

ADMINISTRATIVE PANEL DECISION

A.T.P. Avanzate Tecnologie Plastiche S.R.L. v. 徐继炳 (Xu JiBing)
Case No. D2023-5191

1. The Parties

The Complainant is A.T.P. Avanzate Tecnologie Plastiche S.R.L., Italy, represented by De Tullio & Partners, Italy.

The Respondent is 徐继炳 (Xu JiBing), China.

2. The Domain Name and Registrar

The disputed domain name <toro25.net> is registered with Shanghai Meicheng Technology Information Development Co., Ltd. (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on December 13, 2023. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 14, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name that differed from the named Respondent (Jiangsu Hejia Import and Export Trade Co., Ltd.) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 15, 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 amended Complaint in English on December 19, 2023.

On December 15, 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 December 18, 2023, the Complainant requested that English be the language of the proceeding. The Respondent did not submit any comment on the language of the proceeding.

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 January 8, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 28, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 31, 2024.

The Center appointed Matthew Kennedy as the sole panelist in this matter on February 13, 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.

On February 28, 2024, pursuant to paragraphs 10(a) and 10(b) of the Rules, the Panel issued Administrative Panel Procedural Order No.1 ("Procedural Order No. 1"), in which it requested the Complainant to provide the distribution agreement referred to in the License Agreement (defined in section 4 below); confirm when it became aware of the Respondent's registration of the disputed domain name; and confirm when the Respondent was informed that he was not authorized to register domain names that contain the Complainant's TORO 25 mark or are confusingly similar to that mark. The Complainant's submission was due by March 4, 2024; the Respondent was invited to comment by March 9, 2024; and the Decision due date was extended to March 14, 2024. The Complainant provided its submission on March 4, 2024. The Respondent sent an email communication to the Center on March 11, 2024 in Chinese, asking if there were any problem. On the same day, the Center replied, reminding the Respondent of the notices that it had sent at each stage of this proceeding.

4. Factual Background

The Complainant is a plastics manufacturer established in 1988. It focuses on the development of industrial water supply plastic pipes, domestic water, and heating/cooling steam pipes. It owns trademarks in multiple jurisdictions, including the following:

- International trademark registration number 1075540 for a figurative TORO 25 and bull mark, registered on November 26, 2010, specifying goods in classes 11, 17, and 19; and
- Chinese trademark registration number 14289310 for a figurative TORO 25 and bull mark, registered on September 7, 2023, specifying products in class 19.

The above trademark registrations remain current. The Complainant also registered the domain name <toro25.com> on April 17, 2003 that it uses in connection with a website where it provides information about itself and its products.

The Respondent Xu JiBing (徐继炳) is the former legal representative of Zhangjiagang Bonded Area Chuangxian Trading Co. Ltd (张家港保税区创先国际商贸有限公司) (the "Respondent's company"), which is now deregistered. He is also the former legal representative of Jiangsu Hejia Import and Export Trade Co., Ltd. (江苏禾伽进出口贸易有限公司), which was incorporated in 2015.¹

The Respondent requested to be the Complainant's agent in China in an email sent to the Complainant on December 31, 2011. The Complainant sent the Respondent its price list and the applicable discount rate via email on the same day, and later sent product samples and catalogues, as requested. The Respondent requested information regarding the Complainant's brand and business in an email sent to the Complainant

¹ The Panel notes its general powers articulated inter alia in paragraphs 10 and 12 of the Rules and has searched the publicly available information on the Chinese National Credit Information Publicity System (国家企业信用信息公示系统) ("www.gsxt.gov.cn") in order to verify the identity and status of the Respondent's companies. The Panel considers this process of verification useful in assessing the merits of this dispute and reaching a decision. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.8.

on January 5, 2012. The Complainant explained in reply on the same day that TORO 25 was its brand for PPR pipes and fittings and that it was registering this brand in China and that, as a second step, it could translate its brand and website into Chinese. The Complainant sent the Respondent's company invoices and packing lists for TORO 25 PPR pipes and fittings on March 15, 2012 and May 9, 2012. According to the Complainant, the Respondent distributed the Complainant's TORO 25 products in China at this time pursuant to a distributor agreement that was not yet reduced to writing.

The Respondent registered the disputed domain name on May 14, 2012.

The Complainant and the Respondent's company, entered into a written agreement (executed by the Complainant in Italy on May 16, 2012 and by the Respondent on behalf of his company in China on an unspecified date) (the "License Agreement"), under which the Complainant granted the Respondent's company a license to use its TORO 25 marks in China in the Respondent's company's own name for the benefit of the Complainant for a term of five years. The License Agreement also prohibited the Respondent's company from applying to register any domain names containing the TORO 25 mark or confusingly similar to that mark.

