

ADMINISTRATIVE PANEL DECISION

Power Adhesives Limited v. 陈竹 (chen zhu)
Case No. D2023-2575

1. The Parties

Complainant is Power Adhesives Limited, United Kingdom (“UK”), represented by Withers & Rogers LLP, United Kingdom.

Respondent is 陈竹 (chen zhu), China.

2. The Domain Name and Registrar

The disputed domain name <badapter.com> is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on June 14, 2023. On June 15, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 16, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to Complainant on June 19, 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 June 21, 2023.

On June 19, 2023, the Center sent an email communication to both Parties in Chinese and English regarding the language of the proceeding. On June 21, 2023, Complainant submitted its 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 June 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 16, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on July 25, 2023.

The Center appointed Yijun Tian as the sole panelist in this matter on August 1, 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

A. Complainant

Complainant, Power Adhesives Limited, is a company incorporated in the UK. It is a provider of battery adapters for leading power tool brands in the UK and the European Union ("EU"). Complainant has exclusive rights in the BADAPTOR marks. Complainant is the owner of several BADAPTOR marks worldwide, including a UK trademark registration for BADAPTOR, registered since July 13, 2018 (the UK trademark registration number UK00003306357); and a EU trademark registration for BADAPTOR, registered since April 30, 2021 (the EU trademark registration number 018354763). Complainant also maintains and operates a domain name which contains the BADAPTOR mark in its entirety, *i.e.*, <badaptor.com>, and uses the website resolved by this domain name to advertise and sell battery adapters for leading power tool brands.

B. Respondent

Respondent is 陈竹 (chen zhu), China.

The disputed domain name <badapter.com> was registered on September 10, 2022, after the BADAPTOR marks were registered. The disputed domain name does not resolve to an active website.

5. Parties' Contentions

A. Complainant

Complainant contends that the disputed domain name is almost identical to Complainant's distinctive trademark BADAPTOR, with the exception of one letter, where the "o" has been replaced with an "e" in "badapter".

Complainant contends that Respondent has no rights or legitimate interests in respect of the disputed domain name.

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

Complainant requests that the disputed domain name be transferred to it.

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 filed initially its Complaint in English, and has requested that English be the language of the proceeding for the following main reasons:

- (a) Complainant is a UK registered company, located in the UK and has no knowledge of Chinese.
- (b) To proceed with this Complaint in Chinese, Complainant would be required to retain the services of a translator which would burden Complainant with a cost that will be significantly higher than the overall cost of the administrative proceedings.
- (c) Not only would Complainant face a higher financial burden, but it would also cause undue delay.
- (d) The language/script of the disputed domain name is the same as that of Complainant's trademark; they both consist of English/Latin characters, not Chinese script. This indicates that Respondent has knowledge of the English language.
- (e) English is the primary language for "international relations".

Respondent did not make any submissions 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](#)). WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[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."

([WIPO Overview 3.0](#), section 4.5.1; see also *L’Oreal S.A. v. MUNHYUNJA*, WIPO Case No. [D2003-0585](#)).

On the record, Respondent appears to be located in China and is thus presumably not a native English speaker, but considering the following aspects, the Panel has decided that the language of the proceeding shall be English: (a) the disputed domain name is registered in Latin characters, rather than Chinese script; (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 Center has notified Respondent of the language of the proceeding in both Chinese and English, and Respondent has indicated no objection to Complainant’s request that English be the language of the proceeding; (d) the Center also notified Respondent in both Chinese and English of the Complaint, and informed Respondent that it would accept a response in either English or Chinese, but Respondent chose not to file any response.

Considering these circumstances, the Panel finds that 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;
- (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 BADAPTOR marks. The Panel finds that the essential part of the disputed domain name “badapter” is a mere misspelling of Complainant’s trademark BADAPTOR by replacing the letter “o” with the letter “e”. In addition to this, the disputed domain name only differs from Complainant’s trademarks by the addition of the gTLD suffix “.com”. These do not compromise the recognizability of Complainant’s marks within the disputed domain name, nor eliminate the confusing similarity between Complainant’s registered trademarks and the disputed domain name (*Walgreen Co. v. Lin yanxiao / Linyanxiao*, WIPO Case No. [D2016-1605](#); and *Decathlon v. Zheng Jianmeng*, WIPO Case No. [D2019-0234](#)).

