

ADMINISTRATIVE PANEL DECISION

Alfa Laval Corporate AB v. Li Shicheng (李仕成)

Case No. D2022-2418

1. The Parties

Complainant is Alfa Laval Corporate AB, Sweden, represented by Advokatbyrån Gulliksson AB, Sweden.

Respondent is Li Shicheng (李仕成), China, self-represented.

2. The Domain Name and Registrar

The disputed domain name <contherm.com> (the “Domain Name”) is registered with Xin Net Technology Corporation (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on July 4, 2022. On July 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On July 8, 2022, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details.

On July 11, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On July 13, 2022, Complainant submitted the amended Complaint in which it submitted its request that English be the language of the proceeding. Respondent requested that Chinese be the language of the proceedings on July 13 and July 16, 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 Respondent in Chinese and English of the Complaint, and the proceedings commenced on July 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 9, 2022. The Response was filed in Chinese with the Center on August 3, 2022.

The Center appointed Kimberley Chen Nobles as the sole panelist in this matter on August 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

Complainant is a Swedish-based company providing products and services in areas of heat transfer, separation and gas and fluid handling industries including the marine, environment, pharma, hygienic, food and energy sectors. In particular, Complainant develops and manufactures scraped surface heat exchangers and sells the products under its trademark CONTHERM. These CONTHERM-named products provide solutions for industries and applications from food, chemicals and pharmaceuticals to health and beauty, and are developed to handle viscous, heat sensitive, crystallizing or sticky products. Complainant has offices and manufacturing facilities in Europe, Asia (including China), and the Americas, and manufacturing locations in Europe, Asia and the Americas. Complainant has established offices in China since around 1984.

Complainant owns registered trademarks with the CONTHERM mark across several countries including:

- United States of America (“United States”) registered trademark number 1,125,958 for CONTHERM word mark, registered on October 16, 1979 in Class 11 for “scrape surface heat exchangers for industrial and agricultural use”;
- Swedish registered trademark number 212523 for CONTHERM word mark, registered on December 2, 1988;
- Japanese registered trademark number 2192505 for CONTHERM word mark, registered on November 28, 1989 in Classes 7, 9, and 11 for “chemical Machinery and Instruments including heat exchangers”; and
- Canadian registered trademark number TMA418000 for CONTHERM word mark, registered on October 15, 1993 for “heat exchangers”.

Respondent is located in Shanghai, China. The Domain Name was registered on July 3, 2001. Respondent claims that he purchased the Domain Name in November 2021. The Domain Name resolves to a website featuring products from Shanghai Ftherm Machinery Co., Ltd. (“Shanghai Ftherm”), which is noted on its website as an internationally renowned scraped surface heat exchanger manufacturing and service provider, offering services and goods such as scraped surface heat exchangers under the name “Ftherm”.

The Panel notes that the website to which the Domain Name resolves currently indicates that:

“Ftherm® X series scraped surface heat exchangers absorb the advantages of scraped surface heat exchangers in the United States, Sweden and the United Kingdom, and are tailored for domestic customers. It has the advantages of flexible installation method, long service life and low maintenance cost.”

At the time of filing the Complaint, the website to which the Domain Name resolved also indicated that:

“The Ftherm® X series scraped surface heat exchanger absorbs the advantages of SPXflow scraped surface heat exchanger, Swedish Alfa Laval Contherm scraped surface heat exchanger and British Chemetator scraped surface heat exchanger.”

5. Parties’ Contentions

A. Complainant

Complainant contends that (i) the Domain Name is identical or confusingly similar to Complainant’s

trademarks; (ii) Respondent has no rights or legitimate interests in the Domain Name; and (iii) Respondent registered and is using the Domain Name in bad faith.

In particular, Complainant contends that it has trademark registrations for CONTHERM and that Respondent registered and is using the Domain Name with the intention to confuse Internet users looking for *bona fide* and well-known CONTHERM products and services.

Complainant notes that it has no affiliation with Respondent, nor authorized Respondent to register or use a domain name, which includes Complainant's trademarks, and that Respondent has no rights or legitimate interests in the registration and use of the Domain Name. Rather, Complainant contends that Respondent has acted in bad faith in acquiring and setting up the Domain Name, when Respondent clearly knew of Complainant's rights.

B. Respondent

Respondent indicated that Shanghai Ftherm was established on May 13, 2020 at the invitation of a friend with a scraped heat exchanger business, to establish and jointly develop business in the scraped surface and heat exchanger business.

Respondent noted in his reply that he had previously used the name CONTHERM for developing business in cream manufacturing machines, hardware and daily commodities. Respondent also indicated that he registered the domain name <contherm.cn> in May 2019, and while he had intended to file a trademark application for CONTHERM, it has not yet been submitted. Respondent also stated that he purchased the Domain Name <contherm.com> in November 2021.

