

## ADMINISTRATIVE PANEL DECISION

Itron, Inc. v. 刘旭明(liu xuming), 深圳市贝斯特燃气设备有限公司(szbeisite)  
Case No. D2024-3223

### 1. The Parties

The Complainant is Itron, Inc., United States of America, represented by Lee & Hayes, PC, United States of America.

The Respondent is 刘旭明(liu xuming), 深圳市贝斯特燃气设备有限公司(szbeisite), China.

### 2. The Domain Name and Registrar

The disputed domain name <itron-china.com> is registered with Xin Net Technology Corp. (北京新网数码信息技术有限公司) (the "Registrar").

### 3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on August 6, 2024. On August 7, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 8, 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 August 16, 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 August 20, 2024.

On August 16, 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 August 20, 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 August 26, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 15, 2024. The Respondent sent email communications on August 31, 2024. On September 2, 2024, the Center sent an email regarding the possible settlement to the Parties, then the Respondent sent email communications to the Center on September 7, 2024, the Complainant requested to suspend the proceeding on September 9, 2024.

On September 11, 2024, the Respondent sent email communications to the Center. On October 15, 2024, the Complainant requested to extend the suspension. The Respondent sent email communications to the Center on October 16, November 16 and 26, 2024. On November 25, 2024, the Complainant requested to reinstitute the proceeding. The Center informed the Parties of the reinstatement of proceeding on November 26, 2024, the due date for Response was December 1, 2024. The Response was filed with the Center on November 28, 2024, the Respondent filed another submission on November 28, 2024.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on December 4, 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 technology company that offers energy and water resource management products and services under the trademark ITRON since 1979 and is particularly known for its metering technology used for electricity, gas, and water utility providers.

The Complainant owns an international trademark portfolio protecting the ITRON mark, including but not limited to the following registrations: United States Trademark Registration No. 1,519,639, ITRON, registered on January 10, 1989 and International Trademark Registration No. 1047092, ITRON, registered on February 4, 2010 and designating jurisdictions including China. In addition, the Complainant owns a domain name portfolio including the ITRON mark, such as <itron.com>, registered on May 25, 1993.

The disputed domain name was registered on May 20, 2017. At the time of filing the Complaint, the Respondent used the disputed domain name to host a website presenting an array of third-party commercial products which were purportedly in the same business sector as the Complainant's products (i.e., the water management product sector), with products from third-party brands. The disputed domain name currently directs Internet users to a website displaying a notice from the Registrar that the website is currently unavailable.

#### **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 well-known registered trademarks, as it incorporates the ITRON mark entirely. The Complainant also states that the Respondent has no rights or legitimate interests in respect of the disputed domain name: there is no indication that the Respondent was previously known by the name "Itron," nor does the Respondent have a license or any sort of permission from the Complainant to use the Complainant's ITRON marks in a domain name. Finally, the Complainant argues that the Respondent is not making legitimate noncommercial or fair use of the disputed domain name, because the disputed domain name directs consumers to a webpage purporting to sell the exact same goods as the Complainant. The Complainant also contends that the

Respondent's previous use of the disputed domain name means that it has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's web site or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's web site or location or of a product or service on your web site or location. The Complainant essentially argues that such use of the disputed domain name does not confer rights or legitimate interests on the Respondent and constitutes registration and use in bad faith of the disputed domain name.

## **B. Respondent**

The Respondent filed a Response on November 28, 2024, in which it essentially stated that the Respondent agrees to cancel the domain name; that the website at the disputed domain name currently directs to a website displaying a notice from the Registrar that the website is currently unavailable, and that there is therefore no infringement; and that the Respondent is not willing to bear any costs related to this proceeding. On the same day, the Respondent also filed an unsolicited supplementary filing, containing a statement dated September 11, 2023 by Dresser Utility Solutions, referring to Dresser Utility Solutions' completion of the acquisition of certain of the Complainant's European business operations, from which the Respondent concluded that the products previously presented on the disputed domain name were not competing with the Complainant's products.

## **6. Discussion and Findings**

### **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 the disputed domain name is composed entirely of English characters, and ITRON does not have any specialized name or meaning in Chinese; the fact that neither the Complainant nor its representative are proficient in Chinese, and that the retention of a translator would add considerable cost to the Complainant, cause undue burden to the Complainant, and result in delay to the proceedings; and the fact that a number of photos displayed on the website of the disputed domain name display English trademarks.

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, and also noting that the Respondent has sent various email communications in English in this proceeding, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

### **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 terms 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.

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 satisfactorily 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. Instead, in its Response, the Respondent merely states that it agrees to cancel the disputed domain name (which, the Panel notes, is not the remedy requested by the Complainant) and that the website at the disputed domain name is currently unavailable and therefore not infringing.

Having regard at the previous use of the disputed domain name by the Respondent, the Panel notes that the Respondent was using the disputed domain name, fully incorporating the Complainant’s mark, to host a website presenting an array of third-party commercial products which are clearly in the same business sector as the Complainant’s products (i.e., the water management product sector), with products from third-party brands, without displaying any accurate and prominent disclaimer regarding the absence of relationship between the Parties. The Panel is of the view that the foregoing elements illustrate that the Respondent was not acting as a good faith provider of goods or services under the disputed domain name, see also *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#).

The Panel also finds that the current use of the disputed domain name, namely directing Internet users to a website displaying a notice from the Registrar that the website is currently unavailable, does not confer rights or legitimate interests on the Respondent. In this regard, the Panel finds that holding a domain name passively, without making any use of it, also does not confer any rights or legitimate interests in the disputed domain name on the Respondent in 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 finds that the nature of the disputed domain name, being confusingly similar to the Complainant’s trademarks and containing the geographical term “-china”, carries a risk of implied affiliation

and cannot constitute fair use, as it effectively impersonates the Complainant and its products or suggests sponsorship or endorsement by the Complainant (see [WIPO Overview 3.0](#), section 2.5.1).

### **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 well-known, intensely used, and distinctive trademark ITRON. The Panel refers to prior decisions under the Policy which have recognized the well-known nature of these trademarks, see for instance *Itron, Inc. v. beats*, WIPO Case No. [D2023-0366](#). The Panel infers from this fact that by registering the disputed domain name, the Respondent deliberately and consciously targeted the Complainant's prior well-known trademarks for ITRON. The Panel finds that this creates a presumption of bad faith. 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 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.

Taking into account the previous use of the disputed domain name by the Respondent, and the composition of the disputed domain name itself, the Panel accepts that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site or location or of a product or service on your web site or location. This is direct evidence of bad faith under the Policy, Paragraph 4(b)(iv).

As to the current use of the disputed domain name, namely directing Internet users to a website displaying a notice from the Registrar that the website is currently unavailable, 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. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness and strong reputation of the Complainant's trademark, the composition of the disputed domain name, and the unlikelihood of any future good faith use of the disputed domain name by the Respondent, 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.

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 <itron-china.com> be transferred to the Complainant.

*/Deanna Wong Wai Man/*

**Deanna Wong Wai Man**

Sole Panelist

Date: December 9, 2024