

ADMINISTRATIVE PANEL DECISION

Zhejiang Dahua Technology Co. Ltd v. Sasi Kumar, RK & Sons
Case No. D2024-0460

1. The Parties

The Complainant is Zhejiang Dahua Technology Co. Ltd, China, represented by Lakshmikumaran & Sridharan, Attorneys, India.

The Respondent is Sasi Kumar, RK & Sons, India.

2. The Domain Names and Registrar

The disputed domain names <ahuatech.com>, <dahuaindia.com>, and <dahuaservices.com> are registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on January 31, 2024. On January 31, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On February 1, 2024, 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. In response to a notification by the Center that the Complaint was administratively deficient, the Complainant filed an amended Complaint on February 15, 2024.

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 of the Complaint, and the proceedings commenced on February 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 7, 2024. The Response was filed with the Center on March 6, 2024.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on March 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.

4. Factual Background

The Complainant was incorporated in China in 2001. It became a publicly listed company on the Shenzhen Stock Exchange in 2008.

In the Complaint, the Complainant describes itself as “a world-leading, video-centric AIoT solution and service provider.” This appears to be meant that it provides security solutions and related products and services. Its “products and solutions” have been installed at major events including the China International Import Expo, the Rio Olympics, the G20 Hangzhou Summit, the BRICS Xiamen Summit, a project in the Vatican City, Toyota’s Argentina Plant, and the Sao Paulo International Airport.

According to the Complaint, the Complainant has established more than 57 subsidiaries in different parts of the world including the Asia Pacific, North America, South America, Europe, and Africa, and its products and services have been deployed in more than 180 countries. Its products and services have been used and promoted in India for “over a decade”. The Complaint also includes an undated report stating that the Complainant reported revenues of USD 2.1 billion in 2016 and at that time had 11,000 employees.

Since 2014, the Complainant has been ranked as the second largest supplier of video surveillance equipment in the world each year by Omdia (formerly known as IHS). It has also been ranked second on the A & S Security 50 list for 5 consecutive years.

The Complaint includes evidence that the Complainant owns a number of registered trademarks in India:

- (a) Registered Trademark Nos 2604471 and 2604472, DAHUA, which were both registered with effect from September 30, 2013, for a range of goods and services in International Classes 9 and 35. The details recorded on the Register show that the Complainant claimed the marks have been in use from August 5, 2008;
- (b) Registered Trademark No 3900245, DAHUA, which has been registered with effect from July 27, 2018, in respect of a range of goods and services in International Classes 7, 12, 38, 42, and 45;
- (c) Registered Trademark No 2063622 for the figurative mark depicted below and which has been registered with effect from December 5, 2010, in respect of relevant goods in International Class 9:



There are also later registrations in 2018 for the figurative mark in International Classes 7, 9, 12, 37, 38, 42, and 45.

The second disputed domain name <dahuaindia.com> was registered on April 30, 2012; the first disputed domain name <ahuatech.com> was registered on February 14, 2013 and the third disputed domain name <dahuaservices.com> was registered on July 17, 2019.

For some time, the second disputed domain name resolved to a website operated by the Respondent.¹ The landing page in evidence features at the top what appears to be a rotating advertisement; the one that has been captured prominently featuring the Complainant’s figurative mark and, beneath the panel for the rotating advertisements, a number of what are admittedly the Complainant’s products. In the top left hand of the landing page there is a “logo” depicting the Respondent’s own trademark which includes the initials “ASI” and the phrase “Active System Integration”. This “logo” is somewhat smaller in size than the Complainant’s figurative trademark depicted in the rotating advertisement so that, arguably, the Complainant’s figurative

¹ As the first named Respondent is the CEO of the second named Respondent, the Panel will refer simply to “the Respondent” unless it becomes necessary to distinguish between them.

mark is the most striking feature. The Respondent uses the phrase “Active System Integration” as some sort of business or trading name.

When the Complainant sent a cease-and-desist notices to the Respondent, the Respondent (while protesting) took the website down. The second and third disputed domain names do not currently resolve to an active website.

