

ADMINISTRATIVE PANEL DECISION

Leybold GmbH v. Yi Gong
Case No. D2023-3225

1. The Parties

Complainant is Leybold GmbH, Germany, represented by Legal Studio Solicitors, United Kingdom.

Respondent is Yi Gong, China.

2. The Domain Name and Registrar

The disputed domain name <laibaovac.com> (the “Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 26, 2023. On July 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On July 28, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Private Registration, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on August 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 August 6, 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 August 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 4, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on September 6, 2023.

The Center appointed Marina Perraki as the sole panelist in this matter on September 18, 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 was founded in 1850 and is active in the field of industrial and high vacuum applications. It offers a wide range of vacuum components, standardized and customized vacuum solutions, complemented by vacuum technology accessories and instrumentation. Per the Complaint, the LEYBOLD mark has been used for over 100 years in respect of vacuum pumps and associated equipment. Complainant provides its goods and services through selected partners in, *inter alia* China.

Complainant owns trademark registrations for LEYBOLD including the international trademark registration No. 1391584, LEYBOLD (fig.), registered on December 14, 2016, for goods and services in international classes 4, 6, 7, 9, 11, 16, 17, 37, 41, and 42, designating China, where Respondent is located.

The Domain Name was registered on November 25, 2022. At the time of filing of the Complaint, the Domain Name led to a website prominently displaying on the top left a mark and logo that is in a similar font and color as Complainant's LEYBOLD mark, next to which is the listing of the company name in both Chinese and English "莱宝真空泵销售服务商 (Leybold Vacuum Pump (China) Division)", and offering Complainant's goods and services (the "Website"). In the "Contact Us" section of the Website there was a text in Chinese "莱宝真空泵 (leybold) 销售服务商官网" which can be translated as follows: "Leybold Vacuum Pump Sales Service Provider Official Website." Further, under the "About Us" section of the Website, it states that "莱宝真空泵 (中国区) 销售服务商 (Leybold)" belongs to "莱宝公司" which was established in 1850 and headquarters in Cologne, Germany. The Website also contains photos of Complainant's products.

Currently, the Domain Name leads to an inactive website.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

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 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 that Complainant has shown rights in respect of a trademark mark for the purposes of the Policy ([WIPO Overview 3.0](#), section 1.2.1).

The generic Top-Level Domain ("gTLD") ".com" is disregarded, as TLDs typically do not form part of the comparison on the grounds that they are required for technical reasons only (*Rexel Developpements SAS v. Zhan Yequn*, WIPO Case No. [D2017-0275](#)).

Per the Complaint, it appears that “lái bǎo” is a machine translation in Chinese language of the LEYBOLD mark. The Domain Name, disregarding the gTLD “.com”, can be divided into three units – “lai”, “bao”, and “vac”. The Panel finds that “lai bao”, as the initial part of the Domain Name, is phonetically similar to the LEYBOLD mark. Therefore, the Panel finds that phonetically the Domain Name practically contains the whole of Complainant’s trademark LEYBOLD. While the addition of other terms (here, “vac” which is short for “vacuum”) may bear on assessment of the second and third elements, the Panel finds the addition of such term 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.).

Further, the Panel notes that the content of the Website, as described above, made several references to Complainant (which indicates that Respondent seeks to target Complainant’s LEYBOLD mark through the Domain Name) and affirms the Panel’s finding of confusing similarity ([WIPO Overview 3.0](#), section 1.15).

The Panel finds that the Domain Name is confusingly similar to the LEYBOLD trademark of Complainant.

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 the Domain Name.

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

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to Respondent of the dispute, Respondent’s use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services; or
- (ii) Respondent (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) Respondent is making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel concludes that Respondent lacks rights or legitimate interests in respect of the Domain Name.

Respondent has not submitted any response and has not claimed any such rights or legitimate interests with respect to the Domain Name. As per Complainant, Respondent was not authorized to register the Domain Name.

