

ADMINISTRATIVE PANEL DECISION

Arm Limited v. Brolin Empey, Techsol Engineering Inc.
Case No. D2022-1122

1. The Parties

The Complainant is Arm Limited, United Kingdom, represented by Quinn IP Law, United States of America (“United States”).

The Respondent is Brolin Empey, Techsol Engineering Inc., Canada.

2. The Domain Name and Registrar

The disputed domain name <arm9cpu.com> is registered with Namespro Solutions Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 31, 2022. On April 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 7 and 8, 2022, the Registrar transmitted by email to the Center its verification responses confirming that the Respondent is listed as the registrant and providing the contact details. The Center sent an email communication to the Complainant on April 8, 2022, providing the contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on April 14, 2022.

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 of the Complaint, and the proceedings commenced on April 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 4, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 5, 2022.

The Center appointed Kaya Köklü as the sole panelist in this matter on May 11, 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

The Complainant is a United Kingdom based company, which designs sophisticated electronic products, supplies software, and provides software and consultancy services since 1990. Among others, the Complainant develops central processing units (“CPUs”) for computers, which ever since are offered and sold under the brand ARM in combination with an ascending version number, e.g., ARM7, ARM9.

The Complainant owns ARM trademark registrations in various jurisdictions, including the United Kingdom trademark Reg. No. UK00002000006, registered on January 29, 1999, the United States trademark Reg. No. 2332930, registered on March 21, 2000, and the Canadian trademark Reg. No. TMA1073839, registered on February 28, 2020 (Annex V to the Complaint).

The Complainant further holds and operates its official website at “www.arm.com” (Annex VI to the Complaint).

The Respondent appears to be an individual from a technology company located in Canada, which offers computer hardware and software solutions, including CPUs (Annex VIII to the Complaint).

The disputed domain name was registered on July 19, 2005. The disputed domain name previously redirected to a third party website, offering for sale CPU modules. After the Complainant sent the demand letter to the Registrar, the disputed domain name no longer resolves to an active website (Annex VIII to the Complaint).

Prior to initiating the present administrative proceeding, the Complainant tried to solve the matter amicably by sending a demand letter to the Registrar on March 16, 2022, and requesting the Registrar to forward the letter to the Respondent (Annex IX to the Complaint).

5. Parties’ Contentions

A. Complainant

The Complainant requests the transfer of the disputed domain name.

The Complainant is of the opinion that the disputed domain name is confusingly similar to its ARM trademark.

It further argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

In addition, the Complainant is convinced that the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

The Respondent did not reply to the Complainant’s contentions.

6. Discussion and Findings

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions. See *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

It is further noted that the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views captured therein.

Before discussing the three elements under paragraph 4(a) of the Policy, the Panel notes that the Complaint was filed almost 17 years after the registration of the disputed domain name. However, UDRP panels have widely recognized that mere delay between the registration of a domain name and the filing of a complaint neither bars a complainant from filing such case, nor from potentially prevailing on the merits. See section 4.17 of the [WIPO Overview 3.0](#).

A. Identical or Confusingly Similar

The Panel finds that the Complainant has registered trademark rights in the mark ARM by virtue of various trademark registrations worldwide.

The Panel further finds that the disputed domain name is confusingly similar to the Complainant's registered ARM trademark, as it fully incorporates the Complainant's trademark. As stated at section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms would not prevent a finding of confusing similarity. The mere addition of the number "9" and the letters "cpu" (which are commonly understood as an abbreviation for "central processing unit") does not, in view of the Panel, serve to prevent a finding of confusing similarity between the disputed domain name and the Complainant's ARM trademark.

Hence, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's ARM trademark. Accordingly, the Panel finds that the Complainant has satisfied the first requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Panel further finds that the Respondent has failed to demonstrate any rights or legitimate interests in the disputed domain name.

While the burden of proof on this element remains with the complainant, previous UDRP panels have recognized that this would result in the often impossible task of proving a negative, in particular as the evidence in this regard is often primarily within the knowledge of the respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name in order to meet the requirements of paragraph 4(a)(ii) of the Policy. See, *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

The Panel finds that the Complainant has satisfied this requirement, while the Respondent has failed to file any evidence or make any convincing argument to demonstrate rights or legitimate interests in the disputed domain name according to the Policy, paragraphs 4(a)(ii) and 4(c).

In its Complaint, the Complainant has provided uncontested *prima facie* evidence that the Respondent has no rights or legitimate interests to use the Complainant's ARM trademark in a confusingly similar way within the disputed domain name.

The disputed domain name previously redirected to a third party website, offering for sale CPU modules (products similar to those of the Complainant), and it currently does not resolve to any active website. Such use does not constitute a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use. Furthermore, there is no indication in the current record that the Respondent is commonly known by the disputed domain name. In the absence of any response, the Respondent has also failed to demonstrate any of the other non-exclusive circumstances evidencing rights or legitimate interests under the Policy, paragraph 4(c) or other evidence of rights or legitimate interests in the disputed domain name.

The Panel also notes the composition of the disputed domain name, which apparently carries a risk of implied affiliation or endorsement, as stated in section 2.5.1 of the [WIPO Overview 3.0](#).

As a conclusion, the Panel finds that the Complainant has also satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel is convinced that the Respondent, who appears to be active in the computer industry (Annex VIII to the Complaint), must have had the Complainant's ARM trademark in mind, when it registered the disputed domain name. At the date of registration of the disputed domain name in 2005, the ARM trademark was already registered and widely used by the Complainant. In view of the Panel, the nature of the disputed domain name also indicates that the Respondent has registered the disputed domain name solely for the purpose of creating an illegitimate association with the Complainant and its products.

With respect to use of the disputed domain name in bad faith, as already indicated before, the disputed domain name previously redirected to a third party website, offering for sale CPU modules (products similar to those of the Complainant), which constitutes bad faith under paragraph 4(b)(iv) of the Policy. After the Complainant sent the demand letter to the Registrar on March 16, 2022 and requested the Registrar to forward the letter to the Respondent, the disputed domain name is no longer linked to any active website. Nonetheless, and in line with previous UDRP decisions (*e.g. Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)) and section 3.3 of the [WIPO Overview 3.0](#), the Panel believes that the non-use of the dispute domain name in this case does not prevent a finding of bad faith use.

Applying the passive holding doctrine as summarized in section 3.3 of the [WIPO Overview 3.0](#), the Panel assesses the Complainant's ARM trademark as sufficiently distinctive for technological products and also widely known in the relevant customer circles. Further, noting the disputed domain name is composed of the Complainant's ARM trademark in combination with the number "9" and the letters "cpu", the Panel finds the implausibility of any good faith use to which the disputed domain name may be put.

Finally, the Panel finds that the Respondent's failure to respond to the Complainant's contentions and to its demand letter of March 16, 2022, additionally supports the conclusion that it has registered and is using the disputed domain name in bad faith. The Panel is convinced that, if the Respondent had legitimate purposes in registering and using the disputed domain name, it would have probably responded.

Taking all circumstances of this case into consideration, the Panel concludes that in the present case the passive holding of the disputed domain name constitutes bad faith use by the Respondent.

Consequently, the Panel is finds that the disputed domain name was registered and is being used in bad faith and that the Complainant consequently has satisfied the third element of the Policy, namely, paragraph 4(a)(iii) 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 <arm9cpu.com> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: May 25, 2022