

ADMINISTRATIVE PANEL DECISION

Zhejiang Geely Holding Group Co., Ltd. v. Alabamine Pty. Ltd.
Case No. DAU2024-0018

1. The Parties

The Complainant is Zhejiang Geely Holding Group Co., Ltd., China, represented by Beijing Wan Hui Da (Guangzhou) Law Firm, China.

The Respondent is Alabamine Pty. Ltd., Australia, internally represented.

2. The Domain Names and Registrar

The disputed domain names <geely.au>, <geely.com.au>, and <geely.net.au> are registered with Domain Directors Pty Ltd. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 3, 2024. On July 10, 2024, the Center transmitted by email to the Registrar a request for verification in connection with the disputed domain names. On July 11, 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.

The Center verified that the Complaint satisfied the formal requirements of the .au Dispute Resolution Policy (the "Policy" or ".auDRP"), the Rules for .au Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for .au Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on July 12, 2024. In accordance with the Rules, paragraph 5(a), the due date for Response was August 1, 2024. The Respondent sent an email to the Center on July 29, 2024; however, the Respondent did not submit any formal response. Accordingly, the Center notified the commencement of panel appointment process on August 2, 2024.

The Center appointed John Swinson as the sole panellist in this matter on August 7, 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.

On August 7, 2024, the Complainant submitted a supplementary filing in respect of the Respondent's email of July 29, 2024. On August 12, 2024, the Respondent submitted a supplementary filing in respect of the Complainant's filing of August 7, 2024.

In view of the supplementary filings, the Panel issued a Procedural Order on August 19, 2024.

The Respondent replied to the Procedural Order on August 23, 2024. The Complainant replied to the Procedural Order on August 29, 2024.

4. Factual Background

The Complainant is a large automobile manufacturer headquartered in China. The Complainant entered the automobile industry in 1997, and a few years later, expanded internationally. The Complainant operates under several automotive brands, including GEELY, VOLVO, and POLESTAR. The Complainant sells Volvo cars and Polestar cars in Australia. In 2022, it was reported that the Complainant had a revenue of over USD 55 billion.

The Complainant owns registered trademarks in Australia, including:

1. Australian Trademark Registration No. 1059978 for a logo registration in the shape of a circle that includes the term "GEELY" at the top of the circle and a snowcapped mountain registration within the circle. The application for this registration was filed on February 28, 2005.
2. Australian Trademark Registration No. 1141740 for the term "GEELY" in capital letters in an outline font. The application for this registration was filed on June 22, 2006.
3. Australian Trademark Registration No. 1298856 for the word mark "GEELY GT". The application for this registration was filed on March 10, 2009.

The disputed domain name <geely.com.au> was first registered on April 19, 2008 and currently does not resolve to an active website.

The disputed domain name <geely.net.au> was first registered on September 2, 2008 and currently resolves to a website that advertises telephone and intercom equipment. This website is branded "Aristel" and is operated by Aristel Networks Pty Ltd.

The disputed domain name <geely.au> was first registered on September 21, 2022 and currently does not resolve to an active website.

The Respondent is an Australian company. According to the registrant contact, the Respondent is the beneficial owner of Aristel Pty Ltd which has been in business for 23 years.

The website at disputed domain name <geely.net.au> and the website at <aristel.com.au> appear to be identical. One page of both websites advertises a product called "Geely T2 WIFI/SIP Cordless Phone".

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.

In summary, the Complainant makes the following submissions:

The Complainant is well-known globally and in Australia. The Complainant provided evidence to support this assertion.

The disputed domain names contain the Complainant's prior registered trademark for GEELY.

The Respondent does not have a trademark registration for GEELY and has not been authorised by the Complainant to use its GEELY trademarks.

The disputed domain name is identical to the Complainant's GEELY trademarks and it is unlikely that the Respondent was unaware of the Complainant and its trademarks.

