

## ADMINISTRATIVE PANEL DECISION

Ed. Wüsthof Dreizackwerk KG v. 吴清儒 (wu qing ru)  
Case No. D2023-4759

### 1. The Parties

The Complainant is Ed. Wüsthof Dreizackwerk KG, Germany, represented by McDermott Will & Emery Rechtsanwälte Steuerberater LLP, Germany.

The Respondent is 吴清儒 (wu qing ru), China.

### 2. The Domain Name and Registrar

The disputed domain name <wusthof.info> 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 November 15, 2023. On November 16, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 17, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. The Complainant filed an amended Complaint in English on November 20, 2023.

On November 17, 2023, the Center informed the parties in Chinese and English, that the language of the registration agreement for the disputed domain name is Chinese. On November 20, 2023, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

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 the Respondent in English and Chinese of the Complaint, and the proceedings commenced on November 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 13, 2023. The Respondent sent emails in Chinese to the Center on November 23, 2023. The Center sent an email regarding possible settlement on

November 23, 2023. The Complainant did not request suspension. The Respondent did not submit any formal response, and accordingly the Center notified the commencement of panel appointment process on December 14, 2023.

The Center appointed Joseph Simone as the sole panelist in this matter on December 26, 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 is a company that – together with its affiliates – produces and sells cutlery and accessories therefor worldwide, including in Europe, United Kingdom, China, and elsewhere.

The Complainant has an extensive global portfolio of trade marks comprising the mark WÜSTHOF and WUSTHOF (without an umlaut), including the following:

- International Trade Mark Registration No. 1516829 for WÜSTHOF in Classes 7, 35, and 41 registered on December 12, 2019, designating Canada, China, United Kingdom, Japan, and United States of America;
- European Union Trade Mark Registration No. 018102647 for WÜSTHOF in Classes 7, 35, and 41 registered on January 9, 2020; and
- China Trade Mark Registration No. 17462836 for WÜSTHOF in Class 21, registered on September 14, 2016.

The disputed domain name <wusthof.info> was registered on June 23, 2023.

The Complainant's evidence indicates that at the time of filing of the Complaint, the disputed domain name resolved to a website offering to sell the disputed domain name. At the time of issuance of this decision, the disputed domain name remained unchanged.

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

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

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

Notably, the Complainant asserts that it has prior rights in the WUSTHOF trade mark and that it has acquired a strong reputation in its field of business.

The Complainant further notes that the disputed domain name registered by the Respondent is confusingly similar to the Complainant's WUSTHOF trade mark.

The Complainant asserts that it has not authorized the Respondent to use its WUSTHOF mark, and there is no evidence to suggest that the Respondent has used, or undertaken any demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services.

The Complainant also asserts that there is no evidence suggesting any connection between the Respondent and the WUSTHOF mark in any way, and that there is no plausible good-faith reason for the Respondent to have registered the disputed domain name, especially considering the relevant circumstances of the Respondent offering to sell the disputed domain name at USD 950, likely intended for sale in excess of the costs of registration.

The Complainant therefore concludes that the registration and any use of the disputed domain name whatsoever was in bad faith.

## **B. Respondent**

The Respondent did not formally reply to the Complainant's contentions. In his email dated November 23, 2023, the Respondent states if the Complainant requests suspension of the proceeding, the disputed domain name can be sold to the Complainant for USD 600.

## **6. Discussion and Findings**

### **6.1 Preliminary Issue: 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 unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that:

- In UDRP proceedings, panels have found that any content on the webpage under the disputed domain name may warrant a specific language of proceedings, which in the case at hand is English, see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5; and
- The disputed domain name is formed by Latin characters, not in Chinese script, and English is the most widely used language in international relations and is one of the working languages of the Center (see also *VIOOH Limited v. 吴清儒 (wu qing ru)*, WIPO Case No. [D2023-2155](#)).

The Respondent did not comment on the Complainant's request for the language of the proceeding be English but sent email communications in Chinese.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see [WIPO Overview 3.0](#), section 4.5.1).

The Respondent was notified in both Chinese and English of the language of the proceeding and the commencement of the proceeding and did not comment on the language of the proceeding.

Considering the circumstances of this case, the Panel determines that the language of the proceeding shall be English, and as such, the Panel has issued this decision in English. The Panel further finds that such determination should not create any prejudice to either Party and should ensure that the proceeding takes place with due expedition.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

### **6.2 Substantive Issues**

#### **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 the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

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

Disregarding the generic Top-Level Domain (“gTLD”) “.info”, the Complainant’s trade mark WÜSTHOF is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

As such, and based upon the available information, 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 the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the 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.

As such, the Panel concludes that the Respondent has failed to rebut the Complainant’s *prima facie* showing of the Respondent’s lack of rights or legitimate interests in the disputed domain name, and that none of the circumstances of paragraph 4(c) of the Policy is applicable in this case.

There is no evidence adduced to show that the Respondent, prior to the notice of the dispute, has used or has demonstrated its preparation to use the disputed domain name in connection with a *bona fide* offering of goods or services. There is also no evidence adduced to show that the Respondent has been commonly known by the disputed domain name or the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

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.

Paragraph 4(b) of the Policy states that any of the following circumstances in particular, but without limitation, shall be considered as evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant (the owner of the trade mark or service mark) or to a competitor of that complainant, for valuable consideration in excess of the respondent’s documented out-of-pocket costs directly related to the domain name; or

- (ii) circumstances indicating that the respondent registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) circumstances indicating that the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its 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 its website or location.

For the reasons discussed under this and the preceding heading, the Panel believes that the Respondent's conduct in this case constitutes bad faith registration and use of the disputed domain name.

The Panel notes that at the time the Respondent registered the disputed domain name, the WÜSTHOF trade marks were already widely-known and directly associated with the Complainant's activities. UDRP panels have consistently found that the mere registration of a domain name that is confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely known trade mark by an unaffiliated entity can by itself create a presumption of bad faith. ([WIPO Overview 3.0](#), section 3.1.4.)

The Respondent has provided no evidence to justify his choice of the term "wusthof" in the disputed domain name.

In light of the foregoing, it would be unreasonable to conclude that, at the time of the registration of the disputed domain name, the Respondent was unaware of the Complainant's trade mark.

The Complainant's registered trade mark rights in WÜSTHOF and WUSTHOF for its products and services predate the registration date of the disputed domain name. A simple online search (such as via Baidu, Bing, etc.) for the term "wusthof" would have revealed that it is a renowned brand in the cutlery industry.

The Panel is therefore of the view that the Respondent registered the disputed domain name with full knowledge of the Complainant's trade mark rights.

Furthermore, the disputed domain name has been offered for sale at the price of USD 950 or USD 600. The offer of the disputed domain name for sale at a likely excessive price is evidence that the Respondent registered the disputed domain name with the intention to sell it. This offer for sale is additional evidence of bad faith as set forth in paragraph 4(b)(i) of the Policy. See, e.g., *Gund, Inc. v. CPIC NET/Domain Management*, WIPO Case No. [D2008-0194](#) (finding bad faith where respondent offered to sell domain name for price exceeding its cost in acquiring and using domain name).

Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's trade mark, and the composition of the disputed domain name, and finds that in the circumstances of this case the offer for sale of the disputed domain name further supports a finding of bad faith under the Policy.

In light of the foregoing, there is no plausible good faith reason for the Respondent to have registered the disputed domain name, especially considering the relevant circumstances.

Based on the available record, the Panel finds that the Complainant has established the third element 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 <wusthof.info> be transferred to the Complainant.

*/Joseph Simone/*

**Joseph Simone**

Sole Panelist

Date: January 8, 2024