

## **ADMINISTRATIVE PANEL DECISION**

Itron, Inc. v. beats  
Case No. D2023-0366

### **1. The Parties**

The Complainant is Itron, Inc., United States of America (“United States”), represented by Lee & Hayes, PC, United States.

The Respondent is beats, Republic of Korea.

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

The disputed domain name <Itron.com> is registered with Megazone Corp., dba HOSTING.KR (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on January 26, 2023. On January 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 30, 2023, 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 February 14, 2023, the Center notified the Parties in both English and Korean that the language of the Registration Agreement for the disputed domain name is Korean. On the same day, 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 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 both English and Korean of the Complaint, and the proceedings commenced on February 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 13, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 16, 2023.

The Center appointed Moonchul Chang as the sole panelist in this matter on March 21, 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**

The Complainant, Itron, Inc., is a technology company that offers energy and water resource management products and services under the trademark ITRON (the "ITRON Mark") since 1979 and is particularly known for its metering technology used for electricity, gas, and water utility providers.

The Complainant owns a number of trademark registrations protecting the ITRON Mark in the United States, including: United States Trademark Registration No. 1,519,639, ITRON, registered on January 10, 1989; United States Trademark Registration No. 1,534,650, ITRON, registered on April 11, 1989; United States Trademark Registration No. 1,921,754, ITRON, registered on September 26, 1995.

In addition, the Complainant created its website "www.itron.com" on May 25, 1993.

The disputed domain name <Itron.com> was registered on November 29, 2005, which is redirected to a website displaying pay-per-click advertisements.

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

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

First, the Complainant contends that:

- (a) The disputed domain name is identical or confusingly similar to its trademark. The disputed domain name incorporates a misspelling of the Complainant's ITRON Mark. Merely replacement of the letter "i" with the letter "l" does not affect a finding of the confusing similarity.
- (b) The Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has neither authorized nor given its consent to the Respondent to register or use the disputed domain name. The Respondent has no proprietary rights or legitimate interests in the ITRON mark and the Respondent has not used the disputed domain name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. The disputed domain name is currently redirected to a website displaying pay-per-click advertisements. In addition, the Respondent has never been commonly known by the disputed domain name.
- (c) The disputed domain name was registered and is being used in bad faith. First, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website or other online location, by creating a likelihood of confusion with the Complainant's ITRON Mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location. (Paragraph 4(b)(iv) of the Policy.)

Second, since the Complainant's ITRON Mark is well known and distinctive, it is highly likely that the Respondent knew of the Complainant's Mark before he registered the disputed domain name in 2005.

Third, the disputed domain name is redirected to a website displaying pay-per-click advertisements, including those links that sell products in competition with the Complainant's goods or services.

## B. Respondent

The Respondent did not reply to the Complainant's contentions.

## 6. Discussion and Findings

### 6.1. Preliminary Issue: Language of the Proceeding

According to paragraph 11(a) of the Rules, the language of the administrative proceeding shall be the language of the Registration Agreement unless the Panel determines otherwise or otherwise agreed to by the Parties. In this present case, the Registrar confirmed that the language of the Registration Agreement for the disputed domain name is Korean. However, the Complaint was filed in English. The Complainant requests that the language of the proceeding be English while mentioning the identity and place of residence of the Parties described in the Complaint.

Here, the Panel observes that the Center, for its part, has communicated with the Parties in a bilingual manner in both English and Korean concerning all of the various steps and requirements thus far in the administrative proceeding. However, the Respondent has not responded to the issue of the language of the proceeding. The spirit of paragraph 11 of the Rules is to ensure fairness in the selection of the language of the proceeding by giving full consideration, *inter alia*, to the Parties' level of comfort with the chosen language, expenses to be incurred, and possibility of delay in the proceeding in the event that translations are required and other relevant factors. The Panel would have accepted a Response filed in either English or Korean, but none was submitted.

In consideration of the above circumstances and in the interest of fairness to both Parties, the Panel concludes, in view of all of the above, that the language of the proceeding shall be English. Therefore, the Panel accepts the Complaint filed in English, and that it will render this Decision in English.