The disputed domain name began to resolve to a website for the Respondent's company. According to screenshots in the Internet archive, the website was titled "TORO 25" alongside the Complainant's bull logo from at least December 18, 2014.²

It appears from the evidence that the Complainant issued letters dated August 5, 2020 and March 3, 2022 by which it authorized the Respondent and Jiangsu Hejia Import and Export Trade Co., Ltd to file applications for sanitary certification with the Chinese Ministry of Health in relation to TORO 25 products.

Following a dispute about use of the TORO 25 mark and payments for products supplied in 2021, the Complainant decided to terminate its relationship with the Respondent's company after the last supply in 2022. The Complainant issued a letter of termination to Jiangsu Hejia Import and Export Trade Co., Ltd. dated March 21, 2023, in which it gave notice inter alia that the Respondent and his company were no longer authorized to use the TORO 25 marks, and were no longer business partners of the Complainant and its TORO 25-branded series of PPR pipes and PPR plastic fittings in China. The Complainant's Chinese legal representative sent Jiangsu Hejia Import and Export Trade Co., Ltd. a cease-and-desist letter dated April 6, 2023 regarding the continued use of the Complainant's TORO 25 trademarks and other intellectual property on the website associated with the disputed domain name.

According to screenshots presented by the Complainant, the title of the website associated with the disputed domain name is now "拓乐管道" (which may be translated as "Thule Pipe") above the words "Italy ATP 旗下" (meaning "owned by Italy ATP"). The website presents the company profile of the Complainant and describes the Respondent's company as the responsible unit of the ITALY ATP company in China, specializing in the promotion and sale of Thule PPR piping system, which it describes as "a brand of ITALY ATP". The website displays photographs of the Complainant's products. Various product descriptions refer to "TORO 25", in some cases followed by "拓乐" or "Thule" in parentheses. A news item dated November 13, 2023 published on the site announces that the English trademark of Thule brand PPR pipes and pipe fittings authorized by the Complainant has been changed to "TORO 25 THERM".

² The Panel again notes its general powers articulated inter alia in paragraphs 10 and 12 of the Rules and has searched the publicly available Internet archive (<archive.org>) in order to verify the use to which the disputed domain name was put prior to this dispute. The Panel considers this process of verification useful in assessing the merits of this dispute and reaching a decision. See [WIPO Overview 3.0](#), section 4.8.

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 contends that the disputed domain name is identical, or at least confusingly similar, to its TORO 25 mark. The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is no longer a distributor of the Complainant. It has never been authorized to continue using the TORO 25 mark. It has never received any authorization, express or implied, to use the TORO 25 mark in a domain name or to resell the Complainant's products on its website. The website associated with the disputed domain name offers for sale products not authorized by the Complainant and competitive with the Complainant's products. The website incorporates a hyperlink to the Complainant's website. The website indicates that it is still an authorized partner/distributor of the Complainant and that it is selling the Complainant's products. The disputed domain name was registered and is being used in bad faith. The unauthorized use of the Complainant's name and mark on the website associated with the disputed domain name is causing a likelihood of confusion. The Respondent intends to mislead the consumer about the source of the products that he intends to promote and commercialize. In the "service and support" section on the website, it is possible to download the Complainant's TORO 25 product catalog. At the time of registration of the disputed domain name, the Respondent was aware that the Complainant owned the TORO 25 trademark. This fraudulent conduct shows the Respondent's bad faith. The Respondent is expressly and untruthfully claiming to have an authorization from the Complainant to affix another trademark (THULE) to the Complainant's original TORO pipeline products.

In reply to Procedural Order No. 1, the Complainant submits that the original distributor agreement between the Parties was oral and not yet reduced to writing. The Complainant sent the Respondent via email a draft of the License Agreement that would expressly prohibit the latter from registering TORO 25 in a domain name. After the Complainant sent its letter of termination of the Parties' business relationship in March 2023, it conducted Internet checks and became aware that the Respondent had registered and was still using two unauthorized domain names, including the disputed domain name. The Respondent's Chinese legal representative sent a cease-and-desist letter in April 2023.

B. Respondent

The Respondent did not reply to the Complainant's contentions besides sending a brief informal email asking if there were any problem.

6. Discussion and Findings

6.1 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 and amended Complaint were filed in English. The Complainant requested that the language of the proceeding be English. Its reasons were that some pre-Complaint correspondence between the Parties had been conducted in English, and the License Agreement between the Parties is in English, which demonstrates the Respondent's familiarity with that language.

The Respondent did not comment on the language of the proceeding and expressed no interest in participating in this proceeding besides sending a brief informal email in Chinese. This email was sent not only after the due date for Response but also after the due date for the Respondent's comments in reply to Procedural Order No.1.

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.

6.2 Substantive Issues

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following elements with respect to each disputed domain name:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the 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.

The burden of proof of each element is borne by the Complainant.

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. See [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of the figurative TORO 25 and bull trademark for the purposes of the Policy. See [WIPO Overview 3.0](#), section 1.2.1. Given that the figurative elements of this trademark cannot be represented in a domain name for technical reasons, the Panel will not take them into account in the assessment of confusing similarity. See [WIPO Overview 3.0](#), section 1.10.

