

ADMINISTRATIVE PANEL DECISION

WIKA Alexander Wiegand SE & Co. KG. v. 蒋恩芳
Case No. DCN2024-0012

1. The Parties

Complainant is WIKA Alexander Wiegand SE & Co. KG., Germany, represented by RWZH rechtsanwälte, Germany.

Respondent is 蒋恩芳, China.

2. The Domain Name and Registrar

The disputed domain name <wika-wika.cn> (the “Domain Name”) is registered with 广东时代互联科技有限公司 (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on April 10, 2024. On April 11, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 11, 2024, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details. In response to a notification by the Center that the Complaint was administratively deficient, Complainant filed an amended Complaint in English on April 15, 2024.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the China ccTLD Dispute Resolution Policy (the “Policy”), the China ccTLD Dispute Resolution Policy Rules (the “Rules”), and the WIPO Supplemental Rules for China ccTLD Dispute Resolution Policy and China ccTLD Dispute Resolution Policy Rules (the “WIPO Supplemental Rules”).

In accordance with the Rules, Articles 5 and 6, and Articles 14 to 16, and the WIPO Supplemental Rules, Paragraph 4(d), the Center formally notified Respondent in Chinese and English of the Complaint, and the proceedings commenced on April 16, 2024. In accordance with the Rules, Article 17 and 49, the due date for Response was May 6, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on May 20, 2024.

The Center appointed Kimberley Chen Nobles, Francine Tan, and James Wang as the panelists in this matter on May 29, 2024. The Panel finds that it was properly constituted. Each member of 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, Article 29.

4. Factual Background

Complainant, a German company, was established in 1946 and produces measuring apparatus under the brand WIKA for sale globally, including in China. Complainant has manufacturing factories worldwide, including several factories in Suzhou, China. In addition, Complainant operates its own Chinese website, and has been doing so for several years, on which products bearing the trademark WIKA are offered to Chinese customers.

Complainant is owner of several registered trademarks incorporating the WIKA mark worldwide, including:

- Chinese registered trademark number 42909093 for the WIKA word and design mark, registered on January 14, 2021; and
- International registered trademark number 1700051 for the WIKA word mark, registered on December 10, 2021.

In addition, Complainant or its affiliated companies are registered owners of several domain names, including:

- <wika.com> (which resolves to Complainant's website at "www.wika.com/de-de/startseite.WIKA");
 - <wika.de> (which redirects to Complainant's website at "www.wika.com/de-de/startseite.WIKA");
 - <wika.eu> (which redirects to Complainant's website at "www.wika.com/de-de/startseite.WIKA");
 - <wika.group> (which redirects to Complainant's website at "www.wika.com/de-de/startseite.WIKA");
- and
- <wika.cn> (registered in the name of Complainant's affiliated company in China, 威卡自动化仪表（苏州）有限公司 (Wika Automation Instrument (Suzhou) Co., Ltd.), which resolves to Complainant's related entity's website at "www.wika.cn").

The Domain Name was registered on December 19, 2023, and at the time of the filing of the Complaint, redirected to an inactive page. Complainant states that the Domain Name was previously owned by Shanghai Motu Industrial Co. Ltd ("Shanghai Motu"), during which it directed to a site that offered WIKA pressure sensor German pressure gauges and related instruments, which are products sold by Complainant, under Complainant's registered trademark. Shanghai Motu appeared to have owned the Domain Name till around November 2, 2023. The Domain Name was subsequent thereto registered by Respondent, and Complainant then filed the current proceeding.

At the time of the Decision, the Domain Name directs to an error or inactive page.

5. Parties' Contentions

A. Complainant

Complainant contends that (i) the Domain Name is identical or confusingly similar to Complainant's trademarks in which it has rights; (ii) Respondent has no rights or legitimate interests in the Domain Name; and (iii) Respondent registered and is using the Domain Name in bad faith.

In particular, Complainant contends that it has trademark registrations for WIKA and that Respondent registered and is using the Domain Name with the intention to confuse Internet users looking for bona fide and well-known WIKA products and services.

Complainant notes that it has no affiliation with Respondent, nor authorized Respondent to register or use the Domain Name, which includes Complainant's trademarks, and that Respondent has no rights or legitimate interests in the registration and use of the Domain Name. Rather, Complainant contends that Respondent has acted in bad faith in acquiring and setting up the Domain Name, when Respondent clearly knew of Complainant's rights.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

6.1. Preliminary Procedural Issue – Language of the Proceeding

Article 6 of the Policy provides that the language of the domain name dispute resolution proceedings shall be Chinese, unless otherwise agreed by the parties or determined by the Panel.

Article 8 of the Rules provides that unless otherwise agreed by the Parties or determined in exceptional cases by the Panel, the language of the domain name dispute resolution proceedings shall be Chinese. The Panel may order that any documents submitted in languages other than Chinese be wholly or partially translated into Chinese.

Complainant submitted its Complaint in English. In its Complaint and amended Complaint, Complainant requested that the language of the proceeding be English. Respondent did not comment on the language of the proceedings.

Complainant contends that: the Domain Name is registered in Latin characters and not Chinese script, that neither Complainant nor its representatives are able to communicate in Chinese, that proceeding in Chinese would require Complainant to retain specialized translation services, and the time and costs required for translation of the proceedings would unfairly burden Complainant and delay the proceedings and adjudication of this matter. Complainant further states that neither Complainant nor its representatives are native English speakers, so it would be fair for both parties to proceed in English.

In exercising its discretion to use a language other than that provided under the Rules, 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.

