

## **ADMINISTRATIVE PANEL DECISION**

Sener, Ingeniería y Sistemas, S.A. v. 汪世金 (Shijin Wang)  
Case No. D2022-2252

### **1. The Parties**

Complainant is Sener, Ingeniería y Sistemas, S.A., Spain, represented by Clarke, Modet y Cía., S.L, Spain.

Respondent is 汪世金 (Shijin Wang), China.

### **2. The Domain Name and Registrar**

The disputed domain name <sener.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 June 21, 2022. On June 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 23, 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 Complainant on June 24, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. On the same day, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. On June 30, 2022, Complainant filed an amended Complaint in Chinese, however, Complainant requested that English be the language of the proceeding. Respondent did not comment on 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 Respondent in English and Chinese of the Complaint, and the proceedings commenced on July 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 24, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on July 26, 2022.

The Center appointed Yijun Tian as the sole panelist in this matter on August 3, 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**

Complainant, Sener, Ingeniería y Sistemas, S.A., was incorporated in Spain. Founded in 1956, it is a Spanish private engineering and technology group and a premier provider of innovative and high-quality solutions in the areas of industry, such as Engineering and Construction, Energy and Environment, and Aerospace. In 2016, Complainant's operating income exceeded EUR 910 billion.

Complainant has registered a number of trademarks for SENER in various jurisdictions, including trademark registrations in Spain (the trademark registration number M2708969(X), registered on May 6, 1976); trademark registrations in the European Union ("EU") (the trademark registration number 000448209, registered on September 28, 1998); and International trademark registrations designating China, among other jurisdictions (the trademark registration number 1103705, registered on December 16, 2011).

Complainant also owns numerous domain names, which contain the SENER marks, such as <group.sener>, <sener.uk>, <sener.sa>, <sener.jp>, <sener.co.uk>, and <sener.eu>.

##### **B. Respondent**

Respondent is 汪世金 (Shijin Wang), China. Respondent registered the disputed domain name <sener.group> on May 20, 2022, which is long after Complainant's registration of the SENER trademarks in Spain (since 1976) and International registration designating China as one of the designated jurisdictions (since 2011). At the time of filing of the Complaint and this decision, the disputed domain name directed to an inactive website.

#### **5. Parties' Contentions**

##### **A. Complainant**

Complainant contends that the disputed domain name is identical to the SENER marks.

Complainant contends that Respondent has no rights or legitimate interests in the disputed domain name.

Complainant contends that Respondent's registration and use of the disputed domain name are in bad faith. Respondent's use of the disputed domain name has made it clear regarding his intention to commit a fraudulent action.

Complainant requests that the disputed domain name <sener.group> be transferred to it.

##### **B. Respondent**

Respondent did not reply to 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 specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement. From the evidence presented on the record, no agreement appears to have been entered into between Complainant and Respondent to the effect that the language of the proceeding should be English. Complainant filed initially its Complaint in English, and has requested that English be the language of the proceeding for the following reasons:

- (a) Complainant has no certainty of the nationality of Respondent;
- (b) No answer from the Registrar has been received when asking it to provide Complainant with contact details of the owner of the disputed domain name; and
- (c) Complainant could be disadvantaged by being forced to translate the Complaint into Chinese.

In response to the Center's email of language of the proceeding, Complainant provided a translated version of the amended Complaint in Chinese but Complainant confirmed its request that English be the language of the proceeding.

Respondent did not comment on the language of the proceeding, nor did he object to the use of English as the language of the 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 other words, it is important to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes (*Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. Ltd.*, WIPO Case No. [D2008-0293](#); *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#)). The language finally decided by the panel for the proceeding should not be prejudicial to either one of the parties in his or her abilities to articulate the arguments for the case (*Groupe Auchan v. xmxzl*, WIPO Case No. [DCC2006-0004](#)). Section 4.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") further states:

"Noting the aim of conducting the proceedings with due expedition, paragraph 10 of the UDRP Rules vests a panel with authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case.

