

ADMINISTRATIVE PANEL DECISION

DEUTZ AG v. 王高琼 (wanggaoqiong)

Case No. D2024-2328

1. The Parties

The Complainant is DEUTZ AG, Germany, represented by Bardehle Pagenberg Partnerschaft mbB, Germany.

The Respondent is 王高琼 (wanggaoqiong), China.

2. The Domain Name and Registrar

The disputed domain name <nfdeutz.com> is registered with Alibaba Cloud Computing (Beijing) Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on June 7, 2024. On June 10, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 11, 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 (n/a) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 12, 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 in English on June 13, 2024.

On June 12, 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 13, 2024, the Complainant requested English to 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 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 in English and Chinese, and the proceedings commenced on June 18, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 8, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 9, 2024.

The Center appointed Rachel Tan as the sole panelist in this matter on July 16, 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

Founded in 1864, the Complainant is a manufacturer of engines based in Cologne, Germany. In particular, the Complainant produces and distributes diesel engines and engine components for agricultural machinery, marine propulsion, automobiles, and construction equipment.

The Complainant is the owner of the DEUTZ trademark in different jurisdictions. For example, International Registration No. 158321 for DEUTZ registered on December 17, 1951 in Classes 7 and 12, International Registration No. 174094 for DEUTZ registered on January 21, 1954 in Classes 7, 11, and 12 and International Registration No. 452600 for DEUTZ registered on May 6, 1980 in Class 37.

The Complainant is the registrant of numerous domain names incorporating the DEUTZ mark, for example <deutz.com>, <deutz.cn>, <deutz.com.cn> and <deutzdde.cn>.

The disputed domain name was registered on August 31, 2012. At the time of filing the Complaint and this Decision, the disputed domain name resolved to a website which displayed the Complainant's DEUTZ mark, and purportedly offered for sale spare parts of the Complainant and the Complainant's competitors. On the website, it appears that the Respondent was trading as a company called 北京内发内燃机械有限公司 (which may be translated as "Beijing Neifa Internal Combustion Machinery Co., Ltd.") and described itself as a company "engaged in the sales and maintenance of" the engines of the Complainant and the Complainant's competitors.

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 identical or confusingly similar to the Complainant's DEUTZ mark. The disputed domain name incorporates the Complainant's DEUTZ mark in its entirety. The additional letters "nf" do not prevent a finding of confusing similarity.

The Complainant further alleges that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not commonly known by the disputed domain name. The Respondent is not licensed or authorized by the Complainant to use its DEUTZ mark. The Respondent cannot claim a bona fide use of the disputed domain name as the website does not contain true information on the relationship between the Respondent and the Complainant. In addition, the Respondent did not sell the Complainant's products exclusively but also products from the Complainant's competitors.

Finally, the Complainant argues that the disputed domain name was registered and used in bad faith. In light of the well-known status and the prominent appearance of the Complainant's DEUTZ mark on the website, the Respondent must have known the Complainant's mark at the time of registering the disputed domain name. Furthermore, the Respondent is not only selling the Complainant's products but also those of the

Complainant's competitors. This demonstrates that the Respondent is using the Complainant's DEUTZ mark to exploit the reputation of the mark and to bait Internet users and switch them to competing products.

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 for several reasons, including the fact that (i) Chinese as the language of proceeding would lead to unnecessary delay and costs as the Complainant and its representatives could not communicate in Chinese; (ii) the disputed domain name is written in Latin characters; (iii) the website under the disputed domain name contains a promotion banner in English which demonstrates the Respondent's ability to communicate in English.

The Respondent did not make any specific 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, 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.

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 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 letters here, i.e., "nf" may bear on assessment of the second and third elements, the Panel finds the addition of such letters 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.

Lastly, it is permissible for the Panel to ignore the generic Top-Level Domain (“gTLD”), in this case “.com”, under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11.1.

Based on the available records, 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 records, 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.