Respondent further noted that while Shanghai Ftherm referred to Complainant's scraped surface heat exchanger on its website, that it was provided to allow consumers to fully distinguish the characteristics of Shanghai Ftherm's surface heat exchanger in Ftherm's X series, from those provided by other companies, including Complainant's. Respondent added that it was not for the purpose of deceiving consumers by pretending to provide products of Complainant or other companies providing surface heat exchangers. Respondent also noted that Complainant's scraped surface heat exchanger products are not necessarily better than those provided by Shanghai Ftherm, and that as these products are becoming better or more abundant, there is no need for Shanghai Ftherm to pretend to be Complainant.

Respondent further notes that while Complainant may be very well known outside China, and claims that it has trademark registrations for the CONTHERM mark in Sweden, Japan, Canada, and the United States, the CONTHERM mark is not registered in, and is not well known in China. Respondent also notes that he is unable to verify the authenticity and validity of the trademark registrations.

The evidence according to the Respondent shows that Respondent's company is an internationally renowned company.

6. Discussion and Findings

6.1. Preliminary Procedural Issue – Language of the Proceeding

The Rules, in paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement between the respondent and the registrar in relation to the disputed domain name, the language of the 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.

A. Complainant

Complainant submitted its Complaint in English. In its Complaint, email dated July 13, 2022, and amended Complaint, Complainant requested that the language of the proceeding be English. According to the information received from the Registrar, the language of the Registration Agreement for the Domain Name is Chinese.

Complainant contends that: Complainant's business is conducted primarily in English and Complainant is unable to communicate in Chinese, and that Complainant would have to go to great expense and delay in order to translate the materials; that the Domain Name is registered in Latin characters and does not include any Chinese characters; that Respondent's website is available in English, and visitors to the website can contact Respondent using an English language form. Complainant thus contends that for the above reasons, Respondent is familiar with the English language.

B. Respondent

Respondent requested that Chinese be the language of the proceeding. In his reply, Respondent noted that while the website has both English and Spanish sections, that it is mainly in Chinese; and that he is not very familiar with English or Latin; that Complainant has a Chinese website at <alfalaval.cn>, and had opened a branch in China in 1984, and that Complainant knows more Chinese than Respondent knows English. Respondent also noted that Complainant had retained a lawyer.

In exercising its discretion to use a language other than that of the Registration Agreements for the Domain Name, 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 has duly considered the circumstances of this case and the relevant Policy considerations in arriving at its decision that English shall be the language of the proceeding. It notes that the Domain Name comprises Latin characters and wholly incorporates Complainant's CONTHERM trademark, and Respondent's website offers content in English and a means for English-speaking consumers to communicate in English. The Panel is also mindful of the need to ensure that the proceeding is conducted in a timely and cost-effective manner.

The Panel further notes that the Center notified the Parties in Chinese and English of the language of the proceeding as well as notified the Parties in Chinese and English of the Complaint. The Panel has also read the Chinese text of what was submitted by Respondent, and it is evident from Respondent's reply that he understands the nature of the claims being asserted by Complainant and has chosen to state his position in the matter.

Having considered all the circumstances of this case, the Panel determines that English be the language of the proceeding and that it would accept the Response submitted in Chinese.

6.2. Substantive Issues

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name was registered and is being used in bad faith.

Thus, the burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy

by a preponderance of the evidence. See, e.g., *The Knot, Inc. v. In Knot We Trust LTD*, WIPO Case No. [D2006-0340](#).

A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2.1. Complainant provided evidence of its rights in the CONTHERM trademarks, as noted above. Complainant has also submitted evidence, which supports that the CONTHERM trademarks are widely known and a distinctive identifier of Complainant's products and services. Complainant has therefore proven that it has the requisite rights in the CONTHERM trademarks.

With Complainant's rights in the CONTHERM trademark established, the remaining question under the first element of the Policy is whether the Domain Name, typically disregarding the Top-Level Domain ("TLD") in which it is registered (in this case, ".com"), is identical or confusingly similar to Complainant's trademark. See, e.g., *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#).

Here, the Domain Name is identical to Complainant's CONTHERM trademarks. These trademarks, which are fanciful and inherently distinctive, are wholly incorporated in the Domain Name.

Thus, the Panel finds that Complainant has satisfied the first element of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make a *prima facie* showing that a respondent possesses no rights or legitimate interests in a disputed domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with relevant evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

From the record in this case, it is evident that Respondent was, and is, aware of Complainant and its CONTHERM trademarks, and does not have any rights or legitimate interests in the Domain Name. Complainant has confirmed that Respondent is not affiliated with Complainant, or otherwise authorized or licensed to use the CONTHERM trademarks or to seek registration of any domain name incorporating the trademarks. Respondent is also not known to be associated with the CONTHERM trademarks and there is no evidence showing that Respondent has been commonly known by the Domain Name. Respondent's company, Shanghai Ftherm, does not contain the made-up word "contherm", and the website to which the Domain Name resolved mentions "Contherm" only when referring to Complainant and its products.