Moreover, as to “typosquatting”, section 1.9 of the [WIPO Overview 3.0](#) states: “A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element.”

As the essential part of the disputed domain name (“badapter”) is a mere misspelling of Complainant’s BADAPTOR marks – by replacing the letter “o” with the letter “e”, the Panel finds the disputed domain name must be considered a typical example of typosquatting, which does not prevent a finding of confusing similarity between the disputed domain name and the BADAPTOR marks.

Further, in relation to the gTLD suffix, section 1.11.1 of the [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.”

The Panel, therefore, 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 name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) Respondent has been commonly known by the disputed domain name, 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 name, without intent for commercial gain to misleadingly divert consumers or to tarnish Complainant’s trademarks at issue.

The overall burden of proof on this element rests with Complainant. However, it is well established by previous UDRP panel decisions that once a complainant establishes a *prima facie* case that the respondent lacks rights or legitimate interests in a domain name, the burden of production shifts to the respondent to rebut the complainant’s contentions. If the respondent fails to do so, the 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).

According to the Complaint, Complainant is a provider of battery adapters for leading power tool brands in the UK and the EU. Complainant has rights in the BADAPTOR marks including in the UK since 2018 and in the EU since 2021, which precedes Respondent’s registration of the disputed domain name (in 2022).

Moreover, Respondent is not an authorized dealer of BADAPTOR-branded products or services. The Panel finds that Complainant has established a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name and thereby shifts 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:

- (i) 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. On the contrary, the disputed domain name does not resolve to an active website;
- (ii) there has been no evidence adduced to show that Respondent has been commonly known by the disputed domain name. There has been no evidence adduced to show that Respondent has any registered trademark rights with respect to the disputed domain name. Respondent registered the disputed domain name in 2022, after the BADAPTOR marks became widely known. The disputed domain name is confusingly similar to Complainant’s BADAPTOR marks; and

(iii) 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 does not resolve to an active website.

The Panel finds that Respondent has failed to produce any evidence to rebut Complainant's *prima facie* showing on Respondent's lack of rights or legitimate interests in the disputed domain name. 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 disputed 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.

Upon the evidence of the circumstances in this case, 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 BADAPTOR marks with regard to its products and services. As mentioned above, Complainant has registered its BADAPTOR marks in the UK (since 2018) and in the EU (since 2021). 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 (in 2022), particularly considering the disputed domain name is a deliberate misspelling of Complainant's mark.

Moreover, Respondent has chosen not to respond to Complainant's allegations. According to the UDRP panel's decision in *The Argento Wine Company Limited v. Argento Beijing Trading Company, supra*, "the failure of the 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

Complainant has adduced evidence to show that the disputed domain name does not resolve to an active website. UDRP panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Section 3.3 of the [WIPO Overview 3.0](#) provides: "While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in

applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put."

As discussed above, Complainant's BADAPTOR marks are widely known. Further, given the lack of response, the Panel cannot envision any other plausible use of the disputed domain name that would not be in bad faith under the present circumstances. Taking into account all the circumstances of this case, the Panel concludes that the non-use of the disputed domain name by Respondent also constitutes bad faith.

In summary, Respondent, by choosing to register and use the disputed domain name, which is a deliberate misspelling of Complainant's BADAPTOR mark, and is confusingly similar to the BADAPTOR mark, intended to ride on the goodwill of this trademark. In the absence of evidence to the contrary and rebuttal from Respondent, the choice of the disputed domain name and the use of the disputed domain name 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 <badapter.com> be transferred to Complainant.

/Yijun Tian/

Yijun Tian

Sole Panelist

Dated: September 8, 2023