The Respondent has not provided evidence of a legitimate or noncommercial use of the disputed domain name or reasons to justify the choice of the disputed domain name that is confusingly similar to the Complainant’s DEUTZ mark. There is also no indication to show that the Respondent is commonly known by the disputed domain name or otherwise has rights or legitimate interests in it. Moreover, the Complainant has not granted the Respondent any license or authorization to use the Complainant’s DEUTZ mark or register the disputed domain name. Nevertheless, the Complainant submitted that there is no direct contractual relationship between the Complainant and the Respondent or the trading company offering the goods on the website.

The disputed domain name resolved to a website which allegedly offered the Complainant’s spare parts for sale and displayed the Complainant’s DEUTZ mark. The Respondent also described itself as a company “engaged in the sales and maintenance of” the engines of the Complainant. The website did not accurately and prominently disclose the lack of a relationship between the parties and created a false impression to the Internet users that the Respondent is authorized by the Complainant. Moreover, the Respondent allegedly sold goods both manufactured by the Complainant and the Complainant’s competitors. This demonstrates that the Respondent is using the Complainant’s DEUTZ mark to bait Internet users and switch them to competing products. Therefore, the facts do not support a claim of fair use under the “Oki Data test”. See *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#), and [WIPO Overview 3.0](#), section 2.8.

None of the circumstances in paragraph 4(c) of the Policy are present in this case. For these reasons, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

Based on the available records, 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 well-known status of the Complainant's DEUTZ mark has been recognized in *Deutz AG v. 张振锋 (Zhang Zhen Feng)*, 广州道依茨发电机有限公司 (*guang zhou dao yi ci fa dian ji you xian gong si*), WIPO Case No. [D2021-1914](#) and *DEUTZ AG v. James Pollard*, WIPO Case No. [D2020-1880](#). The disputed domain name was registered almost 60 years after the first registration of the Complainant's DEUTZ mark. Search results using the key words "deutz" on search engines direct Internet users to the Complainant and its business, which indicates that an exclusive connection between the DEUTZ mark and the Complainant has been established. The Panel notes that the disputed domain name resolved to a website that displays the Complainant's mark. In addition, the spare parts offered on the website are expressly claimed to be used for engines manufactured by the Complainant under the DEUTZ mark. As such, the Respondent clearly knew of the Complainant's mark when registering the disputed domain name. [WIPO Overview 3.0](#), section 3.2.2.

Furthermore, the Panel considers the mere registration of a domain name that is confusingly similar to a well-known trademark by an unaffiliated person can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), sections 3.1.4 and section 3.2.1.

The Panel notes that the disputed domain name resolves to a website displaying the Complainant's DEUTZ mark and purportedly offering for sale products of the Complainant and the Complainant's competitors. The lack of a disclaimer that the Respondent is not an authorized dealer of the Complainant is noticeably absent. The Panel is satisfied that the Respondent has intentionally attempted to create a likelihood of confusion with the Complainant's DEUTZ mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. This demonstrates bad faith registration and use of the disputed domain name, as provided in paragraph 4(b)(iv) of the Policy.

The Panel also notes that the Respondent appears to be engaged in a pattern of abusive registration having registered two domain names both comprising of the Complainant's DEUTZ mark. See *Deutz AG 诉 王高琼 (Wang Gao Qiong)*, WIPO Case No. [DCN2022-0024](#) and *Deutz AG 诉 王高琼 (Wang Gao Qiong)*, 巩义市城区熙彤信息咨询工作室 (*gong yi shi cheng qu xi tong xin xi zi xun gong zuo shi*), WIPO Case No. [DCN2022-0032](#). The Panel finds this case is a continuation of that bad faith pattern. Such use constitutes evidence of bad faith registration and use as contemplated under paragraph 4(b)(ii) of the Policy.

The Respondent has kept silent in the face of the Complainant's allegations of bad faith in this proceeding. Given all the circumstances of the case, the Panel finds that the Respondent must have known of the Complainant before registering the disputed domain name, and considering the Respondent's lack of rights or legitimate interests, and by registering and using the disputed domain name as discussed above, the Panel is led to conclude that the disputed domain name was registered and is being used in bad faith.

Based on the available records, 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 <nfdeutz.com> be transferred to the Complainant.

/Rachel Tan/

Rachel Tan

Sole Panelist

Date: July 30, 2024