

ADMINISTRATIVE PANEL DECISION

Athena v. Yang Xin, RED TOWER Limited (RUBY) / Yan Xin, RED TOWER Limited (RUBY)
Case No. D2024-1179

1. The Parties

The Complainant is Athena, France, represented by Aaron Avocats, France.

The Respondent is Yang Xin, RED TOWER Limited (RUBY), China, represented by China Commercial (Guangzhou.Qianhai) Law Firm.

2. The Domain Names and Registrar

The disputed domain name <ateliersruby.com> and <ruby-helmets.com> are registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on March 19, 2024. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. Also on March 19, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Redacted for Privacy) and contact information in the Complaint.

The Center sent an email communication to the Complainant on March 20, 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 on March 21, 2024.

The Center verified that the Complaint together with the amendment to 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, and the proceedings commenced on April 3, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 23, 2024. On April 19, 2024, the Respondent requested the additional four calendar day extension provided by paragraph 5(b) of the Rules. On April 22, 2024, the Center extended the due date for Response to April 27, 2024. On April 25, 2024, the Respondent requested a

further four day extension. On April 26, 2024, the Center granted said request, and the due date for Response was extended to May 1, 2024. The Response was filed with the Center on May 1, 2024.

The Center appointed Andrew D. S. Lothian, Elise Dufour, and Jacob Changjie Chen as panelists in this matter on June 26, 2024. The Panel finds that it was properly constituted. Each member of 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.

On June 25, 2024, the Complainant filed an amended Complaint and response to the Response. On July 8, 2024, the Respondent filed a supplemental filing

4. Factual Background

The present case has a long and complex history involving a range of companies, their legal representatives, and at least two jurisdictions. The Panel has done its best to review the substantial materials placed before it, noting that some of these were produced in their original language and have not been translated into the language of the proceeding. Neither of the Parties produced any form of timeline or chronology of their longstanding dispute, and the Panel has therefore attempted to do this as best it can from the case papers. As far as the Panel can tell, the following represents a broadly accurate chronology of the background. However, the Panel notes that to the extent that any details may have been missed or incorrectly expressed, this does not affect the ultimate determination of the administrative proceeding in this particular case.

In 2004, M. Jérôme Coste applied for a Registered European Community Design in respect of a motorcycle helmet named the "Pavilion". He also filed two applications for registered trademarks for the word mark RUBY, namely French Registered Trademark Number 3296875 for the word mark RUBY in Classes 9, 18, and 25 (motorcycle helmets and clothing) (hereinafter "Mark 875"), and International Registered Trademark Number 896407 in Classes 9 and 25 (hereinafter "Mark 407").

In 2007, M. Coste incorporated a French entity named Studio Pilote, which began to operate under the trade name "Les Ateliers Ruby", and marketed high-end motorcycle helmets.

In March 2010, a Chinese entity was incorporated named Studio Pilote Xiamen Technology Co Ltd (hereinafter "SPXT"). This company was set up as a 100 per cent subsidiary of Studio Pilote in order to manufacture high-end motorcycle helmets to M. Coste's designs in China.

In June 2010, M. Coste partially assigned Mark 875 to Studio Pilote in respect of Classes 9 and 24.

In December 2011, M. Coste filed French Registered Trademark Number 3881306 (hereinafter "Mark 306") for the semi-figurative mark RUBY consisting of a shield or badge design with the stylized word "Ruby" at its center, all in black on a white background, in Classes 9, 18, and 25.

In January 2012, M. Coste applied for a Registered European Community Design in respect of a motorcycle helmet named the "Castel".

In April 2012, M. Coste filed International Registered Trademark Number 1119427 based upon Mark 306.

In July 2014, the Paris Commercial Court opened a procedure regarding the appointment of a judicial administrator to Studio Pilote which culminated on November 27, 2014 in its compulsory liquidation. In its report dated November 10, 2014, the judicial administrator indicated that reorganization was impossible, the company having no assets and the trademarks / designs being held by M. Coste.

