

## **EXPERT DECISION**

Lumi United Technology Co., Ltd. v. M. B.  
Case No. DCH2024-0012

### **1. The Parties**

The Claimant is Lumi United Technology Co., Ltd., of China, represented by Chofn Intellectual Property Agency Co., Ltd. (Chofn IP), of China.

The Respondent is M. B., of Switzerland.

### **2. The Domain Name**

The dispute concerns the domain name <aqara.ch>.

### **3. Procedural History**

The Request was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 18, 2024. On the same day, the Center transmitted by email to SWITCH, the “.ch” and “.li” registry, a request for verification in connection with the disputed domain name. On September 19, 2024, SWITCH transmitted by email to the Center its verification response, providing the relevant contact details from the Respondent.

The Center invited the Claimant to submit an amended Request on September 24, 2024 (the Respondent received a copy of this invitation). On the same day, the Respondent replied asking the Center whether there is a problem with his domain name. The Center informed the Respondent that (i) it is currently verifying whether the Request filed against him satisfies the formal requirements according the rules of procedure for dispute resolution procedures for “.ch” and “.li” domain names, adopted by SWITCH, on January 1, 2020 (the “Rules of Procedure”) and (ii) once the formal requirements have been confirmed, he will be notified and will be granted the right to file his Response within twenty (20) calendar days of the date of commencement of the proceedings.

The Claimant filed an amended Request on September 25, 2024. The Center verified that the Request satisfied the formal requirements of the Rules of Procedure.

In accordance with the Rules of Procedure, paragraph 14, the Center formally notified the Respondent of the Request, and the dispute resolution procedure commenced on October 1, 2024. In accordance with the Rules of Procedure, paragraph 15(a), the due date for the Response was October 21, 2024.

The Respondent has neither filed a formal Response nor expressed his readiness to participate in a Conciliation in accordance with paragraph 15(d) of the Rules of Procedure. Thus, no Conciliation conference has taken place within the deadline specified in paragraph 17(b) of the Rules of Procedure.

On October 22, 2024, the Center notified the Claimant accordingly, who on October 23, 2024, made an application for the continuation of the dispute resolution proceedings in accordance with paragraph 19 of the Rules of Procedure and paid the required fees.

On November 1, 2024, the Center appointed Jonatan Baier as Expert in this case. The Expert finds that it was properly appointed. In accordance with Rules of Procedure, paragraph 4, the Expert has declared his independence of the Parties.

### **3. Factual Background**

The Claimant is a Chinese company established in 2009 and active globally in the smart home market. The Claimant is a smart home solution supplier which specializes in the design and development of intelligent hardware and software solutions for smart home and corporate applications. It manufactures and distributes its products through various resellers/retailers as well as online marketplaces worldwide, including in Switzerland. The Claimant is the holder of the domain name <aqara.com>, which resolves to its official global website.

The Claimant is the owner of numerous trademark registrations for AQARA, including the following:

- International trademark number 1376045, registered on September 18, 2017, in Nice classes 35, and 42;
- International trademark number 1400838, registered on September 18, 2017, in Nice classes 7, and 20;
- International trademark number 1480029, registered on June 14, 2019, in international classes 9, and 11;
- International trademark number 1636960, registered on September 11, 2021, in Nice classes 7, 9, 11, 20, 35, 37, and 42.

The disputed domain name was registered on September 25, 2019. The holder and owner of the domain name is the Respondent. The records shows the disputed domain name has been inactive.

### **4. Parties' Contentions**

#### **A. The Claimant**

The Claimant submits to be the owner of internationally registered trademarks with protective effect for Switzerland. The Claimant claims that the disputed domain name – when removing the suffix “.ch” – is identical and confusingly similar to the Claimant’s registered trademarks and therefore violates the Federal Act on the Protection of Trade Marks and Indications of Source (“TmPA”). However, the Claimant admits that it cannot prove that the disputed domain name is used for services identical or similar to the Claimant’s trademarks.

Furthermore, the Claimant asserts that the registration of the domain name which is identical to its trademarks by the Respondent amounts to unfair competition in accordance with Article 2 of the Federal Act against Unfair Competition (“UCA”). This holds particularly true as the Respondent is neither a distributor nor a partner of the Claimant or in any way legally permitted to use the Claimant’s AQARA trademarks.

In summary, the Claimant contends that the allocation of the disputed domain name by the Respondent infringes the Claimant’s right in a distinctive sign under the laws of Switzerland.

## **B. The Respondent**

The Respondent did not reply to the Claimant's contentions. Pursuant to paragraph 23 of the Rules of Procedure, the Expert shall decide on the request on the basis of the case file.

## **5. Discussion and Findings**

According to the Rules of Procedure, paragraph 24(c), "the Expert shall grant the request if the allocation or use of the domain name constitutes a clear infringement of a right in a distinctive sign which the Claimant owns under the laws of Switzerland".

