

ADMINISTRATIVE PANEL DECISION

Thiele GmbH & Co. KG v. 昆山蒂勒吊索具有限公司 (kunshan thielesling youxiangongsi)

Case No. D2023-1734

1. The Parties

The Complainant is Thiele GmbH & Co. KG, Germany, represented by Bockermann, Ksoll, Griepenstroh, Osterhoff, Germany.

The Respondent is 昆山蒂勒吊索具有限公司 (kunshan thielesling youxiangongsi), China, represented by 上海正源（昆山）律师事务所 (Shanghai Zhengyuan (Kunshan) Law Firm), China.

2. The Domain Name and Registrar

The disputed domain name <thielesling.com> 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 April 19, 2023. On the following day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 27, 2023, 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 (Kun Shan Thielesling Co., Ltd) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 3, 2023, 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 amended Complaint in English on May 3, 2023.

On May 3, 2023, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant confirmed its request that English be the language of the proceeding on May 3, 2023. The Respondent did not comment on the language of the proceeding by the specified due date.

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 the Respondent in English and Chinese of the Complaint, and the proceedings commenced on May 9, 2023. In accordance with the Rules, paragraph 5, the original due date for Response was May 29, 2023. On May 13, 2023, the Center received several emails from the Respondent. On May 25, 2023, the Respondent requested an extension to the Response due date, and requested that Chinese be the language of the proceeding. On the same day, in accordance with paragraph 5(b) of the Rules, the due date for Response was extended to June 2, 2023. The Response was filed with the Center in Chinese on May 29, 2023.

The Center appointed Matthew Kennedy as the sole panelist in this matter on June 13, 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, founded in 1935, is a manufacturer of chains, slings, and other lifting equipment. It holds the following trademark registrations:

- International trademark registration number 318985 for THIELE registered on August 18, 1966, designating multiple jurisdictions, including China, and specifying chains for lifting apparatus and other goods in classes 6, 7, 8, 11, 12, 17, 19, 20, and 26; and
- European Union trademark registration number 000023226 for THIELE, registered on November 24, 1998, specifying chains for lifting and other goods in classes 6, 7, 8, and 12.

The above trademark registrations remain current. The Complainant has also registered the domain name <thiele.de> that it uses in connection with a website where it provides information about itself and its products. The website prominently displays the THIELE mark with the ® symbol alongside a logo of a T inside a lifting point with a round chain. The Complainant has produced a product brochure that also prominently displays the THIELE mark with the ® symbol alongside the same logo on every page.

The Respondent is a Chinese company established on March 31, 2015, named 昆山蒂勒吊索具有限公司, which the Respondent translates as “Kunshan Thielesling Co., Ltd”, based in Kunshan City, Jiangsu Province, China. It has two shareholders, one of whom is 吴荣贵 (Wu Rong Gui). The Respondent exhibited what appear to be polyester ropes and metal chains at a Shanghai trade fair in a booth displaying its company name in Chinese and English. A photograph provided by the Respondent shows that the labels of the polyester ropes displayed a T THIELE trademark and the name of the Respondent in Chinese.

The Respondent’s contact person 冷惠萍 (Len Hui Ping) is the legal representative of a company related to the Respondent, established on January 26, 2010, named 苏州柯恩斯机电设备有限公司 (which may be translated as Suzhou Keensi Electromechanical Equipment Co., Ltd, referred to below as “Suzhou Keensi”). This company is also based in Kunshan City and has two shareholders: 冷惠萍 (Len Hui Ping) and 吴荣贵 (Wu Rong Gui). In December 2013, Suzhou Keensi filed the following Chinese trademark applications:

- Chinese trademark application number 13793225 for a semi-figurative mark featuring a T inside a round chain with a lifting point and the name “THIELE” (the “T THIELE mark”), filed on December 24, 2013, specifying goods in class 22, including rope (later registered on February 28, 2015, and still in force);
- Chinese trademark application number 13793130 for the T THIELE mark, filed on December 24, 2013, specifying tightening chucks in class 6 (later registered on July 28, 2015 and subsequently cancelled for non-use); and

- Chinese trademark application number 13804642 for a semi-figurative mark featuring the name THIELE inside a rectangle (the “THIELE rectangle mark”), filed on December 25, 2013, specifying services in class 35 (later registered in 2015 and subsequently cancelled for non-use).

