

## ADMINISTRATIVE PANEL DECISION

Das Örtliche Zeichen-GbR v. ling mei yan

Case No. D2024-3748

### 1. The Parties

The Complainant is Das Örtliche Zeichen-GbR, Germany, represented by Bird & Bird LLP, Germany.

The Respondent is ling mei yan, China.

### 2. The Domain Name and Registrar

The disputed domain name <dasoertliche-esslingen.com> is registered with DropCatch.com 1002 LLC (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 13, 2024. On September 16, 2024, the Center transmitted to the Registrar a request for registrar verification in connection with the disputed domain name. On September 17, 2024, the Registrar transmitted to the Center its verification response disclosing the registrant of the disputed domain name and the registrant’s contact information, which differed from the named Respondent and contact information stated in the Complaint. On September 23, 2024, the Center notified the Complainant of the registrant and contact information disclosed by the Registrar and invited the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on September 23, 2024.

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, and the proceeding commenced on September 30, 2024. In accordance with the Rules, paragraph 5, the due date for the Response was October 20, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 21, 2024.

The Center appointed Professor Ilhyung Lee as the sole panelist in this matter on October 25, 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 civil law partnership based in Germany that “publishes ... telephone and address directories under the trademarks ‘Das Örtliche’ and ‘Ö’.” The Complainant owns a number of DAS ÖRTLICHE marks for its business, including those registered in the European Union (registration number 008320574, registered on December 3, 2009), and Germany (registration number 302008071450, registered on March 8, 2011; and registration number 302011045001, registered on October 6, 2011). The Complainant also registered, before the registration of the disputed domain name, its own domain name, <dasoertliche.de>.

The disputed domain name was registered on September 23, 2023. At the time of the Complaint, the disputed domain name resolved to a website with text in Chinese, relating to gambling and sporting bets. Currently, the disputed domain name resolves to an inactive website.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant contends principally that: (i) the disputed domain name is identical or confusingly similar to a mark in which the Complainant has rights; (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. In addition, the Complaint states, inter alia:

“The Complainant has been using the trademark ‘Das Örtliche’ since 1924 when the first ‘Das Örtliche’ directory was published.”

“The Complainant has not granted any license or authorization of any other kind to the Respondent to use the relevant ‘Das Örtliche’ trademarks. There has never been any kind of business relationship between the Complainant and the Respondent.”

The Complaint requests that the disputed domain name be cancelled.

##### **B. Respondent**

The Respondent did not reply to the Complainant’s contentions. Under paragraphs 5(f) and 14(a) of the Rules, the Panel may decide the dispute based on the Complaint. Paragraph 14(b) allows the Panel to draw appropriate inferences from the Respondent’s default.

#### **6. Discussion and Findings**

##### **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.

In the Panel's view, considering that the letter "ö" ("o" with an umlaut) used in German is often written as "oe", the entirety of the Complainant's mark is reproduced, or is at least readily recognizable, 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, "esslingen", may bear on assessment of the second and third elements, the Panel finds the addition of such a 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 generic Top-Level Domain ("gTLD") ".com", a technical registration requirement, is disregarded in the consideration of this element. [WIPO Overview 3.0](#), section 1.11.1.

The Panel finds that 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 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.

Here, the Complainant states that it did not authorize the Respondent to use the DAS ÖRTLICHE mark and has met its initial burden of making a prima facie showing that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The burden shifts to the Respondent to demonstrate any such rights or legitimate interests. Paragraph 4(c) of the Policy provides a non-exhaustive list of circumstances that may demonstrate the Respondent's 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 Panel is unable to ascertain any evidence that would demonstrate the Respondent's rights or legitimate interests in the disputed domain name.

The Panel finds that the second element of the Policy has been established.

## **C. Registered and Used in Bad Faith**

Under paragraph 4(a)(iii) of the Policy, the Complainant must show that the disputed domain name "has been registered and is being used in bad faith". Paragraph 4(b) provides a non-exhaustive list of circumstances that can satisfy this element. 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.

Here, the distinctiveness of the Complainant's mark and the composition of the disputed domain name clearly indicate the Respondent's knowledge of the Complainant and its mark when registering the disputed

domain name. In these circumstances, the Panel determines that “by using the [disputed] domain name, [the Respondent] 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 [C]omplainant’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 [the Respondent’s] web site or location,” under paragraph 4(b)(iv) of 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 <dasoertliche-esslingen.com> be cancelled.

*//Ilhyung Lee/*

**Ilhyung Lee**

Sole Panelist

Date: November 8, 2024