

ADMINISTRATIVE PANEL DECISION

Demag IP Holdings GmbH v. 乔钦涛 (Qiao Qin Tao)
Case No. D2023-2115

1. The Parties

Complainant is Demag IP Holdings GmbH, Switzerland, represented by Moser Götze & Partner Patentanwälte mbB, Germany.

Respondent is 乔钦涛 (Qiao Qin Tao), China.

2. The Domain Name and Registrar

The disputed domain name <dmgqzj.com> is registered with Alibaba Cloud Computing (Beijing) Co., Ltd. (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on May 12, 2023. On May 12, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 15, 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 (德马格起重机(大连)有限公司 (Demag Crane (Dalian) Co., Ltd.) and contact information in the Complaint. The Center sent an email communication to Complainant on May 15, 2023, 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 May 16, 2023.

On May 15, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On May 16, 2023, 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 May 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 12, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on June 14, 2023.

The Center appointed Yijun Tian as the sole panelist in this matter on June 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, Demag IP Holdings GmbH, is a company incorporated in Switzerland. It is part of a group of companies based in Germany that designs and manufactures industrial cranes and components, marketed and sold worldwide under the trademark DEMAG.

Complainant is the owner of numerous DEMAG trademark registrations worldwide, including the International Trademark DEMAG registered on May 31, 1983 (International Trademark registration number 485602), the Chinese Trademark DEMAG registered on June 28, 1998 (the Chinese Trademark registration number 1187255), and the Chinese Trademark 德马格 (Chinese version DEMAG) registered on March 14, 2001 (the Chinese Trademark registration number 1538931).

Respondent is 乔钦涛 (Qiao Qin Tao), China.

The disputed domain name was registered on March 25, 2015. The disputed domain name is currently resolved to a bilingual (Chinese and English) website of a company called “德玛格起重机（大连）有限公司 (Demag Crane (Dalian) Co., Ltd.)”, displaying the Complainant's Chinese trademark 德马格 and promoting DLDMG branded products, such as hoist, beam bridge, door machine, and crane.

The evidence provided by Complainant shows that the company on the website associated with the disputed domain name appears to have been established in 2014 and Complainant took an administrative action through the Chinese authority to change the company name. The Panel visited the website at China National Enterprise Credit Information Publicity System¹ and noted that the company name has been changed from “德马格起重机（大连）有限公司” to “德玛格起重机（大连）有限公司” (the only change is the second Chinese character in the company name which has the same pronunciation but with a different Chinese character, presumably to distinguish from the Chinese character used by Complainant for its Chinese trademark and Chinese company name). The English transliteration of the company name remains as Demag Crane (Dalian) Co., Ltd.

The case record has also shown that China National Intellectual Property Administration (CNIPA) issued a decision on June 30, 2022 regarding Complainant's successful invalidation of the Chinese Trademark registration number 16590019 for DLDMG owned by 德马格起重机（大连）有限公司 (Demag Crane (Dalian) Co., Ltd.). The Panel notes that the public record available at the website of CNIPA still shows that this trademark is pending for invalidation. The Panel further notes that the same company applied for the same trademark under the number 71720971 on May 22, 2023, shortly after the commencement of the current proceeding. This trademark is awaiting for examination.

On May 25, 2018, Complainant issued a cease and desist letter to 德马格起重机（大连）有限公司 (Demag Crane (Dalian) Co., Ltd.) but no reply has been received according to the current record.

¹ Noting in particular the general powers of a panel articulated *inter alia* in paragraphs 10 and 12 of the Rules, it has been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.8.

5. Parties' Contentions

A. Complainant

Complainant contends that the disputed domain name is confusingly similar to Complainant's DEMAG trademarks. The products shown on the website resolved by the disputed domain name are identical or similar to the ones from Complainant's designated goods and services, especially cranes, hoists, etc.

Complainant contends that Respondent has no rights or legitimate interests in the disputed domain name. Respondent is neither an official partner nor a licensee of DEMAG trademarks.

Complainant contends that the disputed domain name was registered and is being used in bad faith.

