

## ADMINISTRATIVE PANEL DECISION

Demag IP Holdings GmbH v. Halil Berk Kurt, Demag Power Jeneratör Enerji  
Güc Sistemleri Sanayi Ve Ticaret LTD. STI  
Case No. D2024-0633

### 1. The Parties

The Complainant is Demag IP Holdings GmbH, Switzerland, represented by Moser Götze & Partner Patentanwälte mbB, Germany.

The Respondent is Halil Berk Kurt, Demag Power Jeneratör Enerji Güc Sistemleri Sanayi Ve Ticaret LTD. STI, Türkiye.

### 2. The Domain Name and Registrar

The disputed domain name <demagpower.com> is registered with Nics Telekomunikasyon A.S. (the "Registrar").

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on February 12, 2024. On February 12, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 13, 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.

On February 15, 2024, the Center informed the parties in Turkish and English, that the language of the registration agreement for the disputed domain name is Turkish. On February 16, 2024, the Complainant requested English to be the language of the proceeding. The Respondent objected to the Complainant's request.

The Center verified that 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 February 27, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 18, 2024. The Respondent sent an email communication to the Center on March 1, 2024.

The Center appointed Kaya Köklü as the sole panelist in this matter on March 25, 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 incorporated in Switzerland and part of a group of companies based in Germany that, among others, designs and manufactures industrial cranes and components, marketed and sold worldwide. The company roots date back to the year 1910.

The Complainant is the owner of the DEMAG trademark, which is registered in a large number of jurisdictions. Among many others, the Complainant is the registered owner of the European Union Trademark Registration No. 011154556, registered on February 22, 2013, for DEMAG, covering protection for goods and services in classes 6, 7, 8, 9, 11, 12, 17, 19, 20, 28, 37, and 42, such as for welding generators, power supply equipment, switches and switch boxes. Also, the Complainant is the owner of various Turkish trademark registrations, such as the Trademark Registration No. 114387, registered on December 25, 1989, for DEMAG, covering protection for various industrial and machinery products as protected in classes 7, 9, and 11<sup>1</sup>.

The Complainant further operates various domain names comprising its DEMAG trademark, such as <demag.de>.

The Respondent is a company with its registered seat in Türkiye, founded in August 2022. Based on its company registration, the company's field of activity inter alia covers the production and sale of all kinds of industrial machinery, including the production and sale of electric motors, generators and transformers respectively converters.

The disputed domain name was registered on August 27, 2022.

The disputed domain name resolves to a website of the Respondent offering industrial power generators under the trademark DEMAG, without any visible and accurate disclaimer describing the (lack of) relationship between the Parties.

On July 13, 2023, the Complainant sent a cease-and-desist letter to the Respondent, and tried to solve the dispute amicably by requesting the stop of use of the disputed domain name.

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<sup>1</sup>Noting in particular the general powers of a panel articulated inter alia in paragraphs 10 and 12 of the Rules, it has been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.8. In this regard, the Panel conducted its independent search through the search engine for the company's history and field of business. By doing so, the Panel noticed that the Complainant operates the website at the domain name <demag.de>. The Panel's further search in the Turkish trademark register shows that the Complainant is the owner of additional Turkish trademark registrations, covering protection for various additional goods and services.

## **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.

### **B. Respondent**

The Respondent did not formally reply to the Complainant's contentions, but sent a brief email communication to the Center on March 1, 2024. In its email communication, the Respondent asserts that the products of the Complainant are "completely different" from the products of the Respondent. To support its argument, the Respondent submitted a copy of its tax registration as well as of its company registration in the commercial register. The Respondent argues that the Complainant tries to tarnish the Respondent's business.

## **6. Discussion and Findings**

### **6.1. Language of the Proceeding**

The language of the Registration Agreement for the disputed domain name is Turkish. 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 has no knowledge of Turkish, while the Respondent (with reference to the English language version of the website associated to the disputed domain name) appears to be familiar with the English language

In its email communication to the Center of February 20, 2024, the Respondent requested Turkish to be the language of the proceeding, arguing that the English language version of its website at the disputed domain name is available to respond to customers from different jurisdictions. Worth to mention is that the Respondent sent this email communication as well as his email communication of March 1, 2024, responding to the Complainant's contentions, in English language only.