In January 2015, the Respondent, Red Tower Ltd, filed French Registered Trademark Number 4148655 in respect of the word mark LES ATELIERS RUBY, in Classes 6, 7, 9, 12, 14, 17, 18, 25, 26, 28, and 38 (hereinafter "Mark 655"). The Panel presumes that the Respondent is an affiliate of SPXT. As far as the Panel can tell, that mark is still on the register.

On February 2, 2015, permission was granted in the liquidation of Studio Pilote for its goodwill, including Mark 875 and Mark 407, together with two domain names, <lesateliersruby.fr> and <lesateliersruby.com>, to be transferred to a French company named Paradise Motorcycles for the sum of EUR 515,000. The Complainant in the present case, Athena, is the legal representative and court-appointed liquidator of Paradise Motorcycles.

In February 2015, an individual named M. Alexander Mouselli took over the management of SPXT, and on February 14, 2015, Paradise Motorcycles transferred 50 per cent of the shareholding of SPXT, which it had acquired in the sale of Studio Pilote, to M. Mouselli.

In June 2015, M. Mouselli was mandated in an email to transfer the domain names <lesateliersruby.fr> and <lesateliersruby.com> into the name of the manager of Paradise Motorcycles. He did not transfer them.

In October 2015, the liquidator of Studio Pilote filed a UDRP complaint before the Center against M. Mouselli, seeking the transfer of <lesateliersruby.com> and a SYRELI complaint seeking the transfer of <lesateliersruby.fr>. In December 2015, the SYRELI complaint was denied on the grounds that the complainant no longer had the requisite rights, these having been transferred to Paradise Motorcycles (see: *La société SELAFA MJA v. M. Alexander M.*, SYRELI Demande No. FR-2015-01045). In January 2016, a UDRP panel denied the complaint brought before the Center on the grounds that it was part of a broader dispute that it could not hear (see: *La Selafa MJA en la personne de Me Lucile Jouve, Studio Pilote v. Alexander Mouselli*, WIPO Case No. [D2015-1870](#)).

In January 2016, Mark 407 was partially assigned to International Registered Trademark Number 896407A (hereinafter "Mark 407A").

In March 2016, the transfer of goodwill from Studio Pilote to Paradise Motorcycles was modified regarding leases and contracts but the transfer of Mark 875 and Mark 407 were confirmed, subject to disputes with M. Coste. The transfer was concluded on March 31, 2016, and was registered on April 5, 2016.

In June 2016, Paradise Motorcycles summoned SPXT and others to the Paris High Court, having noted that RUBY branded motorcycle helmets were being sold via the domain names <lesateliersruby.fr> and <lesateliersruby.com>, and that SPXT was claiming that it was the only authorized manufacturer. In July 2016, M. Mouselli and a company distributing the motorcycle helmets were also summoned.

In December 2016, Mark 655 was assigned by the Respondent to SPXT.

On August 4, 2017, the disputed domain name <ateliersruby.com> was registered. The Panel presumes that it has always been held by the Respondent. The associated website, described as being operated by "ateliersruby.com by Ateliers Ruby," is currently used to promote and sell RUBY branded motorcycle helmets stated to be manufactured in Xiamen city, China.

In August 2018, Mark 655 was assigned by SPXT to the Respondent.

In November 2019, the Court of Appeal of Versailles ruled in a separate case, *Paradise Motorcycles v. M. Coste*, that M. Coste's rights in Mark 306 and Mark 875 were forfeited due to non-use.

On October 2, 2020, the Paris High Court issued its ruling in *Paradise Motorcycles v. SPXT and others*, declaring that neither SPXT nor any Studio Pilote subsidiary had ever owned Mark 875, finding that its transfer to Paradise Motorcycles was valid and binding on all parties. The court found it established that the Respondent registered Mark 655 but noted that the Respondent was not called into the cause and that SPXT did not require to answer for the actions of the Respondent. The case was appealed.