Complainant requests that the disputed domain name be cancelled.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

6.1. Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement. From the evidence presented on the record, no agreement appears to have been entered into between Complainant and Respondent to the effect that the language of the proceeding should be English. Complainant initially filed its Complaint in English, and has requested that English be the language of the proceeding for the following main reasons:

- (a) The presence of an "English" button on the homepage (which is resolved by the disputed domain name) indicates Respondent's familiarity with the requested language.
- (b) Complainant is a Swiss company (jointly owned by a Japanese and Finnish company) and is represented by a German patent attorney. To conduct the proceeding in English would make it possible for both Parties.
- (c) Complainant does not speak nor understand the Chinese language. To conduct the proceeding in the Chinese language would highly disadvantage Complainant.

Respondent did not make any submission with respect to the language of the proceeding and did not object to the use of English as the language of the proceeding.

Paragraph 11(a) of the Rules allows the panel to determine the language of the proceeding having regard to all the circumstances. In particular, it is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding. In other words, it is important to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes (*Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. ltd.*, WIPO Case No. [D2008-0293](#); *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#)). The language finally decided by the panel for the proceeding should not be prejudicial to either one of the parties in its abilities to articulate the arguments for the case (*Groupe Auchan v. xmxzl*, WIPO Case No. [DCC2006-0004](#)). Section 4.5.1 of the [WIPO Overview 3.0](#) further states:

"Noting the aim of conducting the proceedings with due expedition, paragraph 10 of the UDRP Rules vests a

panel with authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case.

Against this background, panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios include (i) evidence showing that the respondent can understand the language of the complaint, (ii) the language/script of the domain name particularly where the same as that of the complainant's mark, (iii) any content on the webpage under the disputed domain name, (iv) prior cases involving the respondent in a particular language, (v) prior correspondence between the parties, (vi) potential unfairness or unwarranted delay in ordering the complainant to translate the complaint, (vii) evidence of other respondent-controlled domain names registered, used, or corresponding to a particular language, (viii) in cases involving multiple domain names, the use of a particular language agreement for some (but not all) of the disputed domain names, (ix) currencies accepted on the webpage under the disputed domain name, or (x) other indicia tending to show that it would not be unfair to proceed in a language other than that of the registration agreement." (See also *L'Oreal S.A. v. MUNHYUNJA*, WIPO Case No. [D2003-0585](#)).

On the record, Respondent is located in China and is thus presumably not a native English speaker. However, considering the following, the Panel has decided that English should be the language of the proceeding: (a) the disputed domain name includes Latin characters, rather than Chinese scripts; (b) the generic Top-Level Domain ("gTLD") of the disputed domain name is ".com", so the disputed domain name seems to be prepared for users worldwide, particularly English speaking countries; (c) The disputed domain name is currently resolved to a bilingual (Chinese and English) website; (d) the Center has notified Respondent of the proceeding in both Chinese and English but Respondent did not comment on the language of the proceeding; and (e) the Center informed the Parties, in English and Chinese, that it would accept a Response in either English or Chinese, but none was filed.

Accordingly, the Panel finds the choice of English as the language of the present proceeding is fair to both Parties and is not prejudicial to either one of the Parties in its ability to articulate the arguments for this case. Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that English shall be the language of the proceeding, and the decision will be rendered in English.

6.2. Substantive Issues

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that the disputed domain name should be cancelled or transferred:

- (i) the disputed domain name registered by Respondent 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 disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

On the basis of the evidence introduced by Complainant and in particular with regard to the content of the relevant provisions of the Policy (paragraphs 4(a)-(c)), the Panel concludes as follows:

A. Identical or Confusingly Similar

The Panel finds that Complainant has rights in the DEMAG and 德马格 (Chinese version of DEMAG) marks acquired through registration and use.

