

ADMINISTRATIVE PANEL DECISION

Drägerwerk AG & Co. KGaA v. jiang ke liang, Will Chen, and Neo Neo
Case No. D2023-5168

1. The Parties

The Complainant is Drägerwerk AG & Co. KGaA, Germany, represented by Bardehle Pagenberg Partnerschaft mbB, Germany.

The Respondents are jiang ke liang, Will Chen, China; and Neo Neo, United States of America.

2. The Domain Names and Registrar

The disputed domain names <draeger1889.com> and <medicaldraeger.com> are registered with Gname.com Pte. Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on December 12, 2023. On December 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On December 14, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Redacted for privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 20, 2023, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrar, requesting the Complainant to either file separate complaint(s) for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity. The Complainant filed an amendment to the Complaint in English on December 21, 2023.

On December 20, 2023, the Center informed the parties in Chinese and English, that the language of the registration agreement for the disputed domain name <draeger1889.com> is Chinese. On December 21, 2023, the Complainant requested English to be the language of the proceeding. The Respondents did not submit any comment on the Complainant’s submission.

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 Respondents in English and Chinese of the Complaint, and the proceedings commenced on January 8, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 28, 2024. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on January 29, 2024.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on February 5, 2024. 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 founded in 1889 and based in Lübeck, Germany. It is active in the medical equipment industry and particular in the field of breathing and protection equipment, gas detection and analysis systems, and noninvasive patient monitoring technologies. The Complainant has more than 14,500 employees and is present in 190 countries. Customers of the Complainant include hospitals, fire departments, and diving companies.

The Complainant owns a large international trademark portfolio for the mark DRAEGER including, in particular, the following trademarks:

- International trademark registration number 1332205, registered on December 8, 2016, in classes 37 and 41;
- International trademark registration number 1357586, registered on December 8, 2016, in classes 1, 9, and 11; and
- International trademark registration number 1369347, registered on December 8, 2016, in class 10.

The Complainant also has a strong online presence and is the owner of several domain names for or incorporating “draeger” including the following <draeger.com> and <draeger.us>.

The disputed domain names were registered on August 28, 2023 (for <medicaldraeger.com>) and October 22, 2023 (for <draeger1889.com>), and were linked to websites which pretended to be original websites of the Complainant or “Draeger Medical”, by using the Complainant’s trademarks, pictures and by introducing itself as the Complainant in the “About Us” section of such websites. However, on the date of this Decision, the disputed domain names direct to inactive websites.

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 names.

Notably, the Complainant contends that it is the owner of a number of registered trademarks consisting of DRAEGER (in various combinations) and that it has a strong reputation for the products under this trademark. The Complainant asserts that the disputed domain names are confusingly similar to the abovementioned trademarks since they each incorporate such trademarks combined with terms which refer to the Complainant such as “medical” (referring to the Complainant’s industry) and “1889” (referring to the Complainant’s year of establishment). The Complainant also argued that the Respondents provided lookalike websites under the disputed domain names, which were impersonating the Complainant for undue

commercial gain. The Complainant alleges that in these circumstances the Respondents have no rights or legitimate interests in the disputed domain names, which were registered and are used in bad faith.

The Complainant requests the transfer of the disputed domain names.

B. Respondents

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

6. Discussion and Findings

6.1 First Preliminary Issue: Consolidation of the Respondents

The Complainant requests consolidation in regard to the Respondents, as the disputed domain names are currently owned by seemingly multiple registrants. In this regard, the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") states in section 4.11.2: "Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario." (See in this regard also prior UDRP decisions such as *Speedo Holdings B.V. v. Programmer, Miss Kathy Beckerson, John Smitt, Matthew Simmons*, WIPO Case No. [D2010-0281](#)).

The Panel has carefully reviewed all elements of this case, giving particular weight to the following elements and facts: (A) both of the disputed domain names consist of a combination of the Complainant's trademarks with another term, thereby exposing a pattern; (B) the Registrar for the disputed domain names is identical (i.e., Gname.com Pte. Ltd.); and (C) the websites hosted at the disputed domain names were identical and were both impersonating the Complainant. The Panel also notes that the Respondents did not submit any arguments and did not contest the request for consolidation.

In view of these elements, the Panel finds that the Respondents are the same or connected and the websites linked to the disputed domain names are under common control, that in this case consolidation would be fair and equitable to all Parties involved and would safeguard procedural efficiency. The Panel therefore decides to grant the request for consolidation of the Respondents and shall hereafter refer to the Respondents jointly as "the Respondent".