Suzhou Keensi and the Respondent entered into an exclusive license agreement dated January 1, 2014 (the “2014 license”), under which Suzhou Keensi authorized the Respondent to use the above three trademarks and any others for which Suzhou Keensi later obtained registration. However, the authorization was limited to the following products: THIELE high-strength equipment dead-ring TH series, Grade 100 chain slings and accessories, high-strength steel wire ropes and rigging, high-strength dead belt slings and customized tie-down devices. The authorization also covered promotional marketing, Internet demonstration, etc. related to the above products.

The disputed domain name was registered on January 9, 2014. It formerly resolved to a website in Chinese and English for the Respondent titled “蒂勒吊索具” purportedly offering for sale chains, slings, and other rigging equipment. The English version of the website prominently displayed the THIELE mark apparently in the same font used in the Complainant’s product brochure, with the taglines “World Brand” and “German technology, European standard production”. According to evidence provided by the Complainant, the website displayed photographs of chain slings in the Complainant’s product brochures, with a watermark consisting of the THIELE mark with the ® symbol and a translation in Chinese. The website also displayed a photograph of the Complainant’s factory in Germany reproduced from Google Maps which, according to evidence submitted by the Respondent, is also displayed on the Complainant’s website.

Suzhou Keensi and the Respondent entered into another exclusive license agreement dated December 31, 2021 (the “2021 license”), that covered the same three Chinese trademarks listed in the 2014 license (which had been registered in the meantime) plus three trademarks for 蒂勒, one for THIELEGER, one for THIELEGER METAL T, one for a figurative mark, and the following:

- Chinese trademark registration number 36254161 for the THIELE rectangle mark, registered on February 28, 2021, specifying services in class 35, including advertising; and
- Chinese trademark registration number 51482106 for the THIELE rectangle mark, registered on August 21, 2021, and specifying services in class 35, including advertising.¹

The authorization under the 2021 license agreement is limited to the same products and related services as the 2014 license.

At the time of this Decision, the disputed domain name resolves to a page displaying a “website under maintenance” message.

5. Parties’ Contentions

A. Complainant

The disputed domain name is confusingly similar to the Complainant’s THIELE trademark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. To the best of the Complainant’s knowledge, the Respondent has no rights in respect of the disputed domain name. The interest of the Respondent is solely to associate itself with the THIELE famous brand name. The Respondent offers products identical to those of the Complainant (chains, slings, hooks etc.), which are also covered by the two THIELE trademark registrations.

¹ The Panel notes this trademark is currently subject to a cancellation/invalidation proceeding.

The disputed domain name was registered and is being used in bad faith. The Respondent is intentionally attempting to attract the attention of potential buyers and Internet users for commercial gain by creating a likelihood of confusion by using the Complainant's trademark and company name Thiele in the disputed domain name. This use also suggests that the Complainant is endorsing the Respondent's website and that the offered products are produced by the Complainant's renowned company. This is clearly not the case, as there are no business relations between the Complainant and the Respondent.

B. Respondent

The disputed domain name is not identical or confusingly similar to the Complainant's THIELE trademark. "Thiele" is derived from the trademarks THIELE and THIELEGER that the Respondent was authorized to use by its affiliated company, Suzhou Keensi, and it is also the English translation of the Respondent's company name "蒂勒". "Sling" means "hang or suspend" because the Respondent company's main business is the design, production, processing and sales of rigging products. The Respondent did not intend to cause confusion with the Complainant's THIELE trademark.