On April 23, 2021, the disputed domain name <ruby-helmets.com> was registered. The Panel presumes that it has always been held by the Respondent. This domain name currently appears to point to the same website as the disputed domain name <ateliersruby.com>, described in the entry for August 4, 2017 above.

In March 2023, liquidation proceedings were commenced against Paradise Motorcycles, which ultimately resulted in the Complainant being appointed to represent that company.

On February 7, 2024, the Paris Court of Appeal affirmed the ruling of the Paris High Court other than regarding the quantum of certain damages. Among other orders of the Court, SPXT was ordered to pay damages to Paradise Motorcycles for acts of counterfeiting, M. Mouselli was ordered to pay damages regarding the transfer of <lesateliersruby.fr> and <lesateliersruby.com>, and the Court dismissed claims of trademark infringement against M. Mouselli.

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 names contain the Complainant's RUBY trademarks in their entirety coupled with the term "ateliers", meaning "workshops", and the word "helmets". These would be understood by Internet users as referring to the products offered or the place where such products are repaired or manufactured.

The Complainant has never authorized the Respondent to register and/or use any domain name incorporating the RUBY mark, nor has it granted any license to use the same. The disputed domain names are leading to "disputed contents" offering counterfeited products. The Respondent's use of the disputed domain names does not qualify as a bona fide offer of goods or services.

The Complainant's marks pre-date the registration of the disputed domain names and the Respondent registered them in the awareness of the Complainant's prior rights. The choice of the disputed domain names was made on purpose to generate a likelihood of confusion with the Complainant's marks.

The Respondent corporation is represented by M. Mouselli, who has already been involved in previous court cases in France involving the Complainant. Two French rulings have recognized that M. Mouselli fraudulently reserved the domain names <lesateliersruby.fr> and <lesateliersruby.com>, and ordered their transfer to the Complainant. The Complainant also raised Mark 655 in said dispute. The Respondent was also referred to in the WIPO and SYRELI cases referred to in the factual background section above. The Respondent, which is in reality M. Mouselli, could not have been unaware of the Complainant's marks and knowingly registered the disputed domain names despite ongoing disputes in France, with the sole intent of profiting from the reputation of the trademarks without legitimate right to do so.

The disputed domain names redirect to the same website offering counterfeited helmets for sale, using and reproducing the Complainant's marks without authorization. Said products are available for delivery to France and this demonstrates the Respondent's intention to benefit from the Complainant's prior rights without consent. The Respondent's attempt to conceal its identity due to the anonymous nature of the corresponding Whois records is a further indication of bad faith.

B. Respondent

The Respondent contends that the Complainant has not satisfied the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Respondent contends that the case is beyond the scope of the Policy, adding that the Policy is not equipped to handle the broader and more complex legal disputes that arise from such scenarios as bankruptcy, multi-party litigation, conflicting decisions, or issues raised in the context of private international law. The Complainant does not demonstrate that the judgments on which it relies have been recognized by the courts in China, which is necessary for due process.

The word “ruby” is not a distinctive sign, and the Complainant has no right to claim exclusivity. Mark 875 has been refused registration as an International Registered Trademark (now Mark 407A). The mark LES ATELIERS RUBY is a trademark filed in China in 2011 by an American company, Dolly Melly, and has been used since then.

The French administrator determined in 2014 that Studio Pilote had no rights over the relevant trademarks or design rights. The Complainant has no right to claim rights in a trademark with retroactive effects to 2014. The Respondent disputes the validity of the transfer of Mark 407 to Mark 407A in 2016 and calls upon the Complainant to produce the background documentation. In any event, the Complainant's trademark is not well-known and has not been recognized as such by a court.

There is no significance in the Respondent having used the Registrar's privacy service for the Whois of the disputed domain name, which is employed to protect the registrant from malware, unsolicited commercial email, phishing and similar abuses.

