

ADMINISTRATIVE PANEL DECISION

KME Germany GmbH v. 蒋元旦 (jiang yuan dan), 元数 (无锡) 信息科技有限公司 (yuan shu wu xi xin xi ke ji you xian gong si)
Case No. D2024-0162

1. The Parties

The Complainant is KME Germany GmbH, Germany, represented by Friedrich Graf von Westphalen & Partner mbB - Rechtsanwälte, Germany.

The Respondent is 蒋元旦 (jiang yuan dan), 元数 (无锡) 信息科技有限公司 (yuan shu wu xi xin xi ke ji you xian gong si), China.

2. The Domain Name and Registrar

The disputed domain name <kmecopper.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 January 16, 2024. On January 16, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 17, 2024, 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 January 17, 2024, 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 January 22, 2024, and the second amended Complaint on January 23, 2024.

On January 17, 2024, the Center informed the Parties in Chinese and English, that the language of the Registration Agreement for the disputed domain name is Chinese. On January 22, 2024, 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 Complaints 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 January 25, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 14, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 16, 2024.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on February 21, 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 is one of the world's leading manufacturers of copper and copper alloy products, having a worldwide distribution network. KME is not only the Complainant's company name but also a registered trademark used by the Complainant for its copper and copper alloy products.

The Complainant is the owner of an international trademark portfolio with trademark registrations for KME, including but not limited to: European Union Trademark Registration number 005875448 for KME, registered on February 21, 2008 and European Union Trademark Registration number 018049252 for KME, registered on October 16, 2019. The Complainant also provides evidence that it possesses a domain name portfolio, including the domain name <kme.com>, which is linked to the Complainant's main website.

The Complainant's abovementioned trademark registrations were registered before the registration date of the disputed domain name, namely July 31, 2023. The Complainant provides evidence that previously, the disputed domain name was linked to an active website on which the Complainant's trademark and logo was prominently used and copper products were purportedly offered. However, the Panel notes that on the date of this Decision, 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 confusingly similar to its prior registered trademarks since it incorporates the KME trademark in its entirety with the mere addition of the descriptive word "copper". Furthermore, the Complainant essentially contends that the Respondent is not affiliated in any way to the Complainant and has no rights or legitimate interests in the Complainant's trademarks. The Complainant also argues that the Respondent connected the disputed domain name to a website offering for sale copper products by reference to the Complainant's trademarks which were prominently used on the website linked to the disputed domain name. The Complainant contends that such use does not confer any rights or legitimate interests on the Respondent and constitutes evidence of bad faith registration and use 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 composed of the Complainant's company name and trademark KME and the English word "copper" which indicates that the Respondent is familiar with the English language; the fact that previously, the disputed domain name was linked to an active website in English, which also shows that the Respondent understands English; the fact that the Top-Level Domain ".com" is a subnational character and targets consumers from all over the world who are more likely familiar with English than with Chinese; the fact that English is the business language of international agreements and disputes; and the fact that translating the Complaint into Chinese would unfairly disadvantage and burden the Complainant and delay the proceeding.

The Respondent did not make any 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.

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 entirety of the mark KME is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other term here, the word "copper", 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 mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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.

Moreover, upon review of the facts and evidence, the Panel notes that the Respondent has not provided any evidence of the use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services. Instead, upon review of the facts and the evidence submitted in this proceeding, the Panel notes that the disputed domain name previously directed to a website which impersonated the Complainant and purportedly offered for sale copper products. This suggests that the Respondent was using the disputed domain name to mislead Internet users by creating a misleading affiliation with the Complainant. Moreover, even if products offered on such website were legitimate products originating from the Complainant, the website at the disputed domain name did not display any accurate and prominent disclaimer regarding the relationship between the Complainant and the Respondent. The Panel is of the view that the foregoing elements illustrate that the Respondent is not a good faith provider of goods or services under the disputed domain name, see also *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#). Given the abovementioned elements, the Panel concludes that the Respondent’s use of the disputed domain name does not constitute a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use of the disputed domain name.

However, the Panel notes that on the date of this Decision, the disputed domain name directs to an inactive webpage. In this regard, the Panel finds that holding domain names passively, without making any use of them, also does not confer any rights or legitimate interests in the disputed domain name on the Respondent in the circumstances of this case (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](#)).

Finally, the Panel finds that the nature of the disputed domain name, being confusingly similar to the Complainant’s trademarks and containing the descriptive term “copper”, which clearly refers to the Complainant’s products and business, carries a risk of implied affiliation and cannot constitute fair use, as it effectively impersonates the Complainant and its products or suggests sponsorship or endorsement by the Complainant (see [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

Given the longstanding, and intensive use of the Complainant’s prior registered trademarks, the Panel finds that the subsequent registration of the disputed domain name, which is confusingly similar to such marks

and contains the word “copper” which describes the Complainant’s products, clearly and consciously targeted the Complainant’s prior registered trademarks. The Panel therefore deducts from the Respondent’s efforts to consciously target the Complainant’s prior trademarks that the Respondent knew of the existence of the Complainant’s trademarks at the time of registering the disputed domain name. This finding is confirmed by the fact that the website linked to the disputed domain name was clearly used to impersonate the Complainant and to purportedly offer for sale copper products, since this proves that the Respondent was fully aware of the Complainant’s business and its prior trademarks. In the Panel’s view, the foregoing 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.

As to use of the disputed domain name in bad faith, the Complainant provides evidence that the disputed domain name directed to an active website which showed a clear intent on the part of the Respondent to impersonate the Complainant and purportedly offer for sale competing products. The Panel concludes from these facts that the Respondent is intentionally attracting Internet users for commercial gain to such website, by creating consumer confusion between the website associated with the disputed domain name and the Complainant’s trademarks. This constitutes direct evidence of the Respondent’s bad faith under paragraph 4(b)(iv) of the Policy. The Panel therefore finds that it has been demonstrated that the Respondent has used and is using the disputed domain name in bad faith.

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 reputation and longstanding use of the Complainant’s trademarks, the composition of the disputed domain name (containing the Complainant’s trademark combined with “copper” which clearly refers to the Complainant’s products) and the unlikelihood of any good faith 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.

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 <kmecopper.com> be transferred to the Complainant.

/Deanna Wong Wai Man/

Deanna Wong Wai Man

Sole Panelist

Date: February 29, 2024