

## ADMINISTRATIVE PANEL DECISION

Metso Corporation v. li xiao dong  
Case No. D2024-2170

### 1. The Parties

The Complainant is Metso Corporation, Finland, represented by Roschier Brands, Attorneys Ltd., Finland.

The Respondent is li xiao dong, China.

### 2. The Domain Name and Registrar

The disputed domain name <metsochina.com> is registered with Gname.com Pte. Ltd. (the “Registrar”).

### 3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on May 27, 2024. On May 28, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 29, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Redacted for privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 31, 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 in English on June 3, 2024.

On May 31, 2024, the Center informed the Parties in Chinese and English, that the language of the Registration Agreement for the disputed domain name is Chinese. On June 3, 2024, the Complainant submitted a request that English be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

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 Chinese and English of the Complaint, and the proceedings commenced on June 6, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 26, 2024. The Respondent did not submit any

response. Accordingly, the Center notified the Respondent's default on June 27, 2024.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on July 3, 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 headquartered in Espoo, Finland and provides technologies, end-to-end solutions and services for the aggregates, minerals processing and metals refining industries globally. With over 17,000 employees in close to 50 countries, the Complainant achieved a turnover of EUR 5,390 million in 2023.

The Complainant and its affiliated company have an international trademark portfolio for the METSO marks in different jurisdictions, including but not limited to European Union Trademark Registration for METSO, No. 001388065, registered since October 22, 2004; and International Trademark Registration for METSO, No. 1220403, registered since January 15, 2014, designating jurisdictions including China. The Complainant also has a strong online presence and uses various domain names including the abovementioned marks, including <metso.com>, where it hosts its main website.

The disputed domain name was registered on December 5, 2016, and is therefore of a later date than the abovementioned trademarks of the Complainant. The Complainant submits evidence that the disputed domain name has directed to a webpage in Chinese with a title "Welcome to the official website of 3039 Sports", stating that access to the website is restricted for this region (Finland). Upon the Panel's verification, on the date of this Decision, the disputed domain name redirects to an inactive or blank website at "https://www.5858ty6.app/sports?gameType=1&key=8536226".

#### **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 confusingly similar to its registered trademarks as it incorporates the METSO mark entirely. The Complainant also claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name; the Respondent is not a licensee of the Complainant, and the Complainant has not given the Respondent any permission to register the trademark as a domain name, nor is there any evidence that the Respondent has been commonly known by the disputed domain name.

The Complainant states that the disputed domain name is not in any real legitimate use. In addition to non-use, the Complainant argues that relevant factors to be taken into account in the assessment in the present case are the high distinctiveness of the trademark METSO and the fact that the disputed domain name could not be used without infringing the Complainant's trademark rights. The Complainant essentially argues that the passive holding of the disputed domain name by the Respondent constitutes bad faith and contends that the Respondent intentionally attempts to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's mark METSO as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **6.1. Preliminary Issue: 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 was filed in English. The Complainant requested that the language of the proceeding be English. The Panel notes that the Complainant provided very limited supporting arguments and evidence for this request, essentially arguing that the Respondent would understand English since it uses a few words in English (or in Latin script) on the error website linked to the disputed domain name.

The Respondent did not make any submissions with respect to the language of the proceeding.

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).

Having considered all the matters above, and giving particular weight to the fact that the Center notified the Respondent in Chinese and English of the language of the proceeding and the commencement of the proceeding, and the absence of any reply from the Respondent in this proceeding, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

### **6.2. Substantive Issues**

#### **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.

Based on the available record, the Panel finds 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 Panel finds the entirety of the Complainant's 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 term here, "china" 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.

Based on the available record, 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. 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.

Furthermore, the Panel notes that the disputed domain name previously directed to a webpage in Chinese with a title “Welcome to the official website of 3039 Sports”, stating that access to the website is restricted for this region (Finland), and the disputed domain name currently redirects to an inactive/blank webpage and that the Respondent has apparently not used the disputed domain name in connection with a bona fide offering of goods or services, nor any credible preparations for that purpose. In this regard, the Panel finds that holding a domain name passively, without making any use of it, does not confer any rights or legitimate interests in the disputed domain name on the Respondent under the circumstances of this case (see in this regard earlier UDRP decisions such as *Bollore SE v. 赵竹飞 (Zhao Zhu Fei)*, WIPO Case No. [D2020-0691](#); and *Vente-Privee.Com and Vente-Privee.com IP S.à.r.l. v. 崔郡 (jun cui)*, WIPO Case No. [D2021-1685](#)).

Finally, the Panel also finds that the nature of the disputed domain name, incorporating the Complainant’s mark entirely and merely combining it with the geographical term “china”, carries a risk of implied affiliation and cannot constitute fair use, as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

Based on the available record, 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.

In the present case, the Panel notes that the Respondent has registered a domain name which is confusingly similar to the Complainant’s intensely used and widely-known trademarks for METSO, and combined it with the geographical term “china”, which clearly suggests an affiliation or other connection to the Complainant. In this regard, the Panel refers to the [WIPO Overview 3.0](#), section 3.1.4, which states “[p]anels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith”. Furthermore, the Panel also notes that the Complainant’s trademarks were registered many years before the registration date of the disputed domain name. The Panel deducts from these elements that the Respondent knew, or at least should have known, of the existence of the Complainant’s trademarks at the time of registering the disputed domain name. In the Panel’s view, these elements indicate bad faith on the part of

the Respondent, and the Panel therefore finds that it has been demonstrated that the Respondent registered the disputed domain name in bad faith.

As to use in bad faith, the disputed domain name previously directed to a webpage in Chinese with a title “Welcome to the official website of 3039 Sports”, stating that access to the website is restricted for this region (Finland). It seems that the disputed domain name may have previously resolved to an active website promoting 3039 Sports in certain regions. If this would be the case, the Respondent’s intent to use the disputed domain name were to attempt to attract, for commercial gain, Internet users to the Respondent’s website by creating a likelihood of confusion with the Complainant’s mark.

The disputed domain name currently redirects to an inactive/blank webpage, panels have found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds that the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the intensive use and reputation of the Complainant’s trademark, the Respondent’s absence of any reply to the Complainant’s contentions, and the unlikelihood of any good faith use of the disputed domain name by the Respondent, considering the composition of the disputed domain name clearly targeting the Complainant, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding 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 that the disputed domain name <metsochina.com> be transferred to the Complainant.

*/Deanna Wong Wai Man/*

**Deanna Wong Wai Man**

Sole Panelist

Date: July 14, 2024