6. Discussion and Findings

A. Preliminary Issue – Parties' Supplemental Filings

Paragraph 10 of the UDRP Rules vests the Panel with the authority to determine the admissibility, relevance, materiality, and weight of the evidence, and also to conduct the proceedings with due expedition. Paragraph 12 of the UDRP Rules expressly provides that it is for the Panel to request, in its sole discretion, any further statements or documents from the parties it may deem necessary to decide the case.

Unsolicited supplemental filings are generally discouraged, unless specifically requested by the Panel. Panels have repeatedly affirmed that the party submitting or requesting to submit an unsolicited supplemental filing should clearly show its relevance to the case and why it was unable to provide the information contained therein in its complaint or response (e.g., owing to some “exceptional” circumstance). Depending on the content of any admitted supplemental filing, the panel may issue further instructions to the parties, including a rebuttal/reply opportunity to the non-initiating party. [WIPO Overview 3.0](#), section 4.6.

In the present case, in light of its disposal of the case as noted below, the Panel declines to admit the Parties' supplemental filings. It should also be noted that the wider dispute between the Parties is of a longstanding nature and that it was reasonable for both of the Parties to have fully anticipated the arguments of the other in this context, such that supplemental filings would not have been necessary.

B. Dispute not within the scope of paragraph 4(a) of the Policy

A review of the factual background section above together with the contentions of the Parties amply illustrates the fact that this is not the typical kind of case which the Policy seeks to address. The present case has a lengthy history which is rooted in a commercial relationship between an affiliate of the Respondent and M. Coste/Studio Pilote, which has been affected by the transfer of the bundle of rights by the latter company to the Complainant following its insolvency.

There are multiple issues that the present Panel cannot determine, such as the extent of the Respondent's rights and interests in the disputed domain names arising from its affiliation to SPXT, a 50 per cent shareholding of which appears to have been transferred to M. Mouselli (the author of or at least the main protagonist in much of the Response) by the Complainant in February 2015. Importantly, the arguments made by the Complainant as to its rights, and the rights of the Respondent's affiliate, arise from determinations by the French Court regarding matters that transpired in French territory. There appears to be at least one other jurisdiction involved in the Parties' dispute. In any event, it is not the function of the Panel to enforce the determinations of a court but rather to try the issues according to the Policy, providing that the case is in scope.

The Complainant focuses on the fact that the Paris Court of Appeal condemned M. Mouselli regarding his holding of two domain names that are not the subject of the present proceeding. However, the fact that he might not have been entitled to hold such domain names following the insolvency of Studio Pilote and the subsequent transfer of rights to the Complainant does not automatically make the present disputed domain names abusive registrations in terms of the Policy. Notably, the context here includes the fact that SPXT, the former manufacturer of the motorcycle helmets concerned, is not based in France and appears to be continuing to manufacture the same helmets, and that the Complainant appears to have previously transferred a 50 per cent stake in SPXT to M. Mouselli (who seems to be behind the registration of the disputed domain names and who is noted by the Complainant as the manager of the Respondent). In the view of the Panel, this is not a matter for an administrative proceeding under the Policy, and the disputed domain names are largely incidental to the wider multi-jurisdictional dispute between the Parties.

The Final Report of the WIPO Internet Domain Name Process dated April 30, 1999, being the process which ultimately gave rise to the Policy, noted a weight of opinion against mandatory submission to an administrative procedure in respect of any intellectual property dispute arising out of a domain name registration. It was therefore recommended that the scope of the procedure be limited so that it was available only in respect of deliberate, bad faith, abusive, domain name registrations or “cybersquatting” and was not applicable to disputes between parties with competing rights acting in good faith. See also, [WIPO Overview 3.0](#), section 4.14.6.

