

ADMINISTRATIVE PANEL DECISION

TotalEnergies SE v. chen kai, chen kai, chenshen, chenshen, gaoqiu, gaoqiu, Abe, Abe

Case No. D2024-1637

1. The Parties

The Complainant is TotalEnergies SE, France, represented by In Concreto, France.

The Respondents are Chenkai, Chenkai, Hong Kong, China, Gaoqiu, Gaoqiu, Hong Kong, China, Chenshen, Hong Kong, China, and Abe, Abe, United States of America.

2. The Domain Name and Registrar

The disputed domain names <total-crude.vip>, <totalenergiesmall.cc>, <totalenergiesmall.vip>, and <totalenergiesusdt.vip> are all registered with Alibaba.com Singapore E-Commerce Private Limited (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 18, 2024. On April 18, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 19, 2024, 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 Respondents ("Chenkai; Gaoqiu; Anonymized") and contact information in the Complaint. The Center sent an email communication to the Complainant on April 22, 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 amended Complaint on April 26, 2024, and later added a fourth domain name to its Complaint on April 30, 2024. On May 6, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the fourth disputed domain name.

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 May 7, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 27, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 30, 2024.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on June 6, 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

It results from the Complainant's undisputed allegations that it is a worldwide company that produces and markets energies on a global scale: oil and biofuels, natural gas and green gases, renewables, and electricity, operating worldwide in more than 130 countries through a large Group, and numerous subsidiaries. Its business includes all aspects of the energy industry from production to marketing, as well as in the development of next generation energy activities (biomass, wind). It is also a major actor of natural gas and a world-leading solar energy operator.

The Complainant is the registered owner of many trademarks worldwide containing or consisting of "TOTAL", such as, European Union trademark registration No. 018308753 TOTAL ENERGIES registered on May 28, 2021 for goods and services in classes: 1, 2, 3, 4, 5, 6, 7, 9, 11, 14, 16, 17, 18, 19, 20, 21, 25, 28, 35, 36, 37, 38, 39, 40, 41, 42, 43, 45, and French trademark registration No. 1540708 TOTAL registered on January 5, 1990 in classes 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, 33 and 34.

In addition, the Complainant uses – amongst others - the following domain names <totalenergies.com> and <totalenergies.group> in order to promote its activities on its main website.

The disputed domain name <totalenergiesusdt.vip> was registered on March 19, 2024, the disputed domain name <totalenergiesmall.vip> was registered on February 16, 2024, the disputed domain name <totalenergiesmall.cc> was registered on April 9, 2024, the dispute domain name <total-crude.vip> was registered on April 28, 2024. The disputed domain names resolve to websites containing very similar graphics, displaying the Complainant's trademark and logo and allegedly offering investments via cryptocurrencies under the Complainant's trademarks.

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 names are confusingly similar to the Complainant's trademark since they reproduce identically its prior rights. In fact, they are constructed as this: "trademark + descriptive term related to cryptocurrencies.VIP/.CC".

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain names. According to the Complainant, the websites linked to the four contested domain names, which include the Complainant's current or former logo, is clearly an obvious attempt to usurp the Complainant's identity. Furthermore, it should be noted that the Complainant has not licensed the Respondent to use its trademark or domain name, nor has it allowed the Respondent to reserve or use a domain name incorporating the Complainant's rights.

Finally, the Complainant contends that the disputed domain names were registered and are being used in bad faith. According to the Complainant, the bad faith of the Respondent may be presumed inasmuch the trademarks TOTAL and TOTALENERGIES of the Complainant acquired a certain reputation and fame all over the world in the field of industry in which it specialized. In addition, the websites are reproducing the Complainant's logos and trademarks identically without authorization. Furthermore, the Respondent is also using a terminology which demonstrate that he is obviously pretending to be the Complainant. Indeed, the websites are proposing investments in cryptocurrencies which are not authorized or offered by the Complainant. Internet users will therefore obtain no asset when ordering through those websites.

B. Respondent

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

6. Discussion and Findings

6.1 Procedural issues – Consolidation

As noted above, the Complaint relates to more than one domain name, which are registered by different Registrants, according to the information provided by the Registrar upon the Request for Registrar Verification sent by the Center, *i.e.* the disputed domain name <totalenergiesusdt.vip> was allegedly registered by chen kai (Hong Kong, China), the disputed domain name <totalenergiesmall.vip> by gaoqiu (Hong Kong, China), the disputed domain name <totalenergiesmall.cc> by chenshen (Hong Kong, China) and the disputed domain name <total-crude.vip> by Abe (Los Angeles, United States of America).

In its Amended Complaint the Complainant requests the Panel to consolidate the cases.

Paragraph 10(e) of the UDRP Rules grants a panel the power to consolidate multiple domain name disputes.

