

## **ADMINISTRATIVE PANEL DECISION**

Denka Company Limited v. Denka Kloop, Denka Chemicals GMBH  
Case No. D2024-0065

### **1. The Parties**

The Complainant is Denka Company Limited, Japan, represented by TMI Associates, Japan.

The Respondent is Denka Kloop, Denka Chemicals GMBH, Germany.

### **2. The Domain Name and Registrar**

The disputed domain name <denkachemicals.com> is registered with Hostinger Operations, UAB (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 10, 2024. On January 10, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 11, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Privacy Protect, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 18, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on January 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 proceedings commenced on January 26, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 15, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 28, 2024.

The Center appointed Marilena Comanescu as the sole panelist in this matter on March 4, 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, established in 1915 in Japan, is a chemical manufacturer. In 1965, the Complainant established a Duseldorf representative office in Germany, and in 1990, it converted such office into a local corporation and established Denka Chemicals G.m.b.H.

Currently, the Complainant has a number of baseses in and outside Japan, including in Europe and the North America.

The Complainant holds trademark registration for or incorporating DENKA, such as the following:

- International trademark registration number 1495748 for DENKA (figurative), registered on August 21, 2019, for goods and services in International classes 5, 10, 42, and 44, designating, inter alia, the European Union; and
- Japanese trademark registration number 5701955 for DENKA (word), filed on May 14, 2014, and registered on September 12, 2014, for goods in International class 9.

The Complainant owns and operates its corporate website under the domain name <denka.co.jp>.

The disputed domain name was registered on March 22, 2023, and, at the time of filing the Complaint, it did not resolve to an active website.

According to Annexes 9-11 to the Complaint, the disputed domain name has been used in connection with a commercial website impersonating the Complainant by using the name and actual address of the Complainant's German affiliate, displaying the DENKA logo and promoting similar goods to those of the Complainant.

Furthermore, following a request made by a potential customer, who visited the website under the disputed domain name and mistakenly presumed it belongs to the Complainant, the Respondent sent a pro forma invoice, followed by a confirmation letter, having the details of the Complainant's German entity but different bank accounts, and being signed, and furtheron, confirmed, by purported representatives of the Complainant.

According to the Amended Complaint, the name disclosed for the Respondent does not correspond to any employee or associate of the Complainant, and the disclosed Organization name is identical to the name of the Complainant's German affiliated company.

#### **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 or confusingly similar to its trademark, adding to the DENKA trademark the decriptive indication "chemicals", which means chemistry/chemical substance and is closely related to the Complainant's business; that the Respondent

has no rights or legitimate interests in the disputed domain name; and that the Respondent registered and is using the disputed domain name in bad faith impersonating the Complainant, and seeking fraudulent payments charges from its customers.

Furthermore, the Complainant states it has 13 products that hold the no. 1 share in the global market; its trademark has become widely recognized and well-known worldwide, including in Japan, the United States of America, and Germany; it has been actively used the mark DENKA worldwide for more than 50 years; the name “denka” is a coined term with no other meaning other than designating the Complainant, being created as an acronym from the Complainant’s former company name; the Respondent has used the disputed domain name in connection with an illegal website displaying the name and actual location of the Complainant’s German affiliate under the “Contact us” section, as well as the DENKA logo in blue color and thus impersonating the Complainant; it is highly likely that the Respondent was also using the disputed domain name to obtain personal information of the Complainant’s actual and potential customers; the Respondent has registered in the Whols a false name organization and address, impersonating the Complainant’s affiliated company, Denka Chemicals.

## **B. Respondent**

The Respondent did not reply to the Complainant’s contentions.

## **6. Discussion and Findings**

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) the respondent has no rights or legitimate interests in the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

### **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 confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other term, here “chemicals”, may bear on assessment of the second and third elements, the Panel finds the addition of such 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 Panel finds the first element of the Policy has been established.

### **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a non-exhaustive 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 Panel notes that the composition of the disputed domain name itself carries a risk of implied affiliation given that the Complainant’s distinctive trademark has been combined with the dictionary term “chemicals”, closely related to the Complainant’s industry. According to the evidence provided in the Complaint, the Respondent has registered the disputed domain name using a false identity and the disputed domain name has been used to impersonate the Complainant, by displaying the Complainant’s trademark and logo, as well as its affiliate’s name and address. UDRP panels have held that the use of a domain name for illegal activity (such as impersonation/passing off, phishing or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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 Panel notes that the Respondent registered the disputed domain name in bad faith since the DENKA mark is registered since at least 2005 and the Respondent fraudulently used the name of the Complainant’s German affiliate as listed organization contact information in the WhoIs. Further, the use of the disputed domain name supports such conclusion.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but 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.

At the time of filing the Complaint, the disputed domain name directs towards an error page. However, according to the evidence in the Complaint, the disputed domain name has been used in connection with a commercial website impersonating the Complainant by using the name and actual address of the Complainant’s German affiliate, displaying the DENKA logo and promoting similar goods to those of the Complainant.

Panels have held that using privacy or proxy services merely to avoid being notified of a UDRP proceeding filed against it and using a domain name for illegal activity (here, claimed phishing activities, but also the seeming impersonation of the Complainant through the very registration details used for the disputed domain name) constitute bad faith. [WIPO Overview 3.0](#), sections 3.6 and 3.4.

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 <denkchemicals.com> be transferred to the Complainant.

*/Marilena Comanescu/*

**Marilena Comanescu**

Sole Panelist

Date: March 13, 2024