

ADMINISTRATIVE PANEL DECISION

Arcadis N.V. v. JIAFAN YAN

Case No. D2023-3174

1. The Parties

The Complainant is Arcadis N.V., Netherlands (Kingdom of the), represented by Merkenbureau Knijff & Partners B.V., Netherlands (Kingdom of the).

The Respondent is JIAFAN YAN, China.

2. The Domain Name and Registrar

The disputed domain name <arcadisgen.org> ("Disputed Domain Name") is registered with Squarespace Domains II LLC (the "Registrar")¹.

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on July 24, 2023. On July 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On July 25, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on August 4, 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 amendment to the Complaint in English on August 14, 2023.

On August 4, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On August 8, 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.

¹ The Complaint was filed identifying the Registrar as Google LLC. On October 4, 2023, Google LLC confirmed that the disputed domain name is registered with Squarespace Domains II LLC following a purchase agreement. Google LLC has confirmed both Registrars' compliance with the UDRP and the implementation of the decision by either Registrar.

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 the Respondent in English and Chinese of the Complaint, and the proceedings commenced on August 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 4, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 6, 2023.

The Center appointed Kar Liang Soh as the sole panelist in this matter on September 14, 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 was founded in 1888 as a land reclamation specialist. It subsequently expanded its international presence and shifted into urban development and is listed on NASDAQ and has established a group of companies in diverse undertakings in design, engineering, and management consulting. The Complainant currently operates over 350 offices across 70 countries. The Complainant adopted the name and trademark ARCADIS in 1997. One of the Complainant’s subsidiaries, Arcadis Gen Holdings Limited, has been involved in several high-profile infrastructural construction projects, including in Australia, Denmark, Ireland, United Kingdom, and the United States of America.

The Complainant has registered the trademark ARCADIS GEN in a number of jurisdictions, including:

Jurisdiction	Trademark No.	Registration Date
Benelux	1407138	December 3, 2019
International	1538168	June 2, 2020

The Complainant and/or its group of companies operate a corporate website at “www.arcadis.com” and a company website for Arcadis Gen Holdings Limited at “www.arcadisgen.com”.

The Disputed Domain Name was registered on January 6, 2023, and resolved to a parking webpage with banners prominently displaying titles like “Temptation Come My Way” and “Free Music Links”. The Disputed Domain Name is also being offered for sale for USD 9,800 on Sedo.com.

Very little information about the Respondent is available in this proceeding besides what is disclosed as part of the Registrar verification. The Respondent appears to be an individual based in China. Attempts by the Center to write to the Respondent’s disclosed registered mailing address in relation to the Disputed Domain Name failed due to this being an invalid address.

5. Parties’ Contentions

A. Complainant

The Complainant contends that:

- a) the Disputed Domain Name is identical or confusingly similar to the Complainant’s ARCADIS GEN trademark. The Complainant owns trademark registrations for the trademark ARCADIS GEN. The Disputed Domain Name reflects the entirety of the trademark ARCADIS GEN. The generic Top-Level Domain “.org” is disregarded when comparing the Disputed Domain Name;

- b) the Respondent does not have any rights or legitimate interests in the Disputed Domain Name. Nothing in the Whois information shows that the Respondent is commonly known by the Disputed Domain Name. The Respondent is not using the Disputed Domain Name for the *bona fide* offering of goods or services. The Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name. The Disputed Domain Name is parked, and offered for sale on Sedo.com; and
- c) the Disputed Domain Name was registered and is being used in bad faith. The Respondent registered the Disputed Domain Name most probably with actual knowledge of the Complainant's rights in the trademark ARCADIS GEN. The trademark ARCADIS GEN is registered in many countries internationally. The Respondent only registered the Disputed Domain Name in 2023 well after the Complainant's use and registration of the trademark ARCADIS GEN. The Respondent is using the Disputed Domain Name for financial gain, parking a webpage under the Disputed Domain Name, and offering the Disputed Domain Name for sale, resulting in confusion with the Complainant's services.