The Respondent has rights and legitimate interests in the disputed domain name. The Parties' respective businesses are obviously different. The Respondent's main business is the design, production, processing and sale of rigging products whereas the Complainant is an innovative manufacturer of circular steel chains and forgings in the field of conveyor and hoist technology. The Complainant's trademark is registered with respect to goods mostly in class 7 and it is not registered in classes 22 or 35 at all. The Respondent has legal rights to the disputed domain name. The Respondent is related to the Chinese trademark owner, Suzhou Keensi; and they have a common shareholder, a close internal relationship and external business cooperation. Suzhou Keensi's main business is the sale of electromechanical equipment, valves, pumps, and electromechanical automatic control system equipment. It granted the Respondent authorization to use the THIELE, THIELEGER and other marks. The Respondent has widely used the THIELE trademark. It has used the THIELE trademark online and on the products that it has sold. It has also used the THIELE mark offline, including at the China International Hardware Show held in Shanghai in 2019. It also printed the THIELE mark on the shirts of a basketball team that it sponsored in the Decathlon Cup in Kunshan in 2018, and another basketball team that it sponsored in the Meng Li Fang Cup in Kunshan in 2019.

The disputed domain name was not registered nor is it being used in bad faith. The Respondent has the legal right to use the THIELE trademark in the course of business and also has the legal right to register and use the disputed domain name. The Respondent's purpose in registering the disputed domain name was not to sell, rent or otherwise transfer it to the Complainant or to a competitor of the Complainant and obtain unjustified benefits; nor was it to disrupt the Complainant's normal business or create confusion with the Complainant so as to mislead the public.

6. Discussion and Findings

6.1 Language of the Proceeding

Paragraph 11(a) of the Rules provides that "unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative 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". The Registrar confirmed that the Registration Agreement for the disputed domain name is in Chinese.

The Complainant requests that the language of the proceeding be English. Its main arguments are that the Complainant is based in Germany and that it does not know Chinese; the website connected to the disputed domain name can be set to English, from which it can be concluded that the Respondent is able to communicate in English; and the disputed domain name is registered in the ".com" generic Top-Level Domain ("gTLD"), which also suggests that the Respondent has an international and English-speaking orientation.

The Respondent requests that the language of the proceeding be Chinese.

Paragraphs 10(b) and (c) of the Rules requires the Panel to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding take place with due expedition. Prior UDRP panels have decided that the choice of language of the proceeding should not create an undue burden for the parties. See, for example, *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#); *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. ltd.*, WIPO Case No. [D2008-0293](#).

The Panel observes that in this proceeding the Complaint and amended Complaint were filed in English whereas the Response was filed in Chinese. The website to which the disputed domain name formerly resolved was available in Chinese and English, from which it is reasonable to infer that the Respondent understands both languages. Indeed, the detailed Response demonstrates that the Respondent has in fact understood the Complaint and availed itself of the opportunity to present its case. Therefore, the Panel considers that requiring either Party to translate its submission would create an undue burden and delay, whereas accepting both submissions as filed, without translation, will not cause unfairness to either Party.

Having considered all the circumstances above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English, but the Panel will accept the Response as filed in Chinese.

6.2 Substantive Issues

Paragraph 4(a) of the Policy provides that a complainant must prove the following elements:

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

Based on the evidence presented, the Panel finds that the Complainant has rights in the THIELE mark.

The disputed domain name wholly incorporates the THIELE mark as its initial element, with the addition of the word “sling”. This addition does not prevent a finding of confusing similarity because the THIELE mark remains clearly recognizable within the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.8.

The only additional element in the disputed domain name is the gTLD “.com”. As a standard requirement of domain name registration, this element may be disregarded in the comparison between a domain name and a trademark, unless it has some impact beyond its technical function, which is not the case here. See [WIPO Overview 3.0](#), section 1.11.