Against this background, panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios include (i) evidence showing that the respondent can understand the language of the complaint, (ii) the language/script of the domain name particularly where the same as that of the complainant's mark, (iii) any content on the webpage under the disputed domain name, (iv) prior cases involving the respondent in a particular language, (v) prior correspondence between the parties, (vi) potential unfairness or unwarranted delay in ordering the complainant to translate the complaint, (vii) evidence of other respondent-controlled domain names registered, used, or corresponding to a particular language, (viii) in cases involving multiple domain names, the use of a particular language agreement for some (but not all) of the disputed domain names, (ix) currencies accepted on the webpage under the disputed domain name, or (x) other indicia tending to show that it would not be unfair to proceed in a language other than that of the registration agreement." (See also *L'Oreal S.A. v. MUNHYUNJA*, WIPO Case No. [D2003-0585](#)).

On the record, Respondent appears to be a Chinese individual and is thus presumably not a native English speaker. However, considering the following circumstances, the Panel finds the choice of English as the language of the present proceeding is fair to both Parties and is not prejudicial to either one of the Parties in their ability to articulate the arguments for this case. The Panel notes in particular that:

- (a) the disputed domain name <sener.group> includes Latin characters rather than Chinese scripts;
- (b) Complainant is a company from Spain, and Complainant will be spared the burden of working in Chinese as the language of the proceeding;
- (c) the Center has notified the language of the proceeding to the Parties in both Chinese and English, however, Respondent did not comment on the language of the proceeding;
- (d) Complainant has provided a Chinese translation of the amended Complaint; and
- (e) the Center has notified Respondent of the proceeding in both Chinese and English, however, Respondent has chosen not to file a Response in this case.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that English shall be the language of the proceeding, and the decision will be rendered in English.

## **6.2. Substantial Issues**

Paragraph 4(a) of the Policy requires that Complainant prove each of the following three elements to obtain an order that the disputed domain name should be transferred:

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

On the basis of the evidence introduced by Complainant and in particular with regards to the content of the relevant provisions of the Policy (paragraphs 4(a) - (c)), the Panel concludes as follows:

### **A. Identical or Confusingly Similar**

The Panel finds that Complainant has rights in the SENER marks acquired through registration. The SENER marks have been registered worldwide including registrations in Spain, in the EU, and internationally including in China.

The disputed domain name <sener.group> comprises the SENER mark in its entirety. The disputed domain name only differs from Complainant's trademarks by the generic Top-Level Domain ("gTLD") suffix ".group". This does not prevent a finding of confusingly similarity between Complainant's registered trademarks and the disputed domain name. In relation to the gTLD suffix, section 1.11 of the [WIPO Overview 3.0](#) further states:

"The applicable TLD in a domain name (e.g., '.com', '.club', '.nyc') is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.

The practice of disregarding the TLD in determining identity or confusing similarity is applied irrespective of the particular TLD (including with regard to 'new gTLDs') [...]."

Thus, the Panel finds that disregarding the gTLD suffix “.group”, the disputed domain name is identical to the SENER marks.

The Panel therefore holds that the Complaint fulfils the first condition of paragraph 4(a) of the Policy.

## **B. Rights or Legitimate Interests**

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

(i) before any notice to Respondent of the dispute, the use by Respondent 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) Respondent has been commonly known by the disputed domain name, even if Respondent has acquired no trademark or service mark rights; or

(iii) 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 Complainant’s trademarks.

The overall burden of proof on this element rests with Complainant. However, it is well established by previous UDRP decisions that once a complainant establishes a *prima facie* case that a respondent lacks rights or legitimate interests in a domain name, the burden of production shifts to the respondent to rebut the complainant’s contentions. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy (*Danzas Holding AG, DHL Operations B.V. v. Ma Shikai*, WIPO Case No. [D2008-0441](#); [WIPO Overview 3.0](#), section 2.1 and cases cited therein).

According to the Complaint, Complainant is a Spanish private engineering and technology group and a premier provider of innovative and high-quality solutions in the areas of industry, such as Engineering and Construction, Energy and Environment, and Aerospace. Complainant has registered trademark rights in SENER in Spain since 1976, in the EU since 1998, and International registration designating China since 2011, which long precede Respondent’s registration of the disputed domain name (in 2022).