The first disputed domain name currently resolves to a website promoting for sale a range of security surveillance products and services under the name “Ahua Tech”. The page bears a copyright notice “Copyright © 2013. All rights reserved.” The products being offered for sale are not the Complainant’s products; at least one is being offered as “The Camera Name is AHUA TECH.” Further, the “About Us” page under the heading “Why We Special” includes the statement “Unlike other resellers, AHUA TECH fabricates and manufactures all their cameras for their security camera systems.”

5. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of a disputed domain name, the Complainant must demonstrate each of the following:

- (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.

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

A. Identical or Confusingly Similar

The first element that the Complainant must establish for each disputed domain name is that the disputed domain name is identical with, or confusingly similar to, the Complainant’s trademark rights.

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

The Complainant has proven ownership of the registered trademarks for DAHUA and the figurative trademark identified in Section 4 above.

The second stage of this inquiry simply requires a visual and aural comparison of the disputed domain names to the proven trademarks. This test is narrower than and thus different to the question of “likelihood of confusion” under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties, the date they were acquired and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. See e.g., [WIPO Overview 3.0](#), section 1.7.

In undertaking that comparison, it is permissible in the present circumstances to disregard the generic Top-Level Domain (“gTLD”) component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.1.

Disregarding the “.com” gTLD, the second and third disputed domain names consist of the Complainant’s registered trademark and the term “India” or “services”. As this requirement under the Policy is essentially a standing requirement, the addition of these terms does not preclude a finding of confusing similarity. See e.g., [WIPO Overview 3.0](#), section 1.8. Apart from anything else, the Complainant’s trademark remains visually and aurally recognisable within the disputed domain name.

Accordingly, the second and third disputed domain names are confusingly similar to the Complainant’s trademark.

The position of the first disputed domain name is more complicated.

It is also usual to disregard the design elements of a trademark under the first element as such elements are generally incapable of representation in a domain name. Where the textual elements have been disclaimed in the registration or cannot fairly be described as an essential or important element of the trademark, however, different considerations may arise. See for example, [WIPO Overview 3.0](#), section 1.10. The figurative elements of the Complainant’s trademarks are not so dominating that the verbal element cannot be considered an essential or important part of the trademarks in this case. Accordingly, it is appropriate to apply the usual rule.

Applying that rule, the figurative trademark could be seen as “dahua” but the contrasting presentation of the letter “a” inside a letter “d” making “dahua” or “ahua” leads the Panel to conclude that is not appropriate in this case. While the Indian Intellectual Property Office appears to have treated the verbal element of the figurative mark as “alhua”, for the reasons the Panel disregards the representation of the letter “d” (if that is what it is), the Panel considers the verbal element may also be seen as “ahua”. In that case, the first disputed domain name consists of the verbal element of the Complainant’s figurative trademark and the colloquial term “tech”.

The first disputed domain name can also be seen as the Complainant’s trademark DAHUA with the letter “d” dropped. In the Panel’s opinion, this will have a close aural resemblance to the Complainant’s trademark and would qualify as a confusingly similar misspelling or typosquatting. See [WIPO Overview 3.0](#), section 1.9.

As with the second and third disputed domain names, therefore, the Panel considers the first disputed domain name is confusingly similar to the Complainant’s trademark.

Accordingly, the Panel finds that the requirement under the first limb of the Policy is satisfied.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain names.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

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

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a 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.

The Complainant states that it has not authorised the Respondent to use the disputed domain names.

The disputed domain names are not derived from the Respondent's name.

Insofar as the Respondent uses the trading name “Ahua Tech”, the Respondent adopted that name after the Respondent began selling the Complainant's products “from the year 2011 onwards”.

It is not in dispute between the parties that there has been a business relationship between them, at least until December 2022.

The Complainant describes the Respondent as an installer of its products. The Complainant further states that the Respondent's registered the disputed domain names “clandestinely” and without permission or the Complainant's knowledge.

In cases involving resellers, panels generally apply the principles developed under the UDRP in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#):

- (i) the respondent must actually be offering goods or services related to the trademark in respect of which the domain name is confusingly similar;
- (ii) the respondent must offer only those goods or services in connection with the disputed domain name;
- (iii) the respondent must have disclosed its true relationship with the owner of the trademark to which the domain name is identical or confusingly similar, prior to notice of the dispute; and
- (iv) the respondent must not have attempted to “corner the market” in domain names that reflect that trademark.