In the Panel's view the Complainant submitted sufficient evidence to justify the consolidation in terms of common control of the domain names or corresponding websites and fairness and equitableness of the consolidation to all parties.

As set forth in section 4.11.2 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"): "Panels have considered a range of factors, typically present in some combination, as useful to determining whether such consolidation is appropriate, such as similarities in or relevant aspects of (i) the registrants' identity(ies) including pseudonyms, (ii) the registrants' contact information including email address(es), postal address(es), or phone number(s), including any pattern of irregularities, (iii) relevant IP addresses, name servers, or webhost(s), (iv) the content or layout of websites corresponding to the disputed domain names, (v) the nature of the marks at issue (e.g., where a registrant targets a specific sector), (vi) any naming patterns in the disputed domain names (e.g., <mark-country> or <mark-goods>), (vii) the relevant language/scripts of the disputed domain names particularly where they are the same as the mark(s) at issue, (viii) any changes by the respondent relating to any of the above items following communications regarding the disputed domain name(s), (ix) any evidence of respondent affiliation with respect to the ability to control the disputed domain name(s), (x) any (prior) pattern of similar respondent behavior, or (xi) other arguments made by the complainant and/or disclosures by the respondent(s)."

The Panel considers the consolidation as appropriate, taking into consideration the following factors: 1) in particular 1) the disputed domain names resolve to websites containing very similar graphics and allegedly offering investments via cryptocurrencies; 2) the disputed domain names follow the same naming pattern by incorporating a trademark TOTAL ENERGIES or TOTAL followed by a "descriptive term" relating to the cryptocurrencies, *i.e.* "mall" (Metamall cryptocurrency code), "usdt" (Tether cryptocurrency code) and "crude" (Crudeoil cryptocurrency code); 3) the disputed domain names share the same Registrar; 4) finally the disputed domain names (but <total-crude.vip>) share the same registrant contact information in relation to postcode, phone area code and country (presenting also an irregularity in the address, since they indicate a

place that does not exist in that country). All these elements give evidence of a common control of the disputed domain names at issue.

On the balance of probabilities and taking into account the above circumstances of the present case, the Panel finds that the disputed domain names are under common control. The Panel is also satisfied that consolidation of these disputes is fair and equitable to all parties, and that they should be consolidated in the interest of procedural efficiency.

6.2 Substantive issues

Paragraph 15(a) of the Rules instructs this Panel to “decide a 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”. Paragraph 4(a) of the Policy requires a complainant to prove each of the following three elements in order to obtain an order that each disputed domain name be transferred or cancelled:

- (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 Panel will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([“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 marks (i.e. TOTAL and TOTAL ENERGIES) 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 “crude”, “mall” and “usdt” respectively, 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, the Panel notes that the disputed domain names contain the Complainant's registered trademark and a term with an inherent Internet connotation: in fact, all the disputed domain names contain a descriptive term relating to the cryptocurrencies, i.e. "mall" (Metamall cryptocurrency code), "usdt" (Tether cryptocurrency code) and "crude" (Crudeoil cryptocurrency code) respectively. The composition of these disputed domain names carry a risk of implied affiliation: in fact, certain geographic terms (e.g., <trademark-usa.com>, or <trademark.nyc>), or terms with an "inherent Internet connotation" (e.g., <e-trademark.com>, <buy-trademark.com>, or <trademark.online>) are seen as tending to suggest sponsorship or endorsement by the trademark owner, see [WIPO Overview 3.0](#) at section 2.5.1.

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.

One of these circumstances is that the Respondent, by using the disputed domain names, has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location (paragraph 4(b)(iv) of the Policy). In the present case, the Panel notes that it results from the Complainant's documented allegations that the disputed domain names resolve to websites displaying the Complainant's trademark and logo and allegedly offering investments via cryptocurrencies under the Complainant's trademarks. For the Panel, it is therefore evident that the Respondent positively knew the Complainant's trademark. Consequently, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent also knew that the disputed domain names included the Complainant's trademark when it registered the disputed domain names.

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 this regard, the further circumstances surrounding the disputed domain names' registration and use confirm the findings that the Respondent has registered and is using the disputed domain names in bad faith:

- (i) the nature of the disputed domain names (incorporating the Complainant's mark plus the addition of a descriptive term with an "inherent Internet connotation");
- (ii) the content of the websites to which the disputed domain names direct, displaying the Complainant's trademark, logo, and purportedly offering investments under the Complainant's trademarks;
- (iii) a clear absence of rights or legitimate interests coupled with no response for the Respondent's choice of the disputed domain names.

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 <total-crude.vip>, <totalenergiesmall.cc>, <totalenergiesmall.vip>, <totalenergiesusdt.vip> be transferred to the Complainant.

/Tobias Malte Müller/

Tobias Malte Müller

Sole Panelist

Date: June 20, 2024