### 6.2. Substantive Issues

Under paragraph 4(a) of the Policy, the Complainant must demonstrate that the three elements enumerated in paragraph 4(a) of the Policy have been satisfied. These elements are that:

- (i) the disputed domain name is identical or confusingly similar to the Complainant's trademark or service mark; and
- (ii) the 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.

#### A. Identical or Confusingly Similar

The disputed domain name <ltron.com> includes a misspelling of the Complainant's ITRON Mark, which merely replaces letter "i" with letter "l". The Panel's assessment of identity or confusing similarity involves a straightforward comparison between the disputed domain name and the textual components of the relevant mark. The typo such as the substitution of similar-appearing letter "i" with the letter "l" does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark. (Section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#))).

Numerous UDRP panels have held that where a domain name which consists of an intentional misspelling of a trademark, it is sufficient to consider the domain name to be "confusingly similar" to that mark within the meaning of the Policy. (Section 1.9 of the [WIPO Overview 3.0](#)). In addition, the generic Top-Level Domain

("gTLD") ".com" can be disregarded under the confusing similarity test. (Section 1.11.1 of the [WIPO Overview 3.0](#)).

Accordingly, the Panel finds that the first element under paragraph 4(a) of the Policy has been met by the Complainant.

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

Under paragraph 4(a)(ii) of the Policy, the overall burden of proof is on the Complainant. However, once the Complainant presents a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, the burden of production of evidence shifts to the Respondent. (Section 2.1 of the [WIPO Overview 3.0](#)).

Firstly, the Complainant contends that it has never authorized or licensed the Respondent to use the Complainant's ITRON Mark or to register any domain names incorporating it and that the Respondent has used the Complainant's trademark without the permission of the Complainant. On the other hand, the Respondent did not reply to the Complaint. Currently the disputed domain name is redirected to a website displaying pay-per-click advertisements.

Secondly, the Complainant contends that the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services. In the meantime, the Respondent failed to come forward with any appropriate allegations or relevant evidence that might demonstrate its rights or legitimate interests in the disputed domain name to rebut the Complainant's *prima facie* case.

Thirdly, there is no evidence presented to the Panel that the Respondent has used, or has made demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services or is making a legitimate noncommercial or fair use of the disputed domain name. In addition, there is no evidence to suggest that the Respondent has been commonly known by the disputed domain name.

In the consideration of the above circumstances, the Panel finds that the Complainant has made out a *prima facie* case and the Respondent failed to come forward with any appropriate evidence that might rebut the Complainant's *prima facie* case.

Accordingly, the Panel concludes that the Complainant has satisfied the second element under paragraph 4(a) of the Policy in the present case.

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

Paragraph 4(a)(iii) of the Policy requires that the disputed domain name "has been registered and is being used in bad faith". Hence, the Complainant must establish both bad faith registration and bad faith use of the disputed domain name. In addition, the circumstances listed in paragraph 4(b) of the Policy are not exclusive, and other circumstances may likewise lead to a finding of bad faith registration and use.

Firstly, the Complainant obtained the registration of the United States trademarks much earlier than the Respondent registered the disputed domain name in 2005. Having considered that the Complainant's ITRON Mark is internationally well known, it is highly likely that the Respondent was aware of the reputation of the ITRON Mark when registering a confusingly similar domain name that incorporates a misspelling of the Complainant's ITRON Mark. Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. (Section 3.1 of the [WIPO Overview 3.0](#)). Thus, it is considered bad faith that the Respondent deliberately chose the disputed domain name to create a likelihood of confusion with the Complainant's trademark so as to create a false association or affiliation with the Complainant.

Next, the Panel notes that the Respondent has used the disputed domain name to redirect consumers to a website containing the pay-per-click advertisements, some of which compete with the goods and services described under the Complainant's marks. The Complainant contends that the Respondent's website is operating for commercial gain by creating of confusion with the Complainant's ITRON Mark.

Having considered the reputation of the Complainant's ITRON Mark and the failure of the Respondent to submit a response or to provide any evidence of a *bona fide* use, the Panel finds that the Respondent has registered and is using the disputed domain name in bad faith.

Accordingly, the Panel concludes that the Complainant has satisfied the third element under paragraph 4(a) of the Policy in the present case.

## **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 <ltron.com> be transferred to the Complainant

*/Moonchul Chang/*

**Moonchul Chang**

Sole Panelist

Date: April 5, 2023