The Respondent submits that the disputed domain name is not confusingly similar to the THIELE mark due to its derivation from the Respondent’s name and product type and because the Respondent did not intend to cause confusion. However, the first element of paragraph 4(a) of the Policy calls for a relatively straightforward side-by-side comparison. See [WIPO Overview 3.0](#), section 1.7. The Panel will consider the relationship between the disputed domain name and the Respondent’s business, and the Respondent’s intentions, in relation to the second and third elements below.

Therefore, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the panel, shall demonstrate that the respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- (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 trademark 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 trademark or service mark at issue.

As regards the first and third circumstances set out above, the disputed domain name formerly resolved to a website that prominently displayed the THIELE mark and purportedly offered for sale the same type of goods as the Complainant, using photographs reproduced from the Complainant's product brochure. The Complainant is German. The website referred to THIELE as a "world brand" and "German technology, European standard production" and it also displayed a photograph of the Complainant's factory in Germany. This all gave the impression that the Respondent and its products were sourced from, affiliated with, or endorsed by the Complainant. However, the Complainant submits that there are no business relations between itself and the Respondent. At the time of this Decision, the website is not active. These circumstances indicate that the disputed domain name is not being used in connection with a *bona fide* offering of goods or services, nor is the Respondent making a legitimate noncommercial or fair use of the disputed domain name.

As regards the second circumstance set out above, the Registrar verified that the Respondent's name is listed in the Whois database as "昆山蒂勒吊索具有限公司" and "kunshan thielesling youxiangongsi". The Panel notes that the version in Latin characters incorporates the operational element of the disputed domain name ("thielesling"). However, while "sling" is a translation of the characters "吊索具" in the Respondent's Chinese name, "thiele" is not the Pinyin transliteration of "蒂勒", which is "dì lè".

In summary, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Turning to the Respondent's arguments, it claims that the Parties' main businesses are different. However, the Panel notes that the Respondent's website purportedly offered for sale products identical to those of the Complainant insofar as its photographs of chain slings were copied from the Complainant's product brochure. Even though the Respondent may sell other products offline, such as polyester ropes, the Respondent's website still gave the false impression that it was affiliated with, or endorsed by, the Complainant. This does not create a right or a legitimate interest in the disputed domain name.

The Respondent claims that it holds exclusive trademark licenses from Suzhou Keensi. The Panel notes that the disputed domain name does not incorporate or transliterate most of the trademarks covered by the 2014 and 2021 licenses (such as THIELEGER); it only incorporates the dominant or sole textual element of the T THIELE mark and the THIELE rectangle mark. Further, both trademark licenses are of limited scope, covering only certain products and related services (set out in section 4 above) that do not appear to fall within the scope of Suzhou Keensi's trademark registration for the T THIELE mark. Moreover, the Respondent's own evidence shows that it was not incorporated until March 31, 2015, over a year after it supposedly executed the 2014 license under its company seal, which casts doubt on the authenticity of that document. On the other hand, photographic evidence shows that the Respondent has used the T THIELE

mark at one trade show on polyester ropes within the scope of the trademark registration, with the apparent consent of Suzhou Keensi, to which it is closely related. It also appears to hold rights to the THIELE rectangle mark under the 2021 license.

The Panel considers that trademark rights would ordinarily support a finding that a respondent has rights or legitimate interests in the disputed domain name. See [WIPO Overview 3.0](#), section 2.12.1. At the same time, trademark rights do not automatically confer rights or legitimate interests on a respondent for the purposes of the Policy where, for example, the overall circumstances demonstrate that the trademark was obtained primarily to circumvent the application of the Policy or otherwise to prevent the Complainant's exercise of its rights, even if only in China. See [WIPO Overview 3.0](#), section 2.12.2.

