absence of rights or legitimate interests coupled with the Respondent’s clear targeting of the Complainant’s Trade Mark to perpetrate a fraud are also significant factors to consider (as stated in section 3.2.1 of the [WIPO Overview 3.0](#)). The disputed domain name falls into the category stated above and the Panel finds that registration is in bad faith. The addition of the term “us” after the Trade Mark further reflects that the Respondent had the Complainant in mind when registering the disputed domain name given that the Complainant is based in the United States.

Whilst the disputed domain name directs to an inactive page, it is being used as an email address for the purpose of a phishing scam. Section 3.4 of the [WIPO Overview 3.0](#) states as follows:

“Panels have held that the use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include sending email, phishing, identity theft, or malware distribution. (In some such cases, the respondent may host a copycat version of the complainant’s website.) Many such cases involve the respondent’s use of the domain name to send deceptive emails, e.g., to obtain sensitive or confidential personal information from prospective job applicants, or to solicit payment of fraudulent invoices by the complainant’s actual or prospective customers.”

The Complainant has provided evidence of an attempt by the Respondent to solicit information from one of the Complainant’s vendors by using the disputed domain name as an email address. This falls clearly within the actions described above. Considering the circumstances, the Panel considers that the disputed domain name is also being used in bad faith. Accordingly, the Complaint has satisfied the third element of the UDRP, i.e., the disputed domain name was registered and is being used in bad faith.

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

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 <lamresearchus.com> be transferred to the Complainant.

/Karen Fong/

Karen Fong

Sole Panelist

Date: February 15, 2024