

## **ADMINISTRATIVE PANEL DECISION**

Landis+Gyr AG v. MEI WANG

Case No. D2023-1770

### **1. The Parties**

The Complainant is Landis+Gyr AG, Switzerland, represented by SafeNames Ltd., United Kingdom.

The Respondent is MEI WANG, China.

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

The disputed domain name <landisgyr.xyz> is registered with Sav.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 20, 2023. On April 21, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 21, 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 (Privacy Protection.com, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant April 24, 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 amended Complaint on April 27, 2023.

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 of the Complaint, and the proceedings commenced on May 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 21, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 23, 2023.

The Center appointed Daniel Peña as the sole panelist in this matter on May 30, 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 is a Swiss publicly traded multinational corporation which provides energy management solutions to customers across the Americas, Europe and Asia Pacific.

The Complainant is the owner of numerous trademark registrations worldwide, including the following:

- Trademark LANDIS & GYR, International registration 253936, registered March 27, 1962
- Trademark LANDIS & GYR, Canada TMA208092, registered July 11, 1975
- Trademark LANDIS & GYR, Switzerland 2P-31782, registered August 26, 1982
- Trademark LANDIS & GYR, European Union 000921072, registered November 23, 2000
- Trademark LANDIS & GYR, International registration 713229, registered November 4, 1998
- Trademark LANDIS+GYR, International registration 803815, registered January 9, 2003
- Trademark LANDIS+GYR, United States of America (“United States”) registration 3395350, registered March 11, 2008
- Trademark LANDIS+GYR, United States registration 3576576, registered February 17, 2009
- Trademark LANDIS+GYR (LOGO), International registration 1264270, registered March 18, 2015

The disputed domain name was registered on December 19, 2021 and resolves to the website “www.dan.com”, offering the disputed domain name for sale.

#### **5. Parties’ Contentions**

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

The Complainant offers a broad portfolio of energy management solutions products and services to over 3,500 utility companies worldwide. It provides a wide range of devices including that of communications units, electricity meters, heating and cooling meters.

Since its founding in 1896, the Complainant has become well-known for its offering of goods and services within the fields of metering infrastructure and smart grid technologies.

The Complainant’s 125-year-old history began with its manufacturing of state-of-the-art electricity meters for European utility companies in 1896. This reach expanded internationally in 1924, and growth continued with the advent of digital meters in the 1980s. In the early 2000s, the Complainant expanded into wireless networking services. Today, the Complainant focuses on improving energy efficiency and increasing sustainability for both utility companies and end-users.

The Complainant has a widespread global presence, operating in more than 30 countries. It has over 6,800 employees and made a revenue of USD 1.464 billion in Financial Year 2021.

The Complainant submits that the disputed domain name is identical, and if not, confusingly similar to the Complainant’s LANDIS+GYR trademark. The disputed domain name contains in its entirety the LANDIS+GYR trademark – the only difference is the removal of the symbol “+” between the expressions “landis” and “gyr”.

The Complainant submits that the Respondent lacks a right or a legitimate interest in the disputed domain name.

The Respondent does not have any trademark rights to the term “landis+gyr”.

The Respondent has not received any license from the Complainant to use any domain name featuring the LANDIS+GYR trademark.

The Complainant submits that the Respondent uses the disputed domain name to redirect to the domain aftermarket website “www.dan.com” where the disputed domain name is advertised for sale at a “buy now” price of USD 1,450.

The Complainant submits that the evidence shows that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name.

The Respondent has ignored a cease and desist letter sent by the Complainant’s Representative on July 13, 2022. This letter was written and sent in order to put the Respondent on notice of the Complainant’s trademarks and rights, and with a view to resolve the matter amicably.

The Complainant submits that the disputed domain name has been intentionally registered and used with the Complainant’s trademark in mind, in view of profiting from the disputed domain name in excess of the Respondent’s out of pocket costs.

## **B. Respondent**

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

## **6. Discussion and Findings**

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (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. Considering these requirements, the Panel rules as follows:

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

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant has provided evidence of its rights in the trademarks LANDIS+GYR and LANDIS & GYR on the basis of its multiple trademark registrations including its international trademark registrations, and those in the United States, the European Union, Canada and Switzerland. A trademark registration provides a clear indication that the rights in the trademark belong to the Complainant (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“[WIPO Overview 3.0](#)”), section 1.2.1). It has also been established by prior UDRP panels that incorporating a trademark in its entirety into a domain name can be sufficient to establish that the domain name is confusingly similar to a trademark. Such findings were confirmed, for example, within section 1.7 of the [WIPO Overview 3.0](#).