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

The Panel notes that the Respondent was given the opportunity to respond in Turkish and that this opportunity remained unused by the Respondent. Despite its request to conduct the proceeding in Turkish, the Respondent preferred to provide all its submissions to the Center in English language only, even though all communications by the Center to the Respondent were in English and in Turkish. The Panel concludes that the Respondent is obviously able to read, write and understand English. Considering the need to ensure the proceeding is conducted in a timely and cost effective manner, the Panel finds it is not foreseeable that the Respondent would be prejudiced, should English be adopted as the language of the proceeding.

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

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark 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 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See section 4.3 of the [WIPO Overview 3.0](#).

For the evaluation of this case, the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views stated therein.

### 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 the DEMAG trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the DEMAG mark is reproduced 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.

Although the addition of other terms, here "power", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name 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 name. Particularly, the Complainant put forward that the Respondent is neither a business partner of the Complainant nor a licensee of its DEMAG trademarks.

In return, the Respondent referred to its established company in Türkiye in the year 2022 and argued that the offered products by the Parties are “completely different”.

First, the Panel notes that the existence of a registered company name or even an own registered trademark, comprising a third party trademark, does not automatically confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.12.2.

Panels may particularly decline to find respondent rights or legitimate interests in a domain name on the basis of a registered company name where the overall circumstances demonstrate that such company name registration was obtained primarily to circumvent the application of the UDRP or otherwise prevent the complainant’s exercise of its trademark rights.

In the present case, the Panel notes that the company name of the Respondent was registered many years after the Complainant’s DEMAG trademark registrations, including the DEMAG trademark registrations in Türkiye, where the Respondent is located.

Furthermore, the Panel notes the wide reputation of the Complainant’s DEMAG trademark in the field of industrial machinery, including in Türkiye, which indicates that the Respondent was likely aware of the Complainant and tried to take unfair advantage of the Complainant’s previously existing trademark rights in DEMAG. The Respondent did not come forward with any argument as to why he chose to register the disputed domain name incorporating the Complainant’s DEMAG trademark. The Respondent more likely than not was aware of the Complainant’s DEMAG trademark before using it for its own industrial products, which in view of the Panel, prevents accepting a bona fide offering of goods. The Respondent’s argument that the products offered by the Parties are “completely different” is not convincing as both parties are active in the field of industrial machinery. Also, the Panel notes that the DEMAG trademark registrations cover rather broad protection, including protection for power supply equipment, switches and converters and welding generators, which in view of the Panel correspond to or are at least similar to the power generators and related equipment as offered by the Respondent.

The Panel further notes that the Respondent has not provided any evidence that it is commonly known by the disputed domain name. It is not sufficient for the Respondent to say its trade name includes the terms “demag power”, it has to show that it is commonly known as “demagpower”. The mere provision of tax and company name registration documents are not, in view of the Panel, sufficient to demonstrate that the Respondent is commonly known by the disputed domain name.

For the sake of completeness, there has also been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

Bearing all these circumstances in mind, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

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 sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel finds that the Respondent knew or should have known the existence of the Complainant's DEMAG trademark when registering the disputed domain name. The choice of the disputed domain name, which indicates affiliation with the Complainant, cannot be reasonably explained other than as a reference to the DEMAG trademark owned by the Complainant. The Panel is convinced that the Respondent has deliberately chosen the disputed domain name, which comprises the Complainant's long standing DEMAG trademark in its entirety (in combination with the term "power"), with the aim of taking unfair advantage from the reputation of the DEMAG trademark and attracting national and international customers in the respective industrial markets knowing the Complainant, to its own industrial machinery.

Furthermore, the Respondent's use of the disputed domain name for promoting and selling industrial machinery under the DEMAG trademark without authorization from the Complainant and without any visible and accurate disclaimer on the website associated with the disputed domain name describing the (lack of) relationship between the Parties, is, in view of the Panel, sufficient evidence that the Respondent intentionally tries to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant and its (also in Türkiye) long standing DEMAG trademark. In the Panel's view, this establishes the Respondent's bad faith use of the disputed domain name.

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 <demagpower.com> be cancelled.

*/Kaya Köklü/*

**Kaya Köklü**

Sole Panelist

Date: April 8, 2024