While it appears that the Respondent was offering the Complainant's products from the website to which the second disputed domain name resolved until December 2022, it is doing so no longer. There is no evidence that the third disputed domain name has been used to offer any products at all.

The Panel also notes that the Complainant states that the Respondent's website also offered third party, competing products in addition to the Complainant's products. The Complaint does not include evidence of that. However, the Respondent has disputed that allegation.

In these circumstances, the Panel finds that the second and third disputed domain names fail the *Oki Data* test on at least the third (in their composition) and fourth requirements noting in particular that “Dahua India”, at least, would be a natural description for the Complainant's operations in India. The registration of the third disputed domain name also shows a pattern of such conduct.

The Panel also finds that the first disputed domain name fails the *Oki Data* test. The website is clearly offering for sale products which compete with the Complainant's products and doing so by reference to a trademark and domain name which is confusingly similar to the Complainant's trademarks. Such use of the disputed domain name to target the Complainant's trademarks does not qualify as a good faith offering of goods and services under the Policy.

Moreover, the Respondent adopted the name "Ahua Tech" with full awareness of the Complainant's trademark, so it has not been shown objectively to have been adopted independently of the Complainant's name and trademark.

These matters, taken together, are sufficient to establish a prima facie case under the Policy that the Respondent has no rights or legitimate interests in the disputed domain names which the Respondent has not rebutted.

Accordingly, the Panel finds the Complainant has established the second requirement under the Policy also.

C. Registered and Used in Bad Faith

Under the third requirement of the Policy, the Complainant must establish that for each disputed domain name that it has been both registered and used in bad faith by the Respondent: see e.g., *Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd* WIPO Case No. [D2010-0470](#).

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. These are examples only and do not confine what may constitute registration and use in bad faith.

As already noted, the Complainant contends that the disputed domain names have been registered clandestinely, without its permission.

In the Response, the Respondent says it is "an "Authorised Dealer/Seller" and has been involved in procuring products from the Complainant and selling them to customers in India since 2011. It says it registered each of the disputed domain names with the good faith intention of promoting the Complainant's products. According to the Respondent, "it is general practice for a seller to obtain a domain name and incorporate the logos of the product they are affiliated with to promote the same".

The Response includes evidence that the Respondent purchased products from the Complainant's associated company, Aditya Infotech Ltd, in at least 2013 and the Complainant does not dispute the Respondent's claim of sales since 2011.

The Respondent also provides a document on the Complainant's Indian subsidiary's letterhead authorising the Respondent (under the name "Active System Integration") "as our Partner for sales of Enterprise Segment CCTV/ Surveillance products on Tenders."

The letter of appointment further prescribed that "Active System Integration shall purchase the products ordered by customer from 'Dahua (Company Name)' as per company Standard Warranty terms."

The letter of appointment is dated February 26, 2020.

Contrary to the Respondent's claim, it is not the Panel's experience that it is general practice for resellers or distributors or agents to register their suppliers' trademarks as domain names. Typically, that requires permission from the trademark owner. If the reseller or distributor or agent does not have that permission, they must be careful to ensure that their registration (and use) does not violate the supplier's rights.

The Panel does not consider that the letter of appointment provides permission for the Respondent to register any of the disputed domain names. Moreover, it is dated in 2020 – well after the Respondent registered the disputed domain names. Further, for the reasons discussed in Section 5B above, the registration and use of the disputed domain names – which carry an impression of authorization or association – does not qualify as within the rights and legitimate interests of the Respondent under the Policy.

The Respondent appears to have at least tacitly acknowledged this by taking down the website associated with the second disputed domain name on receipt of the Complainant's cease and desist letter.

While the website to which the first disputed domain name resolves is still active, it is not being used to promote the Complainant's products. It therefore appears that the circumstances identified in paragraph 4(b)(iv) apply in respect of the first disputed domain name:

“(iv) by using the domain name, [the Respondent has] intentionally attempted to attract, for commercial gain, Internet users to [its] web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.”

Accordingly, the Panel finds that the Complainant has established the third element of the Policy in respect of each disputed domain name.

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, <ahuatech.com>, <dahuaindia.com>, and <dahuaservices.com> be transferred to the Complainant.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: March 29, 2024