B. Respondent

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

6. Discussion and Findings

6.1 Language of Proceeding

The Registration Agreement of the Disputed Domain Name is in Chinese. Accordingly, the default language of this proceeding should be Chinese. However, under paragraph 11 of the Rules, the Panel is empowered to determine a different language of proceeding having regard to the circumstances. Having done so pursuant to the Complainant's request, the Panel determines that English shall be the language of the proceeding. In making this determination, the Panel has considered the following factors:

- a) the Respondent has not objected to the Complainant's request for English to be the language of proceeding;
- b) the Disputed Domain Name resolved to a website that is wholly in English, demonstrating the Respondent's likely competence in the English language;
- c) the Respondent has chosen not to participate in the proceeding by not filing a Response;
- d) the Complainant's representative has informed that proceeding in Chinese will result in considerable costs and time to translate the Complaint;
- e) the Panel is bilingual in English and Chinese and is well equipped to deal with submissions by the Parties in either language; and
- f) the Complaint has already been submitted in English and no obvious procedural benefit would arise should the Panel insist on Chinese to be the language of the proceeding. On the contrary, doing so would in all likelihood delay proceeding unnecessarily.

6.2 Discussion

The Complainant must establish all three limbs of paragraph 4(a) of the Policy on the facts in order to succeed in this proceeding:

- a) the Disputed Domain Name is identical or confusingly similar to a trademark in which the Complainant has rights;

- b) the Respondent has no rights or legitimate interests in the Disputed Domain Name; and
- c) the Disputed Domain Name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel accepts that the Complainant has rights in the trademark ARCADIS GEN by virtue of the trademark registrations. The Disputed Domain Name clearly incorporates the trademark ARCADIS GEN in its entirety and the trademark is readily recognized in the Disputed Domain Name. The Panel holds that Disputed Domain Name is identical to the trademark ARCADIS GEN. The first limb of paragraph 4(a) of the Policy is thus established.

B. Rights or Legitimate Interests

There is no evidence to suggest that the Respondent is commonly known by the Disputed Domain Name, is the owner of any trademark registrations for the Disputed Domain Name, or is authorized to entirely incorporate the trademark ARCADIS GEN in the Disputed Domain Name. There is also no evidence that the Disputed Domain Name is being used for a noncommercial or fair manner. On the contrary, the Respondent is using the Disputed Domain Name on a parking webpage and as an item for sale. The Panel is persuaded that the facts present a *prima facie* case that the Respondent has no rights or legitimate interests in the Disputed Domain Name. As no Response has been filed, the Respondent has failed to rebut the *prima facie* case. The Complainant has successfully established the second limb of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b)(iv) of the Policy provides an exemplary situation of bad faith registration and use as follows:

“by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location.”

The trademark ARCADIS GEN appears to be an invented combination of words with no known meaning. It is therefore implausible that the Respondent’s selection of the Disputed Domain Name would have been purely coincidental. In the light of the Complainant’s high profile infrastructural background, the Panel is inclined to accept the much higher probability that the Respondent was aware of the trademark ARCADIS GEN at the time of registering the Disputed Domain Name. The Complainant has asserted strongly that the Respondent must have registered the Disputed Domain Name to attract Internet users to the resolved parking webpage by creating confusion with trademark ARCADIS GEN. The Panel finds it inexplicable for the Respondent not to participate in the proceeding in the face of such allegations, and is led to draw the adverse inference that the allegation must be true. The Panel accordingly holds that the present circumstances correspond to the bad faith registration and use described in paragraph 4(b)(iv) of the Policy.

Further, paragraph 4(b)(i) of the Policy provides another example of bad faith registration and use:

“circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name.”

It is evident that the Disputed Domain Name has been posted for sale at Sedo.com and for a price likely far more than the typical out-of-pocket costs of registering and hosting a domain name. There is no evidence before the Panel to suggest that the Disputed Domain Name was registered for some other purposes than to redirect Internet users or for profitable sale. In the absence of any cogent explanation by the Respondent, the Panel infers that the Respondent must have intended to sell the Disputed Domain Name to the Complainant or a competitor of the Complainant.

In the circumstances, the Panel is of the opinion that the Disputed Domain Name was registered and is being used in bad faith according to the third limb of 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 <arcadisgen.org> be transferred to the Complainant.

/Kar Liang Soh/

Kar Liang Soh

Sole Panelist

Date: October 24, 2023