In the Complainant's supplementary filing, the Complainant makes the following additional submissions:

The Respondent's evidence of use of GEELY for a cordless phone product does not show use of this brand prior to the Complainant. The Internet Archive shows that this product was still named Genius-T2 on March 12, 2024, and that the product image shows the brand as VOGTEC, without any "Geely" logo.

Automobiles are closely related to telephone communication equipment, and cars in general use in-vehicle systems that provide communication, information, and safety and security services to the driver and vehicle.

The Complainant's reply to the Procedural Order provided further claims and evidence supporting the Complainant's initial supplementary filing, and confirmed no objection to the Respondent's proposal to transfer the disputed domain names to the Complainant.

B. Respondent

In summary, the Respondent made the following submissions:

The GEELY trademark is not registered in Class 9, in which all the Aristel products are classified.

A Google search for "Geely cordless phone" finds a listing at Telecom Depot for "Geely T2 WIFI/SIP Cordless Phone".

Aristel does not sell motor vehicles, nor does it market any products that are installed in motor vehicles. The Respondent asserts: "It would appear the Complainant wants to muscle its way into the Australian phone market since it's purchase last year of smartphone manufacturer, Meizu."

Around 13 years ago, a West Australian vehicle company lodged a complaint with auDA, disputing the Respondent's rights to own disputed domain name <geely.com.au>. Material, similar to that included in the Response, was sent to .au Domain Administration ("auDA"), at the time. auDA denied the complaint.

6. Discussion and Findings

Paragraph 4(a) of the auDRP provides that a complainant must prove each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to a name, trademark or service mark in which the complainant has rights; and
- (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 or subsequently used in bad faith.

The burden of proof of each element is borne by the Complainant.

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that the Panel deems applicable.

A. Supplemental Filings

Both the Complainant and Respondent submitted Supplemental Filings.

Apart from documents requested by the Panel pursuant to paragraph 12 of the Rules, neither the Policy nor the Rules expressly provide for supplemental filings. Their admissibility is therefore in the discretion of the Panel bearing in mind the requirements under paragraph 10 of the Rules to ensure that the proceeding is conducted with due expedition and both parties are treated equally, with each party being given a fair opportunity to present its case. See, e.g., Overview of Panel Views on Selected auDRP Questions, Second Edition (“auDRP Overview 2.0”), section 4.6.

The Complainant’s unsolicited supplemental filing contests numerous factual allegations alleged in the Response. The Respondent’s unsolicited supplemental filing responds to many of those claims and provides some additional evidence. As a result, a clearer picture of the parties’ cases does emerge. In the interests of fairness to both parties, therefore, the Panel admits both into the record.

Moreover, the Panel requested further claims and evidence from the Parties in its Procedural Order, pursuant to the Panel’s discretion under paragraph 12 of the auDRP Rules, and accordingly accepts the resulting solicited supplemental filings from the Parties.

B. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant’s name, trademark or service mark.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a name or mark at the date the Complaint was filed and, if so, the disputed domain name must be identical or confusingly similar to the name or mark.

For present purposes, the Complainant has proven that it owns registered trademarks for or including GEELY as discussed in section 4 above.

The GEELY trademarks are recognizable in the disputed domain names.

In comparing the disputed domain name to the Complainant’s trademark(s), it is permissible to disregard the country code Top-Level Domain, and where relevant the Second-Level Domain, for example “.com.au”, as a functional component of the domain name system. See for example auDRP Overview 2.0, section 1.11.1. It is also usual to disregard the design elements of a trademark under the first element as such elements are generally incapable of representation in a domain name. See for example, auDRP Overview 2.0, section 1.10.

The Respondent asserts that the Respondent’s GEELY product does not fall within the Complainant’s Australian trademark registrations, which are directed at automobiles. That is not relevant for the first element of this Policy but may be relevant when considering the second and third elements of the Policy.

Accordingly, the disputed domain name is identical with, or confusingly similar to, the Complainant’s GEELY trademarks.

The Complainant succeeds on the first element of the Policy.

C. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances may be situations in which a respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to the respondent of the subject matter of the dispute, the respondent's bona fide use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with an offering of goods or services (not being the offering of domain names that the respondent has acquired for the purpose of selling, renting or otherwise transferring); or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement, like each element, falls on the Complainant. Previous panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is usually sufficient for a complainant to raise a prima facie case against the respondent under this head and the burden of production will shift to the respondent to rebut that prima facie case. The ultimate burden of proof, however, remains with the Complainant. See, e.g., *GlobalCenter Pty Ltd v. Global Domain Hosting Pty Ltd*, WIPO Case No. [DAU2002-0001](#).

The Respondent appeared to assert that the Respondent (via Aristel Networks Pty Ltd) was using "Geely" as a brand for telephone handsets prior to notice of this dispute. However, the materials provided by the Respondent in support were undated. The Complainant responded that Aristel Networks' website was recently amended to change the brand name of a product to "Geely". Accordingly, the Panel issued a Procedural Order requesting the Respondent to provide more detail as to when the Respondent first used "Geely" and evidence to demonstrate the legal or other relationship between the Respondent and Aristel Networks Pty Ltd. The Procedural Order also gave the Respondent the opportunity to answer the following question: "Did the Aristel Networks change its website regarding the name of the *Geely T2 WIFI/SIP Cordless Phone* product as alleged by the Complainant in its August 7 Supplementary Submission? If so, when and why did that change take place?"

In response to the Procedural Order, the Respondent provided the following: "Please transfer the Geely domain names to the Complainant. Clearly, they are of much more interest to the Geely Organisation than they are to Aristel. We will cease using Geely as a product model."

The Panel considers the Respondent's statements as an abandonment of the disputed domain names. However, in the context of the Respondent's consent to transfer, the Panel need not make a final determination in this decision whether the Respondent does not have rights or legitimate interests in the disputed domain names.

D. Registered or Subsequently Used in Bad Faith

Unlike the Uniform Domain Name Dispute Resolution Policy ("UDRP"), the requirements that the disputed domain name be registered or used in bad faith are disjunctive in the auDRP. That is, it is sufficient for the Complainant to show either that the disputed domain name was registered in bad faith or has been used in bad faith.

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered or is using the disputed domain name to take advantage of its significance as a trademark owned by the complainant.

The disputed domain names are identical to the Complainant's unique and well-known trademark. The Procedural Order gave the Respondent the opportunity to explain why the Respondent selected "Geely" as a brand and whether the Respondent was aware of the Complainant or its GEELY mark at the time the Respondent registered the disputed domain names. The Respondent chose not to provide such information, and instead consented to the transfer of the disputed domain names. The Respondent's consent appears genuine and is unconditional.

The Panel considers that a consent to transfer does not "deem" the elements of the Policy satisfied. *PARROT v. Binh An Nguyen*, WIPO Case No. [DAU2011-0016](#). In this case, the Panel cannot draw a clear inference as to the motives of the Respondent, which is not legally represented and runs a genuine and long standing business, or why the Respondent consented to the transfer.

However, as discussed above, this Panel considers that a genuine unilateral consent to transfer by the Respondent provides a basis for an order for transfer without consideration of all the paragraph 4(a) elements. Moreover, the Complainant has confirmed that it has no objection to the Respondent's consent to transfer. Where the Complainant has sought transfer of a disputed domain name, and the Respondent consents to transfer, the Panel has the discretion to make an order for transfer without considering all the paragraph 4(a) elements. *The Cartoon Network LP, LLLP v. Mike Morgan*, WIPO Case No. [D2005-1132](#); *HL7 Australia and Health Level Seven International, Inc v. Klaus Veil and HL7 Systems and Services*, WIPO Case No. [DAU2018-0027](#).

7. Decision

For all the foregoing reasons, in accordance with Paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain names, <geely.au>, <geely.com.au>, and <geely.net.au>, be transferred to the Complainant.

/John Swinson/

John Swinson

Sole Panelist

Date: August 30, 2024