

ADMINISTRATIVE PANEL DECISION

Linde Plc v. admin
Case No. D2024-4151

1. The Parties

The Complainant is Linde Plc, Ireland, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is admin, Republic of Korea.

2. The Domain Name and Registrar

The disputed domain name <whitemartins.com> is registered with Megazone Corp., dba HOSTING.KR (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on October 9, 2024. On October 9, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 10, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

On October 14, 2024, the Center informed the parties in Korean and English, that the language of the registration agreement for the disputed domain name is Korean. On October 16, 2024, the Complainant requested English to be the language of the proceeding. On October 19, 2024, the Respondent objected to the Complainant's request.

The Center verified that 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 proceedings commenced on October 23, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 12, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 13, 2024.

The Center appointed Ik-Hyun Seo as the sole panelist in this matter on November 19, 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 an industrial gas and chemical engineering company founded in 1879 in Germany and later formed under the laws of Ireland. The Complainant has approximately 72,000 employees globally and customers in more than 100 countries. In 2021, the Complainant had operating profit of approximately USD 5 billion and sales of USD 31 billion. White Martins Gases Industriais, Ltda. is a wholly owned subsidiary of the Complainant and a producer and supplier of atmospheric, medical, and specialty gases, established in 1912. White Martins is headquartered in Brazil and has 80,000 employees in more than 80 countries. The Complainant owns trademark registrations for the WHITE MARTINS mark including Trademark Registration Number 2311006 registered in Argentina on August 25, 2009, Trademark Registration Number 810893878 registered in Brazil on October 18, 1983, and Trademark Registration Number 837355 registered in Chile on May 6, 2008. The Complainant also owns trademark registrations for stylized versions of the WHITE MARTINS mark including Trademark Registration Number 818765135 registered on November 4, 1997, in Brazil, and Trademark Registration Number 837348 registered on May 6, 2008, in Chile.

The Respondent appears to be an individual with an address in the Republic of Korea.

The disputed domain name was registered on October 10, 2012, and resolves to a website displaying pay-per-click (“PPC”) links to terms such as “Inogen Oxygen Machines”, “Constant Glucose Monitor”, “M White”, “Business Cards Business”, and “Medical Devices Companies Near Me.”

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 to the Complainant’s WHITE MARTINS mark in which the Complainant has right.

The Complainant also contends that the Respondent has no rights or legitimate interests in the disputed domain name and confirms that it has not authorized or licensed rights to the Respondent in any respect. The Complainant also contends that the Respondent uses the disputed domain name to display PPC links, some of which directly compete with the Complainant’s business, for example, “Inogen Oxygen Machines” and “Oxygen Machine Portable”, which does not give right to rights or legitimate interests in the disputed domain name.

Finally, the Complainant contends that the disputed domain name was registered and used in bad faith. Based on changes in the Whois records, the Complainant contends that the disputed domain name was first registered on October 10, 2012, but that the current registrant obtained it from the original registrant only around September 26, 2024, which is significantly after the Complainant’s WHITE MARTINS marks had accrued fame and good faith.

Further, the Complainant raises a number of arguments on use of the disputed domain name in bad faith, including that the disputed domain name is being offered for sale on multiple platforms for amounts far exceeding the Respondent’s out of pocket expenses associated with the disputed domain name; that the Respondent’s registration of a domain name identical to the Complainant’s WHITE MARTINS mark leads to

misperceptions as to the source, sponsorship, affiliation, or endorsement of the disputed domain name; that the Respondent's offer for sale of the disputed domain name constitutes bad faith since the Respondent is asking for more than his out of pocket expenses associated with the disputed domain name; that the Respondent's email address is associated with several other domain names that misappropriate the trademarks of well-known brands such as <applegame.com>, <capitolgroup.com>, <hermesmedia.com>, and <visaclub.com>, and that this demonstrates that the Respondent is a serial domain squatter; that the Respondent has been involved in several UDRP cases in which he was found to have registered and used domain names in bad faith; and that the Respondent has ignored the Complainant's attempts to resolve the dispute outside the UDRP proceeding, and that failure to respond to a cease and desist letter may be considered bad faith on the part of the Respondent.

B. Respondent

The Respondent did not reply to the Complainant's contentions beyond objecting to the Complainant's request that English be the language of the proceeding.

