

ADMINISTRATIVE PANEL DECISION

Hazet-Werk Hermann Zerver GmbH & Co. KG v. 赵保安 (Zhao Bao An), 深圳市浚海中仪科技有限公司 (Shen ZhenShi Jun Hai Zhong Yi Ke Ji You Xian Gong Si)
Case No. D2022-4918

1. The Parties

Complainant is Hazet-Werk Hermann Zerver GmbH & Co. KG, Germany, represented by Krieger Mes & Graf v. der Groeben, Germany.

Respondent is 赵保安 (Zhao Bao An), 深圳市浚海中仪科技有限公司 (Shen ZhenShi Jun Hai Zhong Yi Ke Ji You Xian Gong Si), China.

2. The Domain Name and Registrar

The disputed domain name <hazet-tool.com> (the “Domain Name”) is registered with Cloud Yuqu LLC (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on December 21, 2022. On December 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On December 22, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to Complainant on December 22, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint in English on December 23, 2022.

On December 22, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On December 23, 2022, Complainant submitted a request 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 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 Respondent in English and Chinese of the Complaint, and the proceedings commenced on December 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 17, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on January 18, 2023.

The Center appointed Kimberley Chen Nobles as the sole panelist in this matter on January 27, 2023. 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, a tool manufacturer headquartered in Remscheid, Germany, has been in business for over 150 years. Complainant manufactures general workshop equipment, including hand tools, torque technology, pneumatic tools, workshop tools, speciality tools, components spare parts. Its products are distributed throughout Europe and over 100 countries worldwide. Complainant owns and operates websites at “www.hazet.com” and “www.hazet.de”.

Complainant is the owner of several registered trademarks for HAZET, including:

- German registered trademark no. 542327 for HAZET (word and design mark), registered on February 16, 1942;
- German registered trademark no. 178719 for HAZET (word mark), registered on July 17, 1913; and
- International trademark registration no. 1655908 for HAZET (word mark), registered on October 13, 2021.

The Domain Name was registered on December 20, 2021, and reverts to a webpage that offers tools, workshop trolleys, tool boxes etc. that are offered and distributed under the HAZET mark. The website also promotes third party product, *i.e.*, a system related to enterprise website management.

On November 3, 2022, Complainant sent a cease and desist letter to Respondent in an attempt to resolve this matter amicably. Respondent did not reply. The Complaint was filed thereafter.

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 HAZET and that Respondent registered and is using the Domain Name with the intention to confuse Internet users looking for *bona fide* and well-known HAZET products and services.

Complainant notes that it has no affiliation with Respondent and contends that Respondent has used Complainant’s reputation to sell plagiarisms on the website associated with the Domain Name. Complainant further contends that Respondent is using the Domain Name as a tool to exploit Complainant’s reputation for its own commercial gain, and that Respondent has no rights or legitimate interests in the registration and use of the Domain Name other than trademark infringement. Further, 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 did not reply to Complainant's contentions.

6. Discussion and Findings

6.1. Preliminary 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.

According to the information received from the Registrar, the language of the Registration Agreement for the Domain Name is Chinese.

Complainant submitted its original Complaint in English. In its amendment to the Complaint, Complainant submitted a request that the language of the proceeding should be English. Complainant mainly contends that the Domain Name resolves to a website providing content in both Chinese and English. Respondent did not comment on the language of the proceeding.

In exercising its discretion to use a language other than that of the Registration Agreement 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 accepts Complainant's submissions regarding the language of the proceeding. The Panel notes that the Domain Name is composed of Complainant's trademark plus an English term "tool", and the Center notified the Parties in Chinese and English of the language of the proceeding as well as notified Respondent in Chinese and English of commencement of the proceeding, and indicated that Respondent may file a Response in either Chinese or English. Respondent chose not to comment on the language of the proceeding nor did Respondent choose to file a Response.

The Panel is also mindful of the need to ensure that the proceeding is conducted in a timely and cost-effective manner. Complainant may be unduly disadvantaged by having to translate the Complaint into Chinese and to conduct the proceeding in Chinese while conducting the proceeding in English would not cause unfairness to either Party in this case.

Having considered all the circumstances of this case, the Panel determines that English be the language of the proceeding.

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.

Section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") states that failure to respond to the complainant's contentions would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true.

