

ADMINISTRATIVE PANEL DECISION

Compañía Logística de Hidrocarburos CLH, S.A., CLH Aviacion, S.A v. Chen Jin Mei (陈进妹)

Case No. D2022-1960

1. The Parties

The Complainant is Compañía Logística de Hidrocarburos CLH, S.A. and CLH Aviacion, S.A, Spain (the “CLH Group”), represented by PONS IP, Spain.

The Respondent is Chen Jin Mei (陈进妹), China.

2. The Domain Name and Registrar

The disputed domain name <clhaviacion.net> is registered with Domain Name Network Pty Ltd (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on May 30, 2022. On May 30, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 31, 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 May 31, 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 amendment to the Complaint in English on June 5, 2022.

On May 31, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On June 3, 2022, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

The Center verified that the Complaint together with the amendment to 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 June 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 27, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 28, 2022.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on July 12, 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, the CLH Group, is comprised of two affiliated companies - Compañía Logística de Hidrocarburos CLH, S.A. and CLH Aviacion, S.A – both incorporated in Spain.

The Complainant is a market leader in the transport and storage of petroleum products in the Spanish market, with more than 80 years of experience in this sector, operating under the trade mark CLH AVIACION (the "Trade Mark"). The Complainant has more than 2,100 employees, 68 storage facilities, 46 airport facilities, more than 6,000 pipelines, and 11 million cubic meters of capacity in 9 countries: Spain, the United Kingdom, Ireland, Germany, the Netherlands, Panama, Ecuador, Peru, and Oman.

The Complainant is the owner of numerous registrations for the Trade Mark in jurisdictions worldwide, including Spanish registration No. M2803169, with a registration date of August 28, 1997; and European Union Trade Mark registration No. 007540248, with a registration date of December 10, 2009.

The Complainant promotes and provides its goods and services via numerous websites comprising the Trade Mark, such as "www.clhaviacion.com".

B. Respondent

The Respondent is apparently an individual resident in China.

C. The Disputed Domain Name

The disputed domain name was registered on March 4, 2022.

D. Use of the Disputed Domain Name

The disputed domain name is resolved to a Chinese language website with multiple links to gambling and pornography related websites (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. 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, 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. However, 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 several reasons, including the following:

- (i) the disputed domain name is registered using the generic Top-Level Domain ("gTLD") ".net", not one of the country code Top-Level Domains ("ccTLDs") for China;
- (ii) the disputed domain name contains Latin text, rather than Chinese script; and
- (iii) the Website contains some English language text in the Website footer.

The Respondent did not make any submissions regarding the language of the proceeding, and did not file any response. The Panel would have accepted a response in Chinese.

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 evidence suggests the Respondent has some knowledge of the English language; and the Panel also notes that the Respondent has taken no part in 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 gTLD “.net”, 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 is resolved, for commercial gain, to the Website, containing links to pornography and gambling related websites.

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.

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 the notoriety of the Complainant and of its Trade Mark; the distinctiveness of the Trade Mark; and the manner of the Respondent’s use of the disputed domain name referred to above; the Panel finds, in all the circumstances, that the requisite element of bad faith has been made out pursuant to paragraph 4(b)(iv) of the Policy.

The evidence suggests that the Respondent has targeted the Complainant in registering and using the disputed domain name; and that there cannot be any actual or contemplated good faith use of the inherently misleading disputed domain name by the Respondent.

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 <clhaviacion.net> be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Dated: July 28, 2022