In relation to the disputed domain name, the Panel finds that the main part of the disputed domain name "dmqzj" comprises: a) "dmq", the abbreviation of Pinyin of the Chinese trademark 德马格 ("de ma ge"), and it also only differs from Complainant's DEMAG trademark by deleting the letters "e" and "a", and b) the term

“qzj”, the abbreviation of Pinyin of 起重机 (“qi zhong ji”) (Chinese translation of “crane”), and the gTLD “.com”. In the Panel’s opinion, Complainant’s marks remain recognizable within the disputed domain name.

The Panel further notes that cranes are one of the main products that Complainant is selling, and the website at the disputed domain name also offers for sale cranes (under the brand name DLDMG) and displays 德马格 (being Complainant’s Chinese trademark for DEMAG). Therefore, it appears *prima facie* that Respondent seeks to target Complainant’s trademarks through the disputed domain name.

Further, in relation to the gTLD suffix, [WIPO Overview 3.0](#) further states: “The applicable Top-Level Domain (‘TLD’) in a domain name (e.g., ‘.com’, ‘.club’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.” ([WIPO Overview 3.0](#), section 1.11.1.)

The Panel, therefore, finds that the disputed domain name is confusing similar to Complainant’s trademarks, and holds that the Complaint fulfils the first condition of paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that Respondent has rights or legitimate interests in the disputed domain name:

- (i) before any notice to Respondent of the dispute, the use by Respondent of, or demonstrable preparations to use, the disputed domain names or a name corresponding to the disputed domain names in connection with a *bona fide* offering of goods or services; or
- (ii) Respondent has been commonly known by the disputed domain names, even if Respondent has acquired no trademark or service mark rights; or
- (iii) Respondent is making a legitimate noncommercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish Complainant’s trademarks.

The overall burden of proof on this element rests with the complainant. However, it is well established by previous UDRP panel decisions that once a complainant establishes a *prima facie* case that a respondent lacks rights or legitimate interests in a domain name, the burden of production shifts to the respondent to rebut complainant’s contentions. If the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. (*Danzas Holding AG, DHL Operations B.V. v. Ma Shikai*, WIPO Case No. [D2008-0441](#); [WIPO Overview 3.0](#), section 2.1, and cases cited therein).

As mentioned above, Complainant has rights in the DEMAG marks acquired through registration and use, including the International Trademark DEMAG registered in 1983, the Chinese Trademark DEMAG registered in 1998, and the Chinese Trademark 德马格 (Chinese version DEMAG) registered in 2001, which all precede Respondent’s registration of the disputed domain name (2015) by many years. According to the Complaint, Complainant is a company incorporated in Switzerland that designs and manufactures industrial cranes and components, marketed and sold worldwide under the trademarks DEMAG and 德马格.

Complainant asserts that it has not authorized Respondent to use its DEMAG and 德马格 marks, and Respondent is not a licensee of Complainant. Complainant has therefore established a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain names and thereby shifted the burden to Respondent to produce evidence to rebut this presumption (*The Argento Wine Company Limited v. Argento Beijing Trading Company*, WIPO Case No. [D2009-0610](#); *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

Based on the following reasons the Panel finds that Respondent has no rights or legitimate interests in the disputed domain name:

- (a) There has been no evidence adduced to show that Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services. Respondent has not provided evidence of legitimate use of the disputed domain name or reasons to justify the choice of the term “dmg” in the disputed domain name. There has been no evidence to show that Complainant has licensed or otherwise permitted Respondent to use the DEMAG and 德马格 marks or to apply for or use any domain name incorporating the Pinyin abbreviation of 德马格 marks;
- (b) There has been no evidence adduced to show that Respondent has been commonly known by the disputed domain name. The registered trademark DLDMG owned by the company on the website associated with the disputed domain name has been invalidated by Complainant. In addition, although the company was previously called “德马格起重机（大连）有限公司 (Demag Crane (Dalian) Co., Ltd.)” and is now called “德玛格起重机（大连）有限公司 (Demag Crane (Dalian) Co., Ltd.)” and “dmg” is the abbreviation of Pinyin of the first three Chinese characters 德马格 or 德玛格 (“de ma ge”) and “qzj” is the abbreviation of Pinyin of 起重机 (“qi zhong ji”) (Chinese translation of “ crane”), there is no evidence on the record that Respondent has been known as “dmgqzj”. Further, the company seems to sell the products under the brand name DLDMG. Moreover, considering Complainant’s DEMAG and 德马格 trademark registrations predate the establishment of Respondent’s company by many years, and the Parties are in the same area of business, it appears more likely than not that Respondent’s choice of “德马格” or “德玛格” and their transliteration “Demag” in their company name has been inspired by Complainant’s name and mark.
- (c) There has been no evidence adduced to show that Respondent is making a legitimate noncommercial or fair use of the disputed domain name. The disputed domain name resolves to a website in both English and Chinese, which is selling DLDMG branded products, such as hoist, beam bridge, door machine, and crane.