In addition, Respondent has not used the Domain Name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. Rather, Complainant asserts that the Domain Name redirects to a website with competing, scraped surface heat exchanger products, which has been conceded by Respondent. Such use does not constitute a *bona fide* offering of goods or services or a legitimate noncommercial or fair use and cannot under the circumstances confer on Respondent any rights or legitimate interests in the Domain Name. See, e.g., *Intesa Sanpaolo S.p.A. v. Charles Duke / Oneandone Private Registration*, WIPO Case No. [D2013-0875](#).

Accordingly, Complainant has provided evidence supporting its *prima facie* claim that Respondent lacks any rights or legitimate interests in the Domain Name. Respondent has failed to produce countervailing evidence of any rights or legitimate interests in the Domain Name. Respondent claimed that he has been using the name CONTHERM for his business in cream manufacturing machines, hardware and daily commodities but no supporting evidence has been provided; moreover, these claims strike the Panel as pretextual and even

if true, such claims do not address the fact that Respondent is clearly aware of Complainant as they operate in the same field. Respondent also claimed that it has registered the domain name <cotherm.cn> and operates a website at such domain name in May 2019, however, such conduct does not automatically confer rights or legitimate interests on Respondent, especially when considered in tandem with the findings under the third element below and in the broader case circumstances. Thus, the Panel concludes that Respondent does not have any rights or legitimate interests in the Domain Name and Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that Respondent's actions indicate that Respondent registered and is using the Domain Name in bad faith.

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances indicating bad faith registration and use on the part of a domain name registrant, namely:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

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

It is settled that the transfer of a domain name registration from a third party to the respondent is not a renewal date and the date on which the current registrant acquired the domain name is the date a panel will consider in assessing bad faith. See [WIPO Overview 3.0](#), section 3.9.

The Panel finds that Complainant provided ample evidence to show that registration and use of its CONTHERM trademarks long predate Respondent's claimed purchase of the Domain Name in November 2021, and even the original registration of the Domain Name in 2001. Complainant is also well established and known, as are its CONTHERM registered trademarks and products.

Complainant has established offices in China as early as 1984, as conceded by Respondent. Indeed, the record shows that Complainant's CONTHERM trademarks and related products and services are widely known and recognized around the world. Complainant's CONTHERM trademark was registered as early as 1979. Particularly noting the Internet's global and borderless nature, a sweeping respondent disclaimer of knowledge based as such on its (deemed) presence in a particular location different from the location(s) in which the complainant's goods or services are accessible or where Complainant's trademarks are registered may be seen by panels as lacking in credibility or relevance. See [WIPO Overview 3.0](#), section 1.1. When typing “contherm” in the search engines such as Google and Baidu which is widely used in China where Respondent is located, the results point to Complainant and its products, whereby an association of Complainant and its products with the trademark CONTHERM is well established.

Further, the registration of the Domain Name incorporating Complainant's CONTHERM trademark in its entirety suggests Respondent's actual knowledge of Complainant's rights in the CONTHERM trademarks at

the time of registration or acquisition of the Domain Name and its effort to opportunistically capitalize on the registration and use of the Domain Name. Indeed, the Domain Name includes Complainant's trademark CONTHERM in its entirety, and directly evokes Complainant's activities in the field of scraped surface heat exchangers, further indicating Respondent's actual knowledge of Complainant, its products and its trademarks. Moreover, not only is Respondent in the same industry and field of business as Complainant, it also cited Complainant's CONTHERM products on its website.

The Panel therefore finds that Respondent knew about Complainant and its CONTHERM marks when registering or acquiring the Domain Name and that its awareness of Complainant's trademark rights at the time of registration or acquisition suggests bad faith. See *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite*, WIPO Case No. [D2001-1070](#); *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#).

Respondent registered and is using the Domain Name to confuse and mislead consumers looking for *bona fide* and well-known CONTHERM products and services of Complainant or authorized partners of Complainant. The use of the CONTHERM mark in the entirety of the Domain Name is intended to capture Internet traffic from Internet users who are looking for Complainant's products and services. Such use and association of the Domain Name to divert users to a webpage featuring Respondent's competing products and services could result in causing confusion with Complainant's business activities. It may confuse Internet users who are looking for Complainant's website and deceive Internet users into thinking that Respondent is somehow connected to Complainant, which is not the case.

The Panel also notes the distinctiveness and reputation of the CONTHERM trademarks, the failure of Respondent to provide any evidence of actual or contemplated good faith use, and the implausibility of any good faith use to which the Domain Name may be put.

Accordingly, the Panel finds that Respondent has registered and is using the Domain Name in bad faith and Complainant succeeds under the third element of paragraph 4(a) 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 Domain Name <contherm.com> be transferred to Complainant.

/Kimberley Chen Nobles/

Kimberley Chen Nobles

Sole Panelist

Date: August 22, 2022