The Respondent’s incorporation of the Complainant’s LANDIS+GYR trademark in full in the disputed domain name is evidence that the disputed domain name is confusingly similar to the Complainant’s mark. Mere removal of the symbol “+” does not prevent a finding of confusing similarity between the disputed domain name and the Complainant’s LANDIS+GYR mark because the Complainant’s LANDIS+GYR trademark remains clearly recognizable in the disputed domain name.

As noted in [WIPO Overview 3.0](#), section 1.8: “Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element.” Furthermore, the addition of the generic Top-Level Domain “gTLD” “.xyz” is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the trademark in which the Complainant has rights, meaning that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

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

Although the Complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, UDRP panels have recognized that demonstrating a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of proving a negative, requiring information that is primarily if not exclusively within the respondent's knowledge. Thus, the consensus view is that paragraph 4(c) of the Policy shifts to the respondent the burden of production to come forward with relevant evidence of rights or legitimate interests in the disputed domain name, once the complainant has made a *prima facie* case that the respondent lacks rights or legitimate interests.

The Complainant's above-noted assertions and evidence in this case effectively shift the burden of production to the Respondent of producing evidence of rights or legitimate interests in the disputed domain name, providing the circumstances of paragraph 4(c) of the Policy, without limitation, in order to rebut the Complainant's *prima facie* case. However, the Respondent has not replied to the Complainant's contentions, not providing any explanation or evidence of rights or legitimate interests in the disputed domain name.

A core factor in assessing fair use of a domain name is that it does not falsely suggest affiliation with the complainant's trademark. See section 2.5, [WIPO Overview 3.0](#). The disputed domain name incorporates the LANDIS+GYR trademark in its entirety, merely removing the symbol "+". The Panel considers that the disputed domain name carries a risk of implied affiliation with the Complainant and the Complainant's trademark.

The Panel further considers that the Complainant has made out a strong *prima facie* case that the Respondent could not have rights or legitimate interests in the disputed domain name, not being authorized to use the LANDIS+GYR trademark, and there is no evidence that suggests that the Respondent is commonly known by the disputed domain name. The Panel has further corroborated that the disputed domain name resolves to website "www.dan.com" where the disputed domain name is advertised for sale at a "buy now" price of USD 1,450.

In this respect, the Panel notes that the Respondent's name, provided in the registration of the disputed domain name, was concealed under a privacy registration service.

All the above-mentioned circumstances lead the Panel to conclude that the Respondent has not rebutted the Complainant's *prima facie* case, and nothing in the case file gives reason to believe, that the Respondent has or has had any rights or legitimate interests in respect of the disputed domain name.

Therefore, the second element of the Policy under paragraph 4(a)(ii) has been established.

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

Paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation", are evidence of the registration and use of the disputed domain name in "bad faith":

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

- (ii) that Respondent has 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 Respondent has engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the domain names primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the domain names, 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 Respondent's website or location.

The Panel concludes that the Respondent has registered and used the disputed domain name in bad faith. Because the LANDIS+GYR mark had been used and registered at the time of the disputed domain name registration by the Respondent, the Panel finds that the Respondent had the Complainant's mark in mind when registering the disputed domain name (*Tudor Games, Inc. v. Domain Hostmaster, Customer ID No. 09382953107339 dba Whois Privacy Services Pty Ltd / Domain Administrator, Vertical Axis Inc.*, WIPO Case No. [D2014-1754](#); *Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net*, WIPO Case No. [D2000-0226](#)).

The disputed domain name, almost identical with the Complainant's trademark, was being offered for sale. This, in view of the finding that the Respondent has no right to or legitimate interest in the disputed domain name, and in the circumstances of the case, affirms the bad faith (*Aygaz Anonim Sirketi v. Arthur Cain*, WIPO Case No. [D2014-1206](#); [WIPO Overview 3.0](#), section 3.1).

The Complainant also relies upon the fact that the Respondent failed to respond to a cease and desist letter sent by the Complainant's lawyers on July 13, 2022, in which the Complainant requested the Respondent should stop using and transfer the disputed domain name. The Panel follows earlier UDRP decisions and finds that a failure to respond to such a letter can be further *prima facie* evidence of bad faith.

The Panel considers also the apparent concealment of the Domain Names holder's identity through use of a privacy shield (*BHP Billiton Innovation Pty Ltd v. Domains By Proxy LLC / Douglass Johnson*, WIPO Case No. [D2016-0364](#)).

Consequently, the Panel finds that the disputed domain name was registered and used by the Respondent in bad faith within Paragraph 4(a)(iii) 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 <landisgyr.xyz> be transferred to the Complainant.

/Daniel Peña/

**Daniel Peña**

Sole Panelist

Date: June 13, 2023