

ADMINISTRATIVE PANEL DECISION

De Banke Group Limited v. 王先生(wang xian sheng)
Case No. D2022-1185

1. The Parties

The Complainant is De Banke Group Limited, United Kingdom, represented by Penningtons Manches Cooper LLP, United Kingdom.

The Respondent is 王先生(wang xian sheng), China.

2. The Domain Name and Registrar

The disputed domain name <ipxray.com> is registered with Hongkong Domain Name Information Management Co., Limited (the “Registrar”).

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 5, 2022. On April 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 12, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

On April 12, 2022, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant confirmed its request that English be the language of the proceeding on April 13, 2022. The Respondent did not comment on the language of the proceeding.

The Center verified that the 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 proceeding commenced on April 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 9, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 10, 2022.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on May 16, 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 company incorporated in England and Wales, United Kingdom, and a provider of intellectual property administration services under the trade mark IP X-RAY (the "Trade Mark").

The Complainant is the owner of United Kingdom registration No. 3571719 for the Trade Mark, with a registration date of May 7, 2021; and International registration No. 1618419, designating the European Union, with a registration date of May 19, 2021.

B. Respondent

The Respondent is apparently an individual resident in China.

C. The Disputed Domain Name

The disputed domain name was registered on July 5, 2021.

D. Use of the Disputed Domain Name

The disputed domain name is not resolved to any active 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, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

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 burden being placed on the Parties and undue delay to the proceeding (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

The Complainant has requested that the language of the proceeding be English for the following reasons: (i) the disputed domain name is comprised of English words and characters; (ii) the Respondent has registered a large number of domain names comprised of English words and characters; (iii) the Respondent has used English on some of the parking pages for its domain names; (iv) the language of each of the previous UDRP proceedings involving the Respondent was English; (v) it would be costly for the Complainant to translate the Complaint and its Annexes into Chinese; and (vi) it is to be inferred from the Respondent's previous conduct in other UDRP proceedings that he will not take any part in this proceeding.

The Respondent did not file a response and did not file 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.

Although there is insufficient evidence before the Panel to support a conclusion that the Respondent is conversant in English, the Panel notes that the Respondent has not taken any part in this proceeding; and the relevant case related communications were sent in both 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 absence of a hyphen and the generic Top-Level Domain ("gTLD") ".com", 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 (see [WIPO Overview 3.0](#), section 2.1).

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 has not been used for an active website.

According to the undisputed evidence filed by the Complainant, the Respondent was the respondent in six proceedings under the Policy in 2021 involving well-known third party trade marks, in which it was ordered that the relevant domain names be transferred to the complainant trade mark owners. The Complainant also relies on the results of a Reverse Whois search, which demonstrate that the Respondent has registered a large number of domain names with no apparent connection to the Respondent.

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 with the Complainant (see [WIPO Overview 3.0](#), section 2.5.1).

In light of the above factors, 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

Given (i) the reputation of the Complainant and of its Trade Mark in the intellectual property rights administration field; (ii) the distinctiveness of the Trade Mark; (iii) the fact the Trade Mark has no meaning in the Chinese language; (iv) the fact the disputed domain name is identical to the Trade Mark; (v) the Respondent's pattern of conduct in registering large numbers of domain names, including those corresponding with well-known third party trade marks; (vi) the Respondent provided false contact details when registering the disputed domain name; and (vii) the lack of any substantiated credible explanation from the Respondent and any good faith use of the disputed domain name, the Panel finds, in all the circumstances, that the requisite element of bad faith has been made out. The Panel considers the Respondent was most likely aware of the Complainant's Trade Mark at the time he registered the disputed domain name. Furthermore, the Respondent's non-use or passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy (see [WIPO Overview 3.0](#), section 3.3).

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 <ipxray.com> be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Dated: May 23, 2022