6.2 Second Preliminary Issue: Language of the Proceeding

The language of the Registration Agreement for the disputed domain names is English (for disputed domain name <medicaldraeger.com>) and Chinese (for disputed domain name <draeger1889.com>) respectively. 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 the Complainant and its representatives are unable to communicate in Chinese; the fact that requiring the Complainant to submit documents in Chinese would lead to delay and cause the Complainant to incur inadequate translation expenses; the fact that the Complainant alleges that the disputed domain names are obviously used to freeride on the Complainant's rights in its marks and trade name; the fact that the disputed domain name <draeger1889.com> itself is written in Latin characters; and the fact that the content on the websites under the disputed domain names was in English, which is evidence that the Respondent is able to communicate in English.

The Respondent did not make any submissions with respect to the language of the proceeding.

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).

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.

6.3 Discussion and Findings on the Merits

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.

The 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 entirety of the mark is reproduced within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here, respectively "1889" and "medical", 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 names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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 names. 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 names such as those enumerated in the Policy or otherwise.

Moreover, upon review of the facts and evidence, the Panel notes that the Respondent has not provided any evidence of the use of, or demonstrable preparations to use, the disputed domain names in connection with a bona fide offering of goods or services. Instead, upon review of the facts and the evidence submitted in this proceeding, the Panel notes that the disputed domain names directed to active websites which showed a clear intent on the part of the Respondent to misleadingly pass it off as the Complainant's websites for

commercial gain. It is clear to the Panel from the foregoing elements that the Respondent is not a good faith provider of goods or services under the disputed domain names, see also *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#). Given the abovementioned elements, the Panel concludes that the Respondent's use does not constitute a bona fide offering of goods or services, nor a legitimate noncommercial or fair use of the disputed domain names.

Panels have held that the use of a domain name for illegal activity here, impersonation/passing off can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Finally, the Panel also finds that the nature of the disputed domain names, being confusingly similar to the Complainant's trademarks and consisting of additional terms which clearly refer to the Complainant such as "medical" (referring to the Complainant's industry) and "1889" (referring to the Complainant's year of establishment), carries a risk of implied affiliation and cannot constitute fair use, as it effectively impersonates the Complainant and its products or suggests sponsorship or endorsement by the Complainant (see [WIPO Overview 3.0](#), section 2.5.1).

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

Given the intensive use, fame, and distinctiveness of the Complainant's prior registered trademarks, the Panel finds that the subsequent registration of the disputed domain names, which are confusingly similar to such marks, clearly and consciously targeted the Complainant's prior registered trademarks (which have been held by prior panels applying the UDRP to be well known, see for instance *Drägerwerk AG & Co. KGaA v. WhoisSecure / Black Roses*, WIPO Case No. [D2022-1874](#)). The Panel therefore deducts from the Respondent's efforts to consciously target the Complainant's well known prior trademarks that the Respondent knew of the existence of the Complainant's trademarks at the time of registering the disputed domain names. This finding is confirmed by the fact that the websites linked to the disputed domain names were used to impersonate the Complainant, since this proves that the Respondent was fully aware of the Complainant's business and its prior well known trademarks. In the Panel's view, the foregoing elements clearly indicate bad faith on the part of the Respondent, and the Panel therefore finds that it has been demonstrated that the Respondent registered the disputed domain names in bad faith.

As to use of the disputed domain names in bad faith, the Complainant provides evidence that the disputed domain names directed to active websites which showed a clear intent on the part of the Respondent to misleadingly pass it off as the Complainant's websites. The Panel concludes from these facts that the Respondent was intentionally attracting Internet users for commercial gain to such websites, by creating consumer confusion between the websites associated with the disputed domain names and the Complainant's trademarks. This constitutes direct evidence of the Respondent's bad faith under paragraph 4(b)(iv) of the Policy. The Panel therefore finds that it has been demonstrated that the Respondent has used the disputed domain names in bad faith.

However, the Panel notes that on the date of this Decision, the disputed domain names direct to inactive or blank webpages. Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain names does not prevent a finding of bad faith in the circumstances of this proceeding. Although 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, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness and well known nature of the Complainant's trademarks and the composition of the disputed domain names and the unlikelihood of any good faith use of the disputed domain names by the

Respondent and finds that in the circumstances of this case the passive holding of the disputed domain names does not prevent a finding of bad faith under the Policy.

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 names <draeger1889.com> and <medicaldraeger.com> be transferred to the Complainant.

/Deanna Wong Wai Man/

Deanna Wong Wai Man

Sole Panelist

Date: February 7, 2024