6. Discussion and Findings

Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Korean. 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 Complainant is unable to communicate in Korean and translation of the Complaint would unfairly disadvantage and burden the Complainant and delay the proceedings; the PPC links at the disputed domain name are in English; and the disputed domain name is comprised of Latin characters.

The Respondent requested that the language of the proceeding be Korean, simply claiming that he does not know English.

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).

In addition, according to [WIPO Overview 3.0](#), section 4.5.1, the Panel can take into consideration prior cases involving the Respondent in a particular language. The Whois records does not disclose the Respondent's name, but it does disclose the Respondent's telephone number which happens to coincide with the telephone number for a number of domain names registered to a "Hochul Jung." Therefore, the Panel finds that it is reasonable to conclude that "Hochul Jung" is the name of the Respondent. The Panel also finds that there are four UDRP decisions with "Hochul Jung" as the respondent: one case where the panel decided that the respondent was sufficiently proficient in English and therefore, the decision was rendered in English (*HusmanHagberg AB v. Hochul Jung*, WIPO Case No. [D2015-2275](#)), and three cases where language was not even the issue since the domain names were registered with registrars with registration agreements in English (*Allianz SE v. Hochul Jung*, WIPO Case No. [D2016-0266](#); *Biohit Oyj v. Hochul Jung*, WIPO Case No. [D2008-1548](#); *Club Méditerranée, S.A. v. Jung Hochul a/k/a Hochul Jung*, WIPO Case No. [D2000-1427](#)). Therefore, the Panel concludes that the Respondent has sufficient knowledge of English to be able to understand the decision in English, or that it would not be unduly prejudiced by rendering the decision in English.

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.

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.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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.

The Respondent uses the disputed domain name to host a parked page comprising PPC links which relate to the goods and services directly related to the Complainant's business, among them, "Inogen Oxygen Machines" and "Oxygen Machine Portable." Such use capitalizes on the reputation and goodwill of the Complainant's trademark and misleads Internet users and does not support a finding of rights or legitimate interests of the Respondent. [WIPO Overview 3.0](#), section 2.9.

Furthermore, the disputed domain is identical to the Complainant's trademark, and therefore, carries a high risk of implied affiliation. Therefore, the Respondent's use of the disputed domain name is not considered to be "fair." [WIPO Overview 3.0](#), section 2.5.

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 Complainant contends that the Respondent obtained the disputed domain name around September 26, 2024, pointing out that the name and address of the registrant for the disputed domain name on Whois changed around that date. However, the addresses given for the prior registrant and the Respondent are in the same neighborhood (Suseong-gu, Daegu in the Republic of Korea), and the Panel finds that it is possible for there to not have been actual change in ownership of the disputed domain name. Nonetheless, given that the Complainant's WHITE MARTINS business has been operating for more than 100 years and its trademark registered since 1983, the Panel finds that the Respondent likely knew or should have known of the Complainant's WHITE MARTINS business and trademark at the time of registration, and that the Respondent registered the disputed domain name in order to sell it to the Complainant at a profit or to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's mark. In addition, it is highly improbable that the disputed domain name was registered in good faith and without knowledge of the Complainant's trademarks.

Further, the Respondent used the disputed domain name to display PPC links to goods and services directly related to the goods and services of the Complainant's WHITE MARTINS business which means that the Respondent created a likelihood of confusion and likely benefited commercially from the confusion of Internet users that visited the site by mistake as per paragraph 4(b)(iv) of the Policy.

Lastly, the Panel takes note of the various prior UDRP decisions rendered against the Respondent that indicate a pattern of bad faith conduct on part of the Respondent as described under paragraph 4(b)(ii) of the Policy (*HusmanHagberg AB v. Hochul Jung*, WIPO Case No. [D2015-2275](#); *Allianz SE v. Hochul Jung*, WIPO Case No. [D2016-0266](#); *Biohit Oyj v. Hochul Jung*, WIPO Case No. [D2008-1548](#); *Club Méditerranée, S.A. v. Jung Hochul a/k/a Hochul Jung*, WIPO Case No. [D2000-1427](#)).

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 <whitemartins.com> be transferred to the Complainant.

/Ik-Hyun Seo/

Ik-Hyun Seo

Sole Panelist

Date: December 9, 2024