

## **ADMINISTRATIVE PANEL DECISION**

Leviton Manufacturing Co., Inc. v. 赖甜甜 (lai tian tian)

Case No. D2023-2281

### **1. The Parties**

The Complainant is Leviton Manufacturing Co., Inc., United States of America (“United States”), internally represented.

The Respondent is 赖甜甜 (lai tian tian), China.

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

The disputed domain name <leviton-china.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 24, 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 May 26, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name that differed from the named Respondent (Registrant and owner of “www.leviton-china.com”) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 26, 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 31, 2023. The Complainant filed a second amended Complaint in English on June 1, 2023, incorporating a correction regarding the requested remedy.

On May 26, 2023, the Center sent an email communication to both Parties in Chinese and English regarding the language of the proceeding. On May 31, 2023, the Complainant submitted 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 together with the first and second amended Complaints 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 June 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 25, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 28, 2023.

The Center appointed Matthew Kennedy as the sole panelist in this matter on July 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 manufactures and sells lighting, electrical, power, and technology-related products. It holds multiple trademark registrations in multiple jurisdictions, including the following:

- United States trademark registrations numbers 2726639 and 4232800, both for LEVITON, registered on June 17, 2003 and October 30, 2012, respectively, with claims of first use in commerce on April 1, 1924, specifying goods in classes 9 and 11;
- Chinese trademark registrations numbers 4621949, 4621950, 4621951, 4621952, 4621953, and 4621954, all for 立维腾 (a phonetic transcription of "Leviton"), variously registered on February 21, 2008, May 7, 2008, and October 21, 2008, specifying goods and services in classes 9, 11, 35, and 45; and
- Chinese trademark registrations numbers 6334867, 6335009, and 8110888, all for a semi-figurative mark featuring the name LEVITON ("the LEVITON logo"), registered on September 28, 2010, April 28, 2010, and March 21, 2011, respectively, specifying goods in classes 9, 25, and 20, respectively.

The above trademark registrations remain current. The Complainant has also used the domain name <leviton.com> since 1995 in connection with a website where it provides information about itself and its products.

The Respondent is an individual based in China. There is no evidence that the Respondent has ever been a distributor of the Complainant or otherwise affiliated with the Complainant.

The disputed domain name was registered on July 23, 2021. It resolves to a website in Chinese that prominently displays the LEVITON logo and a photograph of one of the Complainant's buildings with a notice that presents "Leviton" (in Latin script). The website displays photographs reproduced from the Complainant's website and uses the Complainant's 立维腾 mark to offer products for sale. Under the heading "关于我们" (*i.e.*, About Us), the website refers to the operator as a global company and presents the history of the Complainant and the Complainant's business in China. Under the heading "联系我们" (*i.e.*, Contact Us), the website provides only a service center telephone number with no other contact details.

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

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

The disputed domain name is confusingly similar to the Complainant's LEVITON mark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. The Complainant has not granted permission for the Respondent to register the disputed domain name or to use the Complainant's images and trademarks on the associated website. The Respondent appears to be

connected to/or is a former distributor of the Complainant and either never has been or is no longer affiliated with the Complainant. The Respondent is using the misleading disputed domain name to create an association with the Complainant in order to divert customers from the Complainant's legitimate website and authorized sellers. It is evident that the Respondent is not making a *bona fide* use of the disputed domain name.

The disputed domain name was registered and is being used in bad faith. The Respondent was aware of the Complainant at the time that she registered the disputed domain name because the Complainant is a global company and the Respondent is likely a former distributor of the Complainant. The Respondent only recently registered the disputed domain name, years after the Complainant ended any distribution relationship with the Respondent. The Respondent's website directly competes with the Complainant's business. The Respondent's website contains multiple uses of the LEVITON logo and other registered trademarks, and mimics the overall look and feel of the Complainant's websites, to sell unauthorized and potentially counterfeit LEVITON products.

The Complainant requests that the disputed domain name be cancelled.

## **B. Respondent**

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

## **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 translation of the Complaint into Chinese would impose a significant cost and time burden on the Complainant.