In the present case, the T THIELE mark is remarkably similar to the Complainant's logo and mark. The T THIELE mark features a T inside a round chain with a lifting point, and it includes the name THIELE, whereas the Complainant's logo shows a T inside a lifting point with a round chain, which it has used alongside its THIELE name and mark for decades. The association of THIELE with these figurative elements is arbitrary, from which it may be inferred that the T THIELE mark is an imitation of the Complainant's logo and mark, while the THIELE rectangle mark incorporates the same dominant textual element. Suzhou Keensi filed applications for these trademarks one week before the date of the 2014 license, which was one week before the registration of the disputed domain name. The 2014 license appears to be based on the Complainant's product range. The Respondent was not incorporated until a year later and it is closely related to Suzhou Keensi. The website formerly associated with the disputed domain name displayed photographs from the Complainant's product brochure and a photograph of the Complainant's factory in Germany. Two of the trademark registrations covered by the 2014 license (one for the T THIELE mark and one for the THIELE rectangle mark) have since been cancelled for non-use. The 2021 license is merely an update of the 2014 license. In view of all these circumstances, the Panel has reason to find that the Respondent's trademark rights were acquired primarily to prevent the Complainant's exercise of its trademark rights. Therefore, the existence of these trademark rights does not confer rights or legitimate interests on the Respondent for the purposes of the Policy in this case.

The Respondent also claims that it is widely known under the THIELE trademark. It can be noted that its English name incorporates "Thielesling", which is identical to the disputed domain name. A photograph shows that the Respondent's booth at one trade show was marked with its company name in Chinese and English. Another photograph shows that the labels on some polyester ropes bore the T THIELE mark and the Respondent's company name in Chinese. The Respondent also sponsored local basketball teams in Kunshan in 2018 and 2019 and printed THIELE and its company name in Chinese on the players' shirts. This evidence may show that the Respondent is known to third parties as "Thiele" or by its English company name, which includes the disputed domain name.

Nevertheless, even if the Respondent is known by the disputed domain name, the Panel recalls that "thiele" is not the Pinyin transliteration of any part of the Respondent's Chinese company name. The Respondent does not explain why it chose to transliterate "蒂勒" in that name as "thiele" rather than "dì lè". It appears more likely that "蒂勒" was chosen as a transcription of "Thiele", inspired by the Complainant's name and mark, with the intention to create confusion with the Complainant or to imply an affiliation with the Complainant. This inference is borne out by the circumstances in which the Respondent's trademark rights arose (discussed above). Therefore, the Panel does not find that the Respondent's reputation confers rights or legitimate interests on it for the purposes of the Policy in this case.

For the above reasons, the Panel finds that the Respondent has failed to rebut the Complainant's *prima facie* case.

Therefore, based on the record of this proceeding, the Panel finds that the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that certain circumstances, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The fourth circumstance is as follows:

- (iv) by using the [disputed] domain name, [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 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.

As regards registration, the disputed domain name was registered in 2014, and the Respondent was incorporated in 2015, decades after the registration of the Complainant's THIELE mark, including in China, where the Respondent is established. The disputed domain name wholly incorporates the THIELE mark as its initial element, followed by "sling" which describes one of the Complainant's products. The website formerly associated with the disputed domain name displayed the THIELE trademark apparently in the same font as in the Complainant's product brochure, with the ® symbol, and it displays photographs copied from the Complainant's product brochure, as well as a photograph of the Complainant's factory in Germany. In view of these circumstances, the Panel finds that the Respondent was aware of the Complainant and its mark when it acquired the disputed domain name.

As regards use, the disputed domain name formerly resolved to a website for the Respondent titled “蒂勒吊索具” that prominently displayed the THIELE mark and offered for sale the Complainant's products, using photographs reproduced from the Complainant's product brochure. For the reasons given in section 6.2B above, the website gave the false impression that the Respondent and its products were sourced from, affiliated with, or endorsed by the Complainant. The Panel finds that, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or of products on that website within the terms of paragraph 4(b)(iv) of the Policy.

The Panel takes note that the use of the disputed domain name has recently changed and that the Respondent's website is no longer active. However, this change in use does not alter the Panel's conclusion, if anything, it may be a further indication of bad faith.

Therefore, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant has satisfied the third element in 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 disputed domain name <thielesling.com> be transferred to the Complainant.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: June 30, 2023