

## ADMINISTRATIVE PANEL DECISION

Derivitec Limited v. 伟良 汪

Case No. D2024-0026

### 1. The Parties

The Complainant is Derivitec Limited, United Kingdom (“UK”), represented by Lewis Silkin LLP, United Kingdom.

The Respondent is 伟良 汪, China.

### 2. The Domain Name and Registrar

The disputed domain name <deriviteck.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 January 4, 2024. On January 5, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 5, 2024, 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 (Redacted) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 8, 2024, 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 on January 9, 2024.

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 of the Complaint, and the proceedings commenced on January 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 1, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 2, 2024.

The Center appointed Mathias Lilleengen as the sole panelist in this matter on February 7, 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 to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

The Complainant is a cloud-based financial service provider for risk and portfolio management to clients based in the United Kingdom, Hong Kong, China and throughout the world. It was founded in 2011. The Complainant has been nominated for awards and it has social media presence.

The Complainant is the owner of trademark registrations for DERIVITEC, for example UK registration number UK00002579908 registered on August 5, 2011.

The Domain Name was registered on July 14, 2023. The Complainant has submitted evidence showing that the Domain Name resolves to a website with the title "Derivitec Exchange". The Respondent's website offers financial services and replicates, without authority, the Complainant's trademark DERIVITEC in what appears to be an attempt to deceive consumers. At the time of drafting the Decision, the Domain Name still resolves to said website.

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

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

The Complainant provides evidence of trademark registrations and contends that the Domain Name is almost identical to the Complainant's DERIVITEC trademark with the only difference being that the spelling of the Domain Name has the additional letter "k" at the end.

The Complainant argues that the Respondent has no rights or legitimate interests in respect of the Domain Name. The Complainant asserts that the Respondent does not own any registered rights in any trademark which comprises part or all of the Domain Name, nor is the Respondent commonly known by the Domain Name. There is no evidence of the Respondent's use of the Domain Name or a name corresponding to the Domain Name in connection with a bona fide offering of goods or services. The Respondent's use of the Domain Name is an attempt to deceive consumers into believing that the Respondent's website is associated with the Complainant, or otherwise affiliated with the Complainant. This does not constitute a legitimate interest in the Domain Name.

Based on the nature and use of the Domain Name, the Complainant argues that the Respondent was aware of the Complainant's trademark and business when the Respondent registered the Domain Name. Moreover, the Respondent's use of the Domain Name deliberately attracts Internet users for commercial gain by creating a likelihood of confusion with the Complainant's trademark, which is evidence of bad faith.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

##### **A. Identical or Confusingly Similar**

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 Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has established that it has rights in the trademark DERIVITEC. In this case, the Domain Name is identical to the Complainant's trademark, save for the added letter "k" at the end. The additional letter does not prevent a finding of confusing similarity between the Domain Name and the Complainant's trademark. It appears to the Panel to be an intentional misspelling of the Complainant's trademark (typosquatting). [WIPO Overview 3.0](#), section 1.9. For the purpose of assessing under paragraph 4(a)(i) of the Policy, the Panel may ignore the generic Top-Level Domain ("gTLD"). [WIPO Overview 3.0](#), section 1.11.1.

The Panel finds that the Domain Name is confusingly similar to a trademark in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

## **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a list of circumstances in which a respondent may demonstrate rights or legitimate interests in a disputed 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.

Based on the evidence in the present matter, the Respondent is not affiliated or related to the Complainant in any way. There is no evidence that the Respondent has registered the Domain Name as a trademark or acquired trademark rights. There is no evidence of the 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. On the contrary, the Respondent's use is evidence of bad faith, see below. Furthermore, the Panel finds that the composition of the Domain Name carries a risk of implied affiliation with the Complainant.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name in accordance with paragraph 4(a)(ii) of the Policy.

## **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.

The Panel finds that the Respondent most likely knew of the Complainant when he registered the Domain Name based on the composition and use of the Domain Name. The Domain Name resolves to a website offering financial services and replicates the Complainant's trademark DERIVITEC in an attempt to deceive Internet users. Thus, the Respondent's use and registration of the Domain Name is evidence of bad faith under the Policy.

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 the Domain Name, <deriviteck.com>, transferred to the Complainant.

*/Mathias Lilleengen/*

**Mathias Lilleengen**

Sole Panelist

Date: February 12, 2024