Thus, although in this case Respondent has failed to respond to the Complaint, the burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence.

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 3.0](#), section 1.2.1. Complainant has provided evidence of its rights in the HAZET trademarks, as noted above under section 4. Complainant has also submitted evidence, which supports that the HAZET 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 HAZET trademarks.

With Complainant's rights in the HAZET trademarks 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 is, ".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 confusingly similar to Complainant's HAZET trademarks. These HAZET trademarks are recognizable in the Domain Name. In particular, the Domain Name's inclusion of Complainant's trademark HAZET in its entirety, with an addition of the term "-tool" does not prevent a finding of confusing similarity between the Domain Name and the HAZET trademarks. See [WIPO Overview 3.0](#), section 1.8.

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 HAZET trademarks, and does not have any rights or legitimate interests in the Domain Name. In addition, Complainant asserts that Respondent sells "plagiarisms" with inferior quality, which appears to infer that Respondent is not an authorized reseller and is not related to Complainant. Respondent is also not known to be associated with the HAZET trademarks and there is no evidence showing that Respondent has been commonly known by the Domain Name.

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, the Domain Name resolves to a website that features and offers tools, tool boxes and other related products, which are identical or very similar to those offered by Complainant under the HAZET marks without accurately and prominently disclosing the lack of relationship between Respondent and Complainant, which could mislead Internet users into thinking that the

respective website has been authorized or operated by or affiliated with Complainant, and offered HAZET-branded products for sale. Further, the website also promotes third party product, *i.e.*, a system related to enterprise website management. 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](#).

Moreover, the nature of the Domain Name is inherently misleading, and carries a risk of implied affiliation (see [WIPO Overview 3.0](#), section 2.5.1).

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. 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.”

The Panel finds that Complainant has provided ample evidence to show that registration and use of the HAZET trademarks long predate the registration of the Domain Name. Complainant is also well established and known. Indeed, the record shows that Complainant's HAZET trademarks and related products and services are widely known and recognized. Therefore, Respondent was likely aware of the HAZET trademarks when it registered the Domain Name, or knew or should have known that the Domain Name was confusingly similar to Complainant's trademarks. See [WIPO Overview 3.0](#), section 3.2.2; See also *TTT Moneycorp Limited v. Privacy Gods / Privacy Gods Limited*, WIPO Case No. [D2016-1973](#).

The Panel therefore finds that Respondent's awareness of Complainant's trademark rights at the time of registration 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](#); and *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#).

Further, the registration of the Domain Name incorporating Complainant's HAZET trademark in its entirety suggests Respondent's actual knowledge of Complainant's rights in the HAZET trademarks at the time of registration of the Domain Name and its effort to opportunistically capitalize on the registration and use of the Domain Name. Moreover, the additional term "-tool" in the Domain Name is also directly associated with Complainant's business activities in the field of tools and related products, further indicating Respondent's actual knowledge of Complainant and its trademarks, and that Respondent's registration of the Domain Name was in bad faith.

In addition, the evidence provided by Complainant has shown that the Domain Name directs to a website that displays products that are identical or very similar to Complainant's products under the HAZET marks. Respondent's website also includes unauthorized reproduction of Complainant's HAZET marks, and copyrighted material from Complainant's website, which could mislead Internet users into thinking that the respective website has been authorized or operated by or affiliated with Complainant, and offered HAZET-branded products for sale, all of which have not been rebutted by Respondent. Further, the website also promotes third party product, *i.e.*, a system related to enterprise website management. Such use cannot be considered in good faith.

Moreover, Respondent registered and is using the Domain Name to confuse and mislead consumers looking for *bona fide* and well-known HAZET products and services of Complainant or authorized partners of Complainant. The use of the HAZET mark as the dominant part of the Domain Name is intended to capture Internet traffic from Internet users who are looking for Complainant's products and services. Therefore, by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain Internet users to Respondent's webpage by creating a likelihood of confusion with Complainant's HAZET marks as to the source, sponsorship, affiliation, or endorsement of Respondent's website.

Further, the Panel also notes the failure of Respondent to submit a Response or 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 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 <hazet-tool.com> be transferred to Complainant.

/Kimberley Chen Nobles/

Kimberley Chen Nobles

Sole Panelist

Date: February 10, 2023