As the Panel in *LIBRO AG v. NA Global Link Limited*, WIPO Case No. [D2000-0186](#) noted early on in the development of Policy jurisprudence:

The UDRP is very narrow in scope; it covers only clear cut cases of “cybersquatting” and “cyberpiracy”, and does not cover every dispute that might rise over domain names (see, for example, Second Staff Report on Implementation Documents for the Uniform Dispute Resolution Policy (October 24, 1999), available at <<http://www.icann.org/udrp/udrp-second-staff-report-24oct99.htm>> which states: “Except in cases involving ‘abusive registrations’ made with bad faith intent to profit commercially from others’ trademarks (e.g. cybersquatting and cyberpiracy) the adopted policy leaves the resolution of disputes to the courts and calls for registrars not to disturb a registration until those courts decide. The adopted policy establishes a streamlined, inexpensive administrative dispute-resolution procedure intended only for the relatively narrow class of cases of “abusive registrations”.)

Likewise, the panel in *The Thread.com, LLC v. Jeffrey S. Poploff*, WIPO Case No. [D2000-1470](#) recognized that not every case involving a domain name is ipso facto within the scope of the UDRP, stating:

This Panel is not a general domain name court, and the Policy is not designed to adjudicate all disputes of any kind that relate in any way to domain names. Rather, the Policy is narrowly crafted to apply to a particular type of abusive cybersquatting. To invoke the Policy, a Complainant must show that the domain name at issue is identical or confusingly similar to a mark in which the Complainant has rights, that the Respondent lacks rights or a legitimate interest in the domain name, and that the Respondent registered and used the name in bad faith. Policy, paragraph 4(a). To attempt to shoehorn what is essentially a business dispute between former partners into a proceeding to adjudicate cybersquatting is, at its core, misguided, if not a misuse of the Policy.

This was also recognized by the panel in an administrative proceeding under the Policy when the Complainant’s predecessor in title brought a complaint regarding one of the two domain names that it ultimately litigated upon in the French courts, namely *La Selafa MJA en la personne de Me Lucile Jouve, Studio Pilote contre Alexander Mouselli*, *supra*. The three-member panel in that case noted (Panel’s translation):

The assessment of the arguments of each of the parties, however, refers to the analysis of an overall situation which goes far beyond the framework of a dispute over domain names subject to the rules of the UDRP and would lead the Panel, if it decided to engage with it, to transform itself into a real judge on the merits, which the UDRP does not allow it to do.

It appears to the Panel that the question submitted to it is part of a much broader dispute which it cannot hear.

Since that case was determined in January 2016, matters have not exactly been simplified as regards the various rights and entitlements of the Parties. It appears to the Panel that the Complainant may have believed that the determination of the French Court of Appeal resolved all outstanding issues, rendering the present Complaint a straightforward case of cybersquatting that would be suitable for determination under the Policy. Nevertheless, for the reasons outlined above, not least of which is the question of entitlement of the Respondent's group of companies to continue with its manufacture and distribution of RUBY-branded helmets in jurisdictions other than France in accordance with the portfolio of registered trademarks which it has registered, the Panel declares in accordance with paragraph 15(e) of the Rules that the dispute is not within the scope of Paragraph 4(a) of the Policy.

Finally, for completeness, the Panel notes that nothing in this decision shall be considered as endorsing or condoning the actions of either of the Parties as regards the subject matter of their dispute, and this decision is not addressed to any particular forum that may ultimately be seized of the matter. The Parties are reminded that paragraph 4(k) of the Policy notes that the mandatory administrative proceeding requirements set forth in paragraph 4 of the Policy shall not prevent either of the Parties from submitting the dispute to a court of competent jurisdiction for independent resolution after such proceeding is concluded.

Hence, this decision is without prejudice of any recourse to the trademark law and the jurisdictions where the Complainant may choose to pursue legal actions.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Andrew D. S. Lothian/

Andrew D. S. Lothian

Presiding Panelist

/Elise Dufour/

Elise Dufour

Panelist

/Jacob Changjie Chen/

Jacob Changjie Chen

Panelist

Date: July 24, 2024