The Panel finds that Respondent has failed to produce any evidence to rebut Complainant’s *prima facie* case. The Panel, therefore, holds that the Complaint fulfils the second condition of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out four circumstances which, without limitation, shall be evidence of the registration and use of the disputed domain name in bad faith, namely:

- (i) circumstances indicating that Respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to Complainant who is the owner of the trademark or service mark or to a competitor of Complainant, for valuable consideration in excess of Respondent’s documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) Respondent has registered the disputed 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) Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the disputed domain name, 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 the website or location.

The Panel concludes that the circumstances referred to in paragraph 4(b)(iv) of the Policy are applicable to

the present case and upon the evidence of these circumstances and other relevant circumstances, it is adequate to conclude that Respondent has registered and used the disputed domain name in bad faith.

(a) Registration in Bad Faith

The Panel finds that Complainant has a widespread reputation in the DEMAG and 德马格 marks with regard to its products and services. Complainant has registered its DEMAG marks internationally since 1983, and in China since 1998, and registered its 德马格 marks in China since 2001. It is not conceivable that Respondent would not have had actual notice of Complainant's trademark rights at the time of the registration of the disputed domain name particularly noting that Respondent sells similar products on the website associated with the disputed domain name, and the website also displays Complainant's Chinese trademark 德马格.

Moreover, Respondent has chosen not to respond to Complainant's allegations. According to the UDRP decision in *The Argento Wine Company Limited v. Argento Beijing Trading Company, supra*, "the failure of Respondent to respond to the Complaint further supports an inference of bad faith". See also *Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. [D2002-0787](#).

Thus, the Panel concludes that the disputed domain name was registered in bad faith.

(b) Use in Bad Faith

Respondent is using the website resolved by the disputed domain name to sell DLDMG branded products, such as hoist, beam bridge, door machine, and crane. Thus, the Panel concludes that Respondent is using the confusingly similar disputed domain name with the intention to attract, for commercial gain, Internet users to Respondent's website.

Given the reputation of the DEMAG and 德马格 marks, the Panel finds that the public is likely to be confused into thinking that the disputed domain name has a connection with Complainant, contrary to the fact. There is a strong likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the website to which the disputed domain name resolves. In other words, Respondent has through the use of the confusingly similar disputed domain name created a likelihood of confusion with the DEMAG and 德马格 marks.

The Panel, therefore, concludes that the disputed domain name was registered and is being used by Respondent in bad faith. Such use of the disputed domain name is also disruptive in relation to the interests of Complainant.

In summary, Respondent, by choosing to register and use the disputed domain name, which is confusingly similar to the DEMAG and 德马格 marks, intended to ride on the goodwill of this trademark in an attempt to exploit, for commercial gain, Internet users destined for Complainant. In the absence of evidence to the contrary and rebuttal from Respondent, the choice of the disputed domain name and the conducts of Respondent as far as the website to which the disputed domain name resolves are indicative of registration and use of the disputed domain name in bad faith.

The Panel, therefore, holds that the Complaint fulfils the third condition of paragraph 4(a) of the Policy.

7. Decision

For all 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 <dmqqzj.com> be cancelled.

/Yijun Tian/

Yijun Tian

Sole Panelist

Dated: July 11, 2023