The Rules of Procedure, paragraph 24(d) specify that "a clear infringement of an intellectual property right exists when:

- (i) both the existence and the infringement of the claimed Right in a distinctive sign clearly result from the wording of the law or from an acknowledged interpretation of the law and from the presented facts and are proven by the evidence submitted; and
- (ii) the Respondent has not conclusively pleaded and proven any relevant grounds for defence; and
- (iii) the infringement of the right justifies the transfer or revocation of the domain name, depending on the remedy requested in the request".

### **A. The Claimant has a right in a distinctive sign under the laws of Switzerland**

As outlined above, the Claimant has established ownership of several active international trademarks for AQARA with protection in Switzerland (see above). Due to the use of its trademarks in business transactions, the Claimant can also invoke the unfair use of its protected sign under the UCA.

Accordingly, the Expert finds that the Claimant has established rights in a distinctive sign under the laws of Switzerland in accordance with paragraph 24(d)(i) of the Rules of Procedure.

### **B. The allocation or use of the domain name constitutes a clear infringement of a right in a distinctive sign which Claimant owns under the laws of Switzerland**

#### TmPA

According to article 13, paragraph 1 and paragraph 2(c) of the TmPA, a trademark right confers on its proprietor the exclusive right to use the trademark to identify the goods or services for which it is claimed, and to prohibit others from offering, providing or storing goods for that purpose under a sign that is identical or confusingly similar to its trademark. Thus, trademarks are to be assessed in principle depending on the goods and services for which they claim protection (so-called principle of speciality).

The Swiss Federal Supreme Court held that domain names have an identifying function and must maintain the necessary distance from the signs of third parties with an absolute protection in order to avoid confusion (see BGE 126 III 239 c. 2b/c). A likelihood of confusion exists as soon as, on the basis of the relevant criteria (typeface, effect, meaning) and due to the similarity of the range of services offered, confusion may arise among users of the internet. It is not a prerequisite that such confusion actually occurred (see BGE 128 III 401 c. 5). Country code Top-Level Domains ("ccTLD") such as ".ch" have a descriptive effect and contribute little or nothing to the distinctiveness.

The disputed domain name <aqara.ch> is identical to the Claimant's trademark AQARA and differs only by the addition of the ".ch" ccTLD, which does not create any sufficient distinction to exclude the likelihood of confusion. That said, the disputed domain name resolves to an inactive website and leads to the standard registrar holding page. According to Swiss jurisprudence, the mere fact of registering a domain name does

not constitute trademark-infringing use within the meaning of article 13 paragraph 2 of the TmPA (Swiss Federal Supreme Court decision of 8 November 2004, 4C.31/2004 c 4.2). This is also acknowledged by the Claimant. Consequently, in this specific case, and noting that the Claimant has not provided evidence that its trademark is well-known, there is no infringement of the Claimant's rights under trademark law under Swiss law

### UCA

The Claimant further argues that the Respondent's behavior constitutes unfair behavior within the meaning of article 2 of the UCA. According to the Claimant, by registering a domain name containing its trademark when it had no legitimate interest in doing so, the Respondent (i) disrupts the Claimant's commercial operations, particularly on Swiss territory, by depriving it of its digital assets and (ii) induces Internet users who find the disputed domain name inactive to think that the Claimant no longer operates its internet portals or that its websites are experiencing problems.

According to article 2 of the UCA, "[a]ny conduct or business practice that is misleading or which otherwise violates the principle of good faith such that it influences the relationship between competitors or between suppliers and customers is unfair and unlawful."

Regardless of any use, the registration of a domain name reproducing a third party's trademark may constitute an act of unfair competition when it objectively causes an impediment to the trademark holder's commercial activity and/or when the intention to cause such an impediment is manifest (Zurich Commercial Court decision of Expert's decision December 18, 2001 (ZR 101/2002), S. 191 et seq.; *AdunoKaution AG, Aduno Finance AG v. SC, Swiss Caution SA*, WIPO Dispute No. [DCH2015-0019](#)).

While the Claimant has offered no evidence which establishes that it was the Respondent's manifest intention to cause an impediment to the Claimant's commercial activity by registering the disputed domain name, the Expert nevertheless finds that the registration and non-use of the domain name – which is identical to the Claimant's trademark – by the Respondent objectively causes an impediment to the Claimant's commercial activity in Switzerland. This holds particularly true as the Respondent has not provided (i) any reasonable explanation why it registered the disputed domain name and, to the Expert's best knowledge, no such grounds can be seen and (ii) failed to plead and prove any relevant grounds for defense.

Accordingly, the Expert concludes that the Respondent's conduct constitutes a violation of article 2 of the UCA. The Claimant's request is well founded and that the Respondent's infringements of the Claimant's rights justify a transfer of the disputed domain name in accordance with paragraph 24(d)(iii) of the Rules of Procedure.

## **6. Expert Decision**

For the above reasons, in accordance with paragraph 24 of the Rules of Procedure, the Expert orders that the domain name <aqara.ch> be transferred to the Claimant.

**Jonatan Baier**

Expert

Dated: November 13, 2024