Paragraph 10(b) and (c) of the Rules require 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](#); and *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. ltd.*, WIPO Case No. [D2008-0293](#).

The Panel observes that the Complaint and amended Complaints were filed in English. Despite the Center having sent the notification of the Complaint and an email regarding the language of the proceeding in both Chinese and English, the Respondent has not commented on the language of the proceeding nor expressed any interest in otherwise participating in this proceeding. The Panel notes some product information on the Respondent's website is in English, and which suggests it understands that language. Therefore, the Panel considers that requiring the Complainant to translate the Complaint, as amended, would create an undue burden and delay, whereas accepting it 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. The Panel would have accepted a Response in Chinese, but none was filed.

## 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 LEVITON mark.

The disputed domain name wholly incorporates the LEVITON mark. It adds the country name “China” separated from the mark by a hyphen. This addition does not prevent a finding of confusing similarity because the LEVITON mark remains clearly recognizable within the disputed domain name. See 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 a generic Top-Level Domain (“gTLD”) extension (“.com”). As a standard requirement of domain name registration, a gTLD extension may be disregarded in the comparison with a mark unless it has some impact beyond its technical function, which is not the case here. See [WIPO Overview 3.0](#), section 1.11.

Therefore, the Panel finds that the disputed domain name is confusingly similar to a mark in which the Complainant has rights. The Complainant has satisfied the first condition 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 combines the LEVITON logo with the country name “China”, giving the impression that it will resolve to the Complainant’s Chinese website. That impression is confirmed by the content of the associated website, which prominently displays the LEVITON logo with a photograph of one of the Complainant’s buildings, while presenting the “Leviton” brand in Latin script, repeatedly using the 立维腾 mark, offering for sale what are purported to be the Complainant’s products, and presenting the Complainant as if it were the operator of the site. However, the Complainant submits that the Respondent is not affiliated with the Complainant. In view of these circumstances, regardless of whether the products offered for sale are genuine or counterfeit, the Panel

considers that the Complainant has made a *prima facie* case that the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services, nor is she making a legitimate noncommercial or fair use of the disputed domain name.

As regards the second circumstance set out above, the Respondent is identified in the Registrar's Whois database as “赖甜甜 (lai tian tian)”, which is not the disputed domain name. The disputed domain name is not a phonetic transcription of this personal name. Although the website associated with the disputed domain name is falsely presented as the Complainant's Chinese website, and the Complainant submits evidence of a product brochure published by the Respondent using the brand “立维腾” (a phonetic transcription of “Leviton”), there is no evidence that the Respondent has been commonly known by the disputed domain name.

There is no evidence that the Respondent holds any relevant trademark registrations.

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. The Respondent failed to rebut that *prima facie* case because she did not respond to the Complaint.

Therefore, based on the record of this proceeding, the Panel finds that the Complainant has satisfied the second condition 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 2021, years after the registration of the Complainant's LEVITON mark. The disputed domain name wholly incorporates the LEVITON mark, which is a name, not a dictionary word, and combines it with the country name “China”. The Panel considers the composition of the disputed domain name is inherently misleading. The website associated with the disputed domain name displays not only the Complainant's LEVITON mark but also the Complainant's LEVITON logo and 立维腾 mark, both of which are registered in China, where the Respondent is based. The website offers for sale what are purported to be the Complainant's products and presents the history of the Complainant's business. In view of these circumstances, the Panel finds that the Respondent was aware of the Complainant at the time that she registered the disputed domain name. Nothing indicates that the Respondent ever received the Complainant's permission to register the disputed domain name.

As regards use, the disputed domain name is used to resolve to a website that is falsely presented as the Complainant's Chinese website. This use is intentional and for commercial gain. In view of these circumstances, the Panel considers that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to her website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of his website within the terms of paragraph 4(b)(iv) of the Policy.

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 condition 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 <leviton-china.com> be cancelled.

*/Matthew Kennedy/*

**Matthew Kennedy**

Sole Panelist

Date: July 26, 2023