

ADMINISTRATIVE PANEL DECISION

Wendel-Participations SE v. ping xiang shi jiu hang qi che xiao shou you xian gong si

Case No. D2023-2788

1. The Parties

Complainant is Wendel-Participations SE, France, represented by Dreyfus & associés, France.

Respondent is ping xiang shi jiu hang qi che xiao shou you xian gong si, China.

2. The Domain Name and Registrar

The disputed domain name <thewendelgroup.com> is registered with Alibaba.com Singapore E-Commerce Private Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 30, 2023. On June 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 3, 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 (Not disclosed) and contact information in the Complaint. The Center sent an email communication to Complainant on July 3, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on July 4, 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 Respondent of the Complaint, and the proceedings commenced on July 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 26, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on August 3, 2023.

The Center appointed Richard C.K. van Oerle as the sole panelist in this matter on August 9, 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, founded in 1704 in France, is currently one of the Europe's leading listed investment firms, offering its worldwide customers services related to portfolio management, financial planning, advisory, investment banking, private equity, real estates, brokerage and research services.

The Complaint is based on the following trademark registrations for WENDEL held by Complainant:

- International Registration No. 1233694 for W WENDEL (stylized), registered on November 17, 2014, designating *inter alia* Algeria, Morocco, Tunisia, Kenya; it concerns a figurative mark in which the word WENDEL is written in a special script;
- International Registration No. 796045 for WENDEL INVESTISSEMENT (stylized), registered on November 27, 2002, designating *inter alia* Austria, China, United Kingdom, Singapore, Japan; it concerns a figurative mark in which the words WENDEL INVESTISSEMENT are written in a special script;
- United States of America trademark No. 4689735 for W WENDEL (stylized), registered February 17, 2015; it concerns a figurative mark in which the word W WENDEL is written in a special script.

All these registrations have been duly renewed and are still valid and will hereafter together referred to in singular as the "Trademark".

The disputed domain name was registered on March 24, 2023. Complainant contends that the disputed domain name was resolving to an inactive page. The disputed domain name now redirects to various fraudulent pages, as well as to the Chinese websites related to sport bets.

Complainant sent a cease-and-desist letter to Respondent via the Registrar, requesting the transfer of the disputed domain name free of charge, on April 19, 2023. Registrar confirmed having forwarded Complainant's request to the reported party. However, no response was received from the latter.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

It results from Complainant's allegations that it is a company that serves customers worldwide and provides investment management services. It offers portfolio management, financial planning, advisory, investment banking, private equity, real estates, brokerage, and research services for corporate, institutional investors, and individuals. The Wendel Group developed its business over more than 300 years in diverse range of industrial sectors. Today, Complainant is one of Europe's leading listed investment firms, working at the intersection of industry and finance. A long-term investor with permanent capital, Complainant has been supported for over three centuries by the Wendel family, its reference shareholder.

Complainant contends that its Trademark is distinctive and well-known worldwide, especially in the field of investments.

Complainant promotes its services through the domain name <wendelgroup.com>, registered on March 9, 2007.

Complainant contends that the disputed domain name is confusingly similar to Complainant's Trademark, since it reproduces the Trademark in its entirety with the addition of the additional letter "L" and with terms "the" and "group", which do not prevent any likelihood of confusion. The Trademark is recognizable within the disputed domain name.

Complainant further contends that Respondent has no rights or legitimate interests in the disputed domain name. According to Complainant, Respondent is neither affiliated with Complainant in any way nor has it been authorized by Complainant to use and register its Trademark, or to seek registration of any domain name incorporating said Trademark. In addition, according to Complainant there is no evidence that Respondent may be commonly known by the name "Wendel".

Respondent cannot assert that, before any notice of this dispute, it was using, or had made 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, in accordance with the Policy. The disputed domain name used to direct to an inactive page, whereas it now points to various fraudulent websites in Chinese linked to the sport bets. Hence, it cannot be inferred that Respondent is making a legitimate noncommercial or fair use of disputed domain name, without intent for commercial gain and in order to misleadingly divert consumers, or to tarnish the Trademark at issue, in accordance with the Policy.

Additionally, Respondent never answered to Complainant's letter. It can therefore be assumed that Respondent has no rights or legitimate interests in the disputed domain name.