Moreover, Respondent is not an authorized dealer of Complainant’s products or services. The Panel finds that Complainant has established a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name and thereby shifts the burden to Respondent to produce evidence to rebut this presumption (*The Argento Wine Company Limited v. Argento Beijing Trading Company*, WIPO Case No. [D2009-0610](#); *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

Based on the following reasons the Panel finds that Respondent has no rights or legitimate interests in the disputed domain name:

a) There has been no evidence adduced to show that Respondent is using the disputed domain name in connection with a *bona fide* offering of goods. Respondent has not used the disputed domain name and has provided no reasons to justify the choice of the word “sener” in the disputed domain name. There has been no evidence to show that Complainant has licensed or otherwise permitted Respondent to use the SENER marks or to apply for or use any domain name incorporating the SENER marks, and Respondent has, through the use of an identical disputed domain name, created a likelihood of confusion with Complainant.

b) There has been no evidence adduced to show that Respondent has been commonly known by the disputed domain name. There has been no evidence adduced to show that Respondent has any registered trademark rights with respect to the disputed domain name. Respondent registered the disputed domain name in 2022, long after the SENER marks became internationally known. The disputed domain name is identical to Complainant’s SENER marks.

c) There has been no evidence adduced to show that Respondent is making a legitimate noncommercial or fair use of the disputed domain name. The website resolved by the disputed domain name is inactive.

The Panel finds that Respondent has failed to produce any evidence to rebut Complainant's *prima facie* showing on Respondent's lack of rights or legitimate interests in the disputed domain name.

Moreover, the nature of the disputed domain name carries a high risk of implied affiliation with Complainant ([WIPO Overview 3.0](#), section 2.5.1).

The Panel therefore holds that the Complaint fulfils the second condition of paragraph 4(a) of the Policy.

### **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy sets out four circumstances which, without limitation, shall be evidence of the registration and use of the disputed domain name in bad faith, namely:

(i) circumstances indicating that Respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to Complainant who is the owner of the trademark or service mark or to a competitor of Complainant, for valuable consideration in excess of Respondent's documented out-of-pocket costs directly related to the disputed domain name; or

(ii) Respondent has registered the disputed domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or

(iii) Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on the website or location.

### **Registration in Bad Faith**

The Panel finds that Complainant has a widespread reputation in the SENER marks with regard to its products and services. As mentioned above, founded in 1956, Complainant is a premier provider of innovative and high-quality solutions in the areas of industry, such as Engineering and Construction, Energy and Environment, and Aerospace. In 2016, its operating income exceeded EUR 910 billion. Complainant has registered its SENER mark internationally, including registration in Spain (since 1976) and in China (since 2011). Therefore, it is not conceivable that Respondent would not have had actual notice of Complainant's trademark rights at the time of the registration of the disputed domain name (in 2022). The Panel therefore finds that the SENER mark is not one that traders could legitimately adopt other than for the purpose of creating an impression of an association with Complainant (*The Argento Wine Company Limited v. Argento Beijing Trading Company*, *supra*). Moreover, the Complainant operates its official website under the domain name <group.sener>.

Thus, the Panel concludes that the disputed domain name was registered in bad faith.

## Use in Bad Faith

The disputed domain name <sener.group> is currently inactive. In terms of inactive domain names, section 3.3 of the [WIPO Overview 3.0](#) provides: “From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or ‘coming soon’ page) would not prevent a finding of bad faith under the doctrine of passive holding.” It further states: “While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.”

As discussed above, Complainant’s SENER marks are widely known, particularly in the areas of industry, such as Engineering and Construction, Energy and Environment, and Aerospace. Taking into account all the circumstances of this case, the Panel concludes that the current inactive use of the disputed domain name by Respondent is also in bad faith.

In summary, in the absence of evidence to the contrary from Respondent, the choice of the disputed domain name that is identical to Complainant’s widely-known trademarks and the non-use of the disputed domain name are indicative of registration and use of the disputed domain name in bad faith.

The Panel therefore holds that the Complaint fulfils the third condition of paragraph 4(a) of the Policy.

## 7. Decision

For all 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 <sener.group> be transferred to Complainant.

*/Yijun Tian/*

**Yijun Tian**

Sole Panelist

Dated: September 5, 2022