

ADMINISTRATIVE PANEL DECISION

Banque et Caisse d'Epargne de l'Etat, Luxembourg v. 深圳中科德能科技有限公司 (shen zhen zhong ke de neng ke ji you xian gong si)

Case No. D2024-2575

1. The Parties

Complainant is Banque et Caisse d'Epargne de l'Etat, Luxembourg, Luxembourg, represented by Office Freylinger S.A., Luxembourg.

Respondent is 深圳中科德能科技有限公司 (shen zhen zhong ke de neng ke ji you xian gong si), China, internally represented.

2. The Domain Name and Registrar

The disputed domain name <snet-cloud.com> is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on June 25, 2024. On June 25, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 26, 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. On July 26, 2024, the Center received an email from Respondent. The Center sent an email communication to Complainant on June 26, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint in English on June 28, 2024.

On June 26, 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 28, 2024, Complainant requested English to be the language of the proceeding. Respondent did not submit any comment on 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 Respondent in English and Chinese of the Complaint, and the proceedings commenced on July 2, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 22, 2024. Respondent did not submit any formal response. Accordingly, the Center notified the commencement panel appointment process on July 23, 2024.

On July 25, 2024, Respondent sent two emails to the Center. The Center sent an email regarding the possible settlement on July 25, 2024. On July 31, 2024, Complainant requested the suspension of the proceeding. On July 31, 2024, the Center confirmed that the proceeding was suspended until August 30, 2024. On August 29, 2024, Complainant requested the reinstatement of the proceeding.

The Center appointed Yijun Tian as the sole panelist in this matter on September 2, 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

A. Complainant

Complainant, Banque et Caisse d'Epargne de l'Etat, Luxembourg, is a company incorporated in Luxembourg. Founded on June 22, 1989, it operates internationally in the banking sector and is well-known for providing a range of banking, insurance, and financial services.

Complainant has rights in the S-NET and S-NET-related marks. Complainant is the owner of numerous S-NET trademarks worldwide, including the European Union ("EU") trademark registration for S-NET, registered on July 1, 2012 (registration number: 009110644); and the United Kingdom ("UK") trademark registration for S-NET, registered on July 1, 2012 (registration number: UK00909110644).

B. Respondent

Respondent is 深圳中科德能科技有限公司 (shen zhen zhong ke de neng ke ji you xian gong si), China,

C. The Disputed Domain Name

The disputed domain name <snet-cloud.com> was registered on May 18, 2024, long after the registration of the S-NET marks.

According to the Complaint and relevant evidence provided by Complainant, the disputed domain name is currently resolved to an inactive website.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, Complainant contends that the disputed domain name is confusingly similar in that they wholly incorporate Complainant's registered trademark S-NET in its entirety. The fact that the disputed domain name includes the descriptive term "cloud" is insufficient to diminish confusion and confusing similarity. Complainant contends that Respondent has no rights or legitimate interests in respect of the disputed domain name.

Complainant contends that the disputed domain name was registered and is being used in bad faith.

Complainant requests that the disputed domain name be transferred to it.

B. Respondent

Respondent did not formally reply to Complainant's contentions. However, Respondent informally responded in an email in English on June 26, 2024, seeking clarification about Complainant's intentions regarding the disputed domain name. Additionally, Respondent sent two emails in Chinese on July 25, 2024, stating that they no longer use the disputed domain name.

6. Discussion and Findings

6.1 Procedural Issue: Language of the Proceeding

The language of the Registration Agreements 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. Complainant requested that the language of the proceeding be English for several reasons, including the fact that:

- (a) Complainant is a Luxembourg-based bank (Annex 4 to the Complaint).
- (b) Complainant's trademarks are registered in the EU, and the UK, where English is an official language (Annex 6 to the Complaint).
- (c) The disputed domain name uses the ".com" extension, which is globally accessible, including in regions where Complainant's trademark rights are registered.
- (d) The Registrar provides an English version of the registration agreement.

Respondent did not provide specific submissions regarding the language of the proceeding. Instead, Respondent informally replied in an email in English on June 26, 2024, seeking clarification about Complainant's intentions regarding the disputed domain name, and followed up with two emails in Chinese on July 25, 2024, indicating that they no longer use the disputed domain name.

In exercising its discretion to use a language other than that of the registration agreement, a 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).

On the record, Respondent appears to be located in China and is thus presumably not a native English speaker, but considering the following aspects, the Panel has decided that the language of the proceeding shall be English: (a) the disputed domain name is registered in Latin characters, particularly in English (e.g., English words "net" and "cloud"), rather than Chinese script; (b) the generic Top-Level Domain ("gTLD") of

the disputed domain name is “.com”, so the disputed domain name seems to be prepared for users worldwide, particularly for English-speaking countries; (c) Respondent responded in English to the Center’s email on June 26, 2024, seeking clarification about Complainant’s intentions regarding the disputed domain name; (d) the Center has notified Respondent of the language of the proceeding in both Chinese and English, and Respondent has indicated no objection to Complainant’s request that English be the language of the proceeding; (e) the Center also notified Respondent in both Chinese and English of the Complaint, and informed Respondent that it would accept a response in either English or Chinese, but Respondent chose not to file any substantive response.

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: Three Elements

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 Complainant’s trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds 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 S-NET mark is reproduced within the disputed domain name except for the omission of a hyphen between “S” and “NET.” Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms, “-” and “cloud,” may bear on the 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 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 Respondent may demonstrate rights or legitimate interests in a disputed 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.

Having reviewed the record, the Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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.

More specifically,

(i) there has been no evidence adduced to show that Respondent is using the disputed domain name in connection with a bona fide offering of goods or services. Respondent has not provided evidence of a legitimate use of the disputed domain name or reasons to justify the choice of the term “snet”, Complainant’s S-NET trademark (except for the omission of a hyphen between “S” and “NET”), in the disputed domain name. There has been no evidence to show that Complainant has licensed or otherwise permitted Respondent to use the S-NET marks or to apply for or use any domain name incorporating the S-NET marks.

(ii) there has been no evidence adduced to show that Respondent has been commonly known by the disputed domain name. There has been no evidence adduced to show that Respondent has any registered trademark rights with respect to the disputed domain name. Respondent registered the disputed domain name in 2024, long after the S-NET marks became widely known. The disputed domain name is confusingly similar to Complainant’s S-NET marks and such composition carries a risk of implied affiliation that renders any fair use implausible under the circumstances of this proceeding; and

(iii) there has been no evidence adduced to show that Respondent is making a legitimate noncommercial or fair use of the disputed domain name. By contrast, the disputed domain name is currently resolved to an inactive website. Moreover, Respondent sent two emails in Chinese on July 25, 2024, stating that they no longer use the disputed domain name.

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 Respondent has registered and used the disputed domain name in bad faith. Complainant’s S-NET trademarks predate the registration of the disputed domain name. Respondent has not provided evidence of the reason to register the disputed domain name. More likely than not, Respondent had Complainant’s trademark in mind while registering the disputed domain name.

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.

UDRP 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 record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. While 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, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put. [WIPO Overview 3.0](#), section 3.3.

Having reviewed the record, the Panel notes the distinctiveness or reputation of Complainant’s trademark, that Respondent did not rebut any of Complainant’s contentions despite sending three informal communications to the Center, and the composition of the disputed domain name, 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 the third element of the Policy has been established.

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 <snet-cloud.com> be transferred to Complainant.

/Yijun Tian/

Yijun Tian

Sole Panelist

Dated: September 16, 2024