

ADMINISTRATIVE PANEL DECISION

Serco Group Plc v. 田师谕 (Tian Shi Yi)
Case No. D2022-0060

1. The Parties

The Complainant is Serco Group Plc, United Kingdom, represented by SafeNames Ltd., United Kingdom.

The Respondent is 田师谕 (Tian Shi Yi), China.

2. The Domain Name and Registrar

The disputed domain name <serco.group> 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 7, 2022. On January 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 11, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on January 11, 2022, 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 11, 2022.

On January 11, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On January 11, 2022, the Complainant confirmed its request that English be the language of the proceeding. On January 11, 2022, the Respondent requested that Chinese 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 English and Chinese of the Complaint, and the proceedings commenced on January 18, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 7, 2022. The Center notified the Parties the Commencement of Panel Appointment Process on February 8, 2022.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on February 21, 2022. 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 Financial Times Stock Exchange (“FTSE”) 350 Index company and a provider of services in the transport, justice and immigration, health, defence, and citizen services fields under the trade mark SERCO (the “Trade Mark”) since 1987, operating in the United Kingdom, Europe, North America, Asia Pacific, and the Middle East.

The Complainant manages over 500 contracts and employs over 60,000 people worldwide, with 2020 revenue of GBP 3.9 billion.

The Complainant is the owner of numerous registrations in jurisdictions worldwide for the Trade Mark, including European Union Trade Mark registration No. 000201798, registered on August 19, 1999.

The Complainant has also owned and used the domain name <serco.com> comprising the Trade Mark since 1994.

B. Respondent

The Respondent is apparently an individual resident in China.

C. The Disputed Domain Name

The disputed domain name was registered on August 24, 2017.

D. Use of the Disputed Domain Name

The disputed domain name is resolved to an English, Chinese, Dutch, German, French, Spanish and Hindi language website hosted by Dan.com, offering the disputed domain name for sale for a minimum price of GBP 999 (the “Website”).

5. Parties’ Contentions

A. Complainant

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

B. Respondent

The Respondent did not 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.

Paragraph 11(a) of the Rules allows the Panel to determine the language of the proceeding having regard to all the circumstances. In particular, it is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding, in order to ensure fairness to the Parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. Language requirements should not lead to undue burdens being placed on the Parties and undue delay to the proceeding.

The Complainant has requested that the language of the proceeding be English, for the following reasons:

- (i) the Respondent has registered a large number of English language domain names, some of which resolve to websites with English language content;
- (ii) the Respondent hosts content in English on the Website;
- (iii) the above demonstrates that the Respondent is competent in and at least understand English; and
- (iv) proceeding in Chinese would involve additional translation expenses and delay.

In the Respondent's language request, sent to the Center in both Chinese and English, the Respondent indicated that he was familiar with Chinese, he would have to use an online translation tool to translate the Complaint, which makes it difficult to clarify the Complainant's submissions, and that he would therefore like the proceeding to be conducted in Chinese.

The Panel would have accepted a response in Chinese, but the Respondent did not file a response and did not participate in the proceeding other than sending his language request.

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.

The Panel notes that there is evidence which suggests that the Respondent might understand some English (noting however that the Website is a multiple language website hosted not by the Respondent, but by Dan.com), that the Respondent has chosen not to contest this proceeding, and that all of the Center's communications with the Parties have been sent in English and Chinese.

The Panel is also mindful of the need to ensure the proceeding is conducted in a timely and cost effective manner.

In all the circumstances, the Panel therefore finds it is not foreseeable that the Respondent would be prejudiced, should English be adopted as the language of the proceeding.

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

The Complainant must prove each of the three elements in paragraph 4(a) of the Policy in order to prevail.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has rights in the Trade Mark acquired through use and registration.

Disregarding the generic Top-Level Domain (“gTLD”) “.group”, the disputed domain name is identical to the Trade Mark.

The Panel therefore finds that the disputed domain name is identical to the Trade Mark.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to the respondent of the dispute, the respondent’s use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name even if the respondent has acquired no trade mark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

The Complainant has not authorised, licensed, or permitted the Respondent to register or use the disputed domain name or to use the Trade Mark. The Panel finds on the record that there is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and the burden is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that he has acquired any trade mark rights in respect of the disputed domain name or that the disputed domain name has been used in connection with a *bona fide* offering of goods or services. To the contrary, the disputed domain name has been offered for sale via the Website; and, according to a historical screenshot, it was offered for sale as early as August 5, 2018.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain name; and there has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

In addition, the Panel notes the nature of the disputed domain name, which carries a high risk of implied association (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“WIPO Overview 3.0”), section 2.5.1).

The Panel finds that the Respondent has failed to produce any evidence to rebut the Complainant’s *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Panel therefore finds that the Respondent lacks rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

In light of the Respondent’s offer to sell the disputed domain name via the Website for a minimum price presumably far in excess of the Respondent’s out-of-pocket expenses incurred in registering the disputed

domain name, the Panel finds that bad faith registration and use has been made out under paragraph 4(b)(i) of the Policy.

The Panel also considers that the Respondent's failure to respond to the Complainant's cease and desist letter dated October 25, 2021, sent to the Respondent by the Registrar using the Registrar's online contact form; and the Respondent's failure to file a response, provide further support for a finding of bad faith.

Furthermore, the Respondent's history of registering and offering for sale domain names comprising third party brand names provides further support for a finding of bad faith targeting of the Complainant's Trade Mark.

The Panel therefore considers that, in all the circumstances, it is inconceivable that the Respondent was not aware of the Complainant and of the Complainant's rights in the Trade Mark at the time of registration of the disputed domain name.

For all the foregoing reasons, the Panel concludes that the disputed domain name has been registered and is being used in bad faith.

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 <serco.group> be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Dated: March 7, 2022