Finally, Complainant contends that the disputed domain name was registered and is being used in bad faith. According to Complainant, it is implausible that Respondent was unaware of Complainant when it registered the disputed domain name, since it is well-known throughout the world. The composition of the disputed domain name entirely reproducing Complainant's Trademark, only with the addition of the additional letter "L" and with terms "the" and "group", confirms that Respondent was aware of Complainant and its Trademark.

It was Respondent's duty to verify that the registration of the disputed domain name would not infringe the rights of any third party before registering said domain name. A quick trademark search would have revealed to Respondent the existence of Complainant and its Trademark. Respondent's failure to do so is a contributory factor to its bad faith.

Supposing that Respondent was not aware of the possibility of searching trademarks online before registering a domain name, a simple search via Google or any other search engine using the keyword "Wendel" demonstrates that some of the first results relate to Complainant.

It is most likely to be believed that Respondent registered the disputed domain name based on the notoriety and attractiveness of Complainant's Trademark to divert Internet users and generate more traffic to its fraudulent website.

Furthermore, Respondent neither tried to defend its rights nor stated any valid arguments to justify the registration of the disputed domain name in response to Complainant's cease-and-desist letter.

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

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Dealing, first, with Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under these Rules, the Panel shall be entitled to draw such inferences from this omission, as it considers appropriate.

Paragraph 4(a) of the Policy provides that Complainant prove each of the following three elements in order to succeed in its Complaint:

- (i) the disputed domain name 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.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between Complainant's Trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Trademark is figurative in nature and consists of a stylized representation of the letters (W) WENDEL (INVESTISSEMENT). The textual element is, however, dominant. The non-textual elements of the Trademark do not detract in any way from the prominence of the word element of the mark, that is the most prominent element. The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of the additional letter "L" and with terms "the" and "group", may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on complainant, panels have recognized that proving 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 often primarily within the knowledge or control of respondent. As such, where a complainant makes out a *prima facie* case that respondent lacks rights or legitimate interests, the burden of production on this element shifts to respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If respondent fails to come forward with such relevant evidence, complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name for the reasons set out in section 5.A above. Respondent has not rebutted Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Panel could not establish any indication that any of the circumstances as described in paragraph 4(c) of the Policy in which Respondent may demonstrate rights or legitimate interests in a disputed domain name.

The Panel further finds that the composition of the disputed domain name, identical to the Trademark, with only the addition of the additional letter "L" and with terms "the" and "group", carries a risk of implied affiliation with Complainant.

The Panel finds that Respondent has no rights or legitimate interests in respect of the disputed domain name in accordance with paragraph 4(a)(ii) of the Policy.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that at the time of registration of the disputed domain name, Respondent was or should have been aware of Complainant's Trademark. Complainant has been well known for a long time, and since a Trademark register search, or even a simple online search prior to the registration of the disputed domain name would have informed Respondent of the existence of the oldest Trademark and Complainant's use of the Trademark as a source identifier. Prior panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or well-known trademark by an unaffiliated entity can by itself create a presumption of bad faith (see *Carrefour SA v. blackwhite, dolly Tiwari*, WIPO Case No. [D2021-0274](#)).

Moreover, the disputed domain name replicates the Trademark in its entirety, with the addition of the additional letter "L" and with terms "the" and "group", which strongly suggests that Respondent was aware of Complainant and its Trademark.

Therefore, the Panel finds that the disputed domain name was registered in bad faith.

With a domain name containing the Trademark in its entirety and to which only minor, insignificant additions have been made Internet users are likely to believe that the disputed domain name is related to or endorsed by Complainant and that it will direct them to an official website providing information on the services.

Based on the information and the evidence provided by Complainant, Respondent has never used and does not intend to use the disputed domain name in connection with a *bona fide* offering of goods or services.

Furthermore, the failure of Respondent to submit a response or to provide any evidence of actual or contemplated good faith use, or to this Complaint is further evidence of bad faith, given all the circumstances of the case (see [WIPO Overview 3.0](#), section 3.2).

The Panel is convinced that Respondent registered the disputed domain name to take unfair advantage of the reputation of Complainant's well-known Trademark, and in so doing to disrupt Complainant's business and to attract, for commercial gain, Internet users to another website, by creating a likelihood of confusion with Complainant's Trademark as to the source, sponsorship, affiliation, or endorsement (paragraph 4(b)(iv) of the Policy).

The Panel finds the above confirms the disputed domain name was registered and is being used in bad faith.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 <thewendellgroup.com> be transferred to Complainant.

/Richard C.K. van Oerle/

Richard C.K. van Oerle

Sole Panelist

Date: August 14, 2023