Respondent has not demonstrated any preparations to use, or has not used the Domain Name or a trademark corresponding to the Domain Name in connection with a *bona fide* offering of goods or services. On the contrary, as Complainant demonstrated, the Domain Name was used to host the Website to impersonate Complainant and attempt to mislead consumers into thinking that the goods purportedly offered for sale on the Website originate from Complainant or an affiliate or partner of Complainant. Such use demonstrates neither a *bona fide* offering of goods nor a legitimate interest of Respondent (*Arkema France v. Aaron Blaine*, WIPO Case No. [D2015-0502](#)).

A distributor or reseller can be making a *bona fide* offering of goods and thus have a legitimate interest in a domain name only if the following cumulative requirements are met (*Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#); [WIPO Overview 3.0](#), section 2.8.1: (i) respondent must actually be offering the goods at issue; (ii) respondent must use the site to sell only the trademarked goods; (iii) the site must accurately and prominently disclose the registrant's relationship with the trademark holder; and (iv) respondent must not try to "corner the market" in domain names that reflect the trademark.)

These requirements are not cumulatively fulfilled in the present case. The Domain Name falsely suggests that the Website is an official site of Complainant or of an entity affiliated to or endorsed by Complainant. The Website extensively reproduces, without authorization by Complainant, Complainant's trademark, without any disclaimer of association (or lack thereof) with Complainant. Furthermore, the Website contains text suggesting that it is the official Website of Complainant or of an affiliated entity or partner of Complainant.

The Panel finds that these circumstances do not confer upon Respondent any rights or legitimate interests in respect of the Domain Name.

Having reviewed the record, the Panel finds Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests in the Domain Name. 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 Domain Name such as those enumerated in the Policy or otherwise.

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

Complainant has established Policy, paragraph 4(a)(ii).

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.

Paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation", are evidence of the registration and use of the Domain Name in "bad faith":

(i) circumstances indicating that Respondent has registered or has acquired the 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 that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or

(ii) that Respondent has registered the 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) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or

(iv) that by using the 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 Respondent's website or location.

The Panel concludes that Respondent has registered and used the Domain Name in bad faith.

Because the LEYBOLD mark had been used and registered by Complainant before the Domain Name registration, the Panel finds it more likely than not that Respondent had Complainant's mark in mind when registering the Domain Name (*Tudor Games, Inc. v. Domain Hostmaster, Customer ID No. 09382953107339 dba Whois Privacy Services Pty Ltd / Domain Administrator, Vertical Axis Inc.*, WIPO Case No. [D2014-1754](#); *Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net*, WIPO Case No. [D2000-0226](#)).

Furthermore, the content of the Website gave the false impression that it originated from Complainant, or an affiliate or partner of Complainant, by prominently displaying a logo that adopts the similar font and color as Complainant's LEYBOLD mark as well as pictures of Complainant's products, and making several references to Complainant on the Website. This further supports registration in bad faith reinforcing the likelihood of confusion, as Internet users are likely to consider the Domain Name as in some way endorsed by or connected with Complainant ([WIPO Overview 3.0](#), section 3.1.4).

The above further indicates that Respondent knew of Complainant and chose the Domain Name with knowledge of Complainant and its industry (*Safepay Malta Limited v. ICS Inc.*, WIPO Case No. [D2015-0403](#)).

As regards bad faith use, Complainant demonstrated that the Domain Name was employed to host a Website which appeared falsely to be that of Complainant or an affiliate or partner of Complainant.

Furthermore, the Domain Name has been operated by intentionally creating a likelihood of confusion with Complainant's trademark and business. This further supports the finding of bad faith use ([WIPO Overview 3.0](#), sections 3.1.4 and 3.2.1).

The Domain Name currently leads to an inactive website. The non-use of a domain name would not prevent a finding of bad faith (See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); [WIPO Overview 3.0](#), section 3.3).

Under these circumstances and on this record, the Panel finds that Respondent registered and used the Domain Name in bad faith.

Complainant has established Policy, paragraph 4(a)(iii).

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 Domain Name <laibaovac.com> be transferred to Complainant.

/Marina Perraki/

Marina Perraki

Sole Panelist

Date: October 2, 2023