The disputed domain name incorporates both textual elements of the mark (i.e., the word "Toro" and the number "25"). The only additional element in the disputed domain name is a generic Top-Level Domain ("gTLD") extension (".net") which, as a standard requirement of domain name registration, may be disregarded in the assessment of confusing similarity. Accordingly, the Panel finds the disputed domain name confusingly similar to the Complainant's mark. See [WIPO Overview 3.0](#), sections 1.7 and 1.11.1.

Therefore, 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. See [WIPO Overview 3.0](#), section 2.1.

The Panel will assess the existence of rights and legitimate interests in the present, i.e., with a view to circumstances prevailing at the time when the Complaint was filed. See [WIPO Overview 3.0](#), section 2.11.

In the present case, the disputed domain name incorporates both textual elements of the Complainant's TORO 25 and bull mark and it resolves to the Respondent's company website. According to the evidence, on March 21, 2023, the Complainant terminated the Respondent company's license to use its TORO 25 marks, and terminated the Parties' business relationship for the distribution of the Complainant's TORO 25 branded series of PPR pipes and PPR plastic fittings in China. Despite this, the website associated with the disputed domain name continues to hold out the Respondent's company as the responsible unit of the Complainant in China. The website also makes claims about the rebranding of the Complainant's products that the Complainant submits are false. In view of these circumstances, the Panel does not consider that the Respondent is using the disputed domain name in connection with a bona fide offering of goods or services, nor is he making a legitimate noncommercial or fair use of the disputed domain name.

Further, the Registrar has verified that the Respondent's name is "Xu JiBing (徐继炳)". His company's name is "Jiangsu Hejia Import and Export Trade Co., Ltd. (江苏禾伽进出口贸易有限公司)" and his former company's name was "Zhangjiagang Bonded Area Chuangxian Trading Co. Ltd" (张家港保税区创先国际商贸有限公司). None of these names resembles the disputed domain name. Nothing in the record indicates that the Respondent has been commonly known by the disputed domain name.

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 at the present time. 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.

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

C. Bad Faith and Suitability of the Policy for this Dispute

The third element of paragraph 4(a) of the Policy requires the Complainant to show both that the disputed domain name has been registered in bad faith and also that it is being used in bad faith.

In the present case, the Respondent registered the disputed domain name at a time when his company was distributing the Complainant's TORO 25 products pursuant to a distributor agreement that was not yet reduced to writing. The Complainant had foreshadowed in correspondence that in future it could translate its brand and website into Chinese but it is unclear what the Parties' mutual understanding was at that time regarding the scope of the Respondent's authorization to use the TORO 25 trademark. Nothing indicates that the Complainant opposed the registration of the disputed domain name beforehand.

Two days after the Respondent registered the disputed domain name, the Complainant executed a written License Agreement under which it granted the Respondent's company a license to use the TORO 25 mark. Among other things, the License Agreement prohibited the Respondent's company from applying to register any domain names containing the TORO 25 mark or confusingly similar to that mark. Although the Complainant alleges that it had already sent the Respondent a draft of the License Agreement by email, it is not clear when the Respondent became aware of the proposed prohibition on registration of domain names, or when he executed the License Agreement.

Further, the Complainant continued supplying the Respondent with its products until 2022 even while the Respondent used the disputed domain name in connection with a website displaying the Complainant's mark and logo and offering for sale PPR pipes and pipe fittings from at least 2014. Despite the Complainant's submission that, subsequent to termination of the Parties' relationship, it conducted Internet checks and became aware that the Respondent had registered and was still using the disputed domain name, it remains an open question as to when the Complainant first became aware of the Respondent's website. Nothing on the record indicates that the Complainant objected to the Respondent's registration and use of the disputed domain name prior to termination of their relationship in 2023, and it is plausible that the Complainant tolerated it all along.

In view of the above circumstances, the Panel considers that the disputed domain name is part of a more complex business dispute between a trademark owner and its former distributor, including issues regarding use of the TORO 25 mark and payments for products. The Panel recalls that the Policy is not designed to adjudicate all disputes of any kind that relate in any way to domain names. Rather, the Policy establishes a streamlined, inexpensive administrative dispute resolution procedure intended only for the relatively narrow class of cases of "abusive cybersquatting". The UDRP is not an appropriate process to adjudicate a business dispute such as this because the Panel does not have the benefit of witness testimony, disclosure of documents, or the other appropriate instruments that are typically available to assist a court to resolve such a dispute.

Therefore, the Panel will not consider the merits of the Complaint further, on the broad ground that this is a business dispute that exceeds the scope of the UDRP. The dispute would be more appropriately addressed by a court of competent jurisdiction or an alternative form of dispute resolution. See [WIPO Overview 3.0](#), section 4.14.6.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: March 14, 2024