The Panel accepts Complainant's submissions regarding the language of the proceeding. The Panel notes that the Center notified the Parties in Chinese and English of the Complaint. Respondent chose not to comment on the language of the proceeding, nor did Respondent choose to file a Response.

The Panel is also mindful of the need to ensure that the proceeding is conducted in a timely and cost-effective manner. Complainant may be unduly disadvantaged by having to translate the Complaint into Chinese and to conduct the proceeding in Chinese.

Having considered all the circumstances of this case, the Panel determines that English be the language of the proceeding.

6.2 Substantive Issues

In rendering its decision, the Panel should adjudicate the dispute in accordance with Article 31 of the Rules which provides that, "[t]he Panel shall conduct the proceedings in such manner as it considers appropriate according to these Rules and Supplemental Rules and decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, as well as any rules and principles of law which it deems applicable. If a Respondent does not submit a response, the Panel shall, in the absence of exceptional circumstances, decide the dispute based upon the complaint".

Article 35 of the Rules further provides that, “[i]f a Party, in the absence of exceptional circumstances, does not comply with any provisions of, these Rules and Supplemental Rules or any requests from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate”.

The failure of Respondent to respond does not automatically result in a favorable decision for the Complainant. Under Article 8 of the Policy, support of a complaint is conditional on establishing each of the three elements as provided therein.

These three elements are considered below.

A. Identical or Confusingly Similar to the Complainant’s Name or Mark in which the Complainant has Civil Rights or Interests

On the evidence available, the Panel has no hesitation in finding that Complainant has rights in the trademark WIKA by reason of the trademark registrations recited in Section 4 above. Furthermore, the Panel finds that the Domain Name is confusingly similar to Complainant’s trademark WIKA.

Here, the Domain Name is confusingly similar to Complainant’s WIKA trademarks. These trademarks are recognizable in the Domain Name. In particular, the Domain Name includes Complainant’s trademark WIKA in its entirety, with the addition of a hyphen “-” and repetition of “wika” after the WIKA mark in the Domain Name <wika-wika.cn>. The repetition of Complainant’s trademark with the addition of a hyphen “-wika” after the first instance of the WIKA trademark in the Domain Name as noted, does not prevent a finding of confusing similarity between the Domain Name and the WIKA trademarks.

Thus, the Panel finds that Complainant has satisfied the first element of Article 8(a) of the Policy.

B. Rights or Legitimate Interests

Article 7 of the Policy provides that the complainant and the respondent shall bear the burden of proof for their own claims.

From the record in this case, it is evident that Respondent would have been aware of Complainant and its WIKA trademarks, and does not have any rights or legitimate interests in the Domain Name. Complainant has confirmed that Respondent is not affiliated with Complainant, or otherwise authorized or licensed to use the WIKA trademarks or to seek registration of any domain name incorporating the trademarks. Respondent is also not known to be associated with the WIKA trademarks and there is no evidence showing that Respondent has been commonly known by the Domain Name. Further, the nature of the Domain Name comprising Complainant’s trademark in its entirety, with the additional or repetition of a second instance of Complainant’s WIKA trademark and a hyphen, “-wika” indicates an awareness of Complainant.

In addition, Respondent has not used the Domain Name in connection with a bona fide offering of goods or services or a legitimate noncommercial or fair use. Rather, at the time of the filing of the Complaint, the Domain Name resolved to an inactive website. At the time of the Decision, the Domain Name directs to an error page. Such use does not constitute a bona fide offering of goods or services or a legitimate noncommercial or fair use, and cannot under the circumstances confer on Respondent any rights or legitimate interests in the Domain Name.

Accordingly, Complainant has provided evidence supporting its prima facie claim that Respondent lacks any rights or legitimate interests in the Domain Name. Respondent has failed to produce countervailing evidence of any rights or legitimate interests in the Domain Name. Thus, the Panel concludes that Respondent does not have any rights or legitimate interests in the Domain Name and Complainant has met its burden under Article 8(b) of the Policy.

C. Registered or Used in Bad Faith

The Panel finds that Respondent's actions indicate that Respondent registered and is using the Domain Name in bad faith.

The Panel finds that Complainant provided ample evidence to show that registration and use of the WIKA trademarks long predate the registration of the Domain Name. Complainant is also well established and known. Indeed, the record shows that Complainant's WIKA trademarks and related products and services are widely known and recognized. Therefore, Respondent was likely aware of the WIKA trademarks when it registered the Domain Name, or knew or should have known that the Domain Name was confusingly similar to Complainant's trademarks.

The Panel therefore finds that Respondent's awareness of Complainant's trademark rights at the time of registration suggests bad faith.

Further, the registration of the Domain Name incorporating Complainant's WIKA trademark in its entirety suggests Respondent's actual knowledge of Complainant's rights in the WIKA trademarks at the time of registration of the Domain Name and its effort to opportunistically capitalize on the registration and use of the Domain Name.

In the present circumstances, in addition to the above, considering the distinctiveness and reputation of the WIKA trademarks, the failure of Respondent to submit a response or to provide any evidence of actual or contemplated good faith use, and the implausibility of any good faith use to which the Domain Name may be put, the Panel finds that the non-use of the Domain Name does not prevent a finding of bad faith.

The Panel thus finds that Complainant has satisfied Article 8(c) of the Policy

7. Decision

For the foregoing reasons, in accordance with Articles 14 of the Policy and 40 of the Rules, the Panel orders that the Domain Name <wika-wika.cn> be transferred to Complainant.

/Kimberly Chen Nobles/

Kimberly Chen Nobles

Presiding Panelist

/Francine Tan/

Francine Tan

Panelist

/James Wang/

James Wang

Panelist

Date: June 10, 2024