

## **ADMINISTRATIVE PANEL DECISION**

Breitling SA v. 王先生 (Wang Xian Sheng)  
Case No. D2022-0387

### **1. The Parties**

The Complainant is Breitling SA, Switzerland, represented by Brandstock Domains GmbH, Germany.

The Respondent is 王先生 (Wang Xian Sheng), China.

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

The disputed domain name <breitlingsecurity.com> is registered with Hongkong Domain Name Information Management Co., Limited (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on February 4, 2022. On February 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 10, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on February 10, 2022, 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 amended Complaint in English on February 11, 2022.

On February 10, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On February 11, 2022, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

The Center verified that the Complaint together with the amended 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 in English and Chinese of the Complaint, and the proceeding commenced on February 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 8, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 9, 2022.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on March 15, 2022. 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**

##### **A. Complainant**

The Complainant is a company incorporated in Switzerland and the manufacturer since 1884 of high end chronographs and watches under the trade mark BREITLING (the "Trade Mark").

The Complainant is the owner of numerous registrations for the Trade Mark worldwide, including International registration No. 279322 for BREITLING, with a registration date of January 31, 1964; and Chinese registration No. 5944329 for BREITLING 1884 百年灵, with a registration date of November 14, 2013.

The Complainant is also the owner of the domain name <breitling.com>.

##### **B. Respondent**

The Respondent is an individual resident in China.

##### **C. The Disputed Domain Name**

The disputed domain name was registered on November 4, 2021.

##### **D. Website at the Disputed Domain Name**

The disputed domain name was previously resolved to a simple Chinese language website apparently offering a free security encryption test and inviting Internet users to "please click here to enter" ("请您点击此处进入") – but otherwise containing no contact information or any details regarding the owner and operator of the website (the "Website").

As at the date of this Decision, the disputed domain name is no longer being used.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that the disputed domain name is confusingly similar or identical to the Trade Mark, the Respondent has no rights or legitimate interests in respect of the disputed domain name, and the disputed domain name has been registered and is being used in bad faith.

##### **B. Respondent**

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

## **6. Discussion and Findings**

### **6.1. Language of the Proceeding**

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11, 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. However, paragraph 11(a) of the Rules allows the panel to determine the language of the proceeding having regard to all the circumstances. In particular, it is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding, in order to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. Language requirements should not lead to undue burdens being placed on the parties and undue delay to the proceeding.

The Complainant has requested that the language of the proceeding be English, for the following reasons:

- (i) being a Swiss entity, the Complainant is not able to communicate in Chinese. The Complainant is not in a position to conduct this proceeding in Chinese without additional expense and delay due to the need for translation of the Complaint; and
- (ii) the Respondent is however in a position to understand English and undergo the proceeding in English, because the disputed domain name contains the English term “security”; and a reverse Whois search demonstrates that the Respondent owns several domain names containing English terms.

The Panel would have accepted a response in Chinese, but the Respondent did not file a response.

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.

Although there is insufficient evidence before the Panel to support a conclusion that the Respondent is conversant in English, the Panel notes that the Respondent has taken no part in this proceeding; and that all of the Center’s communications with the Parties have been sent in English and Chinese.

The Panel is also mindful of the need to ensure the proceeding is conducted in a timely and cost effective manner.

In all the circumstances, the Panel therefore finds it is not foreseeable that the Respondent would be prejudiced, should English be adopted as the language of the proceeding.

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.

### **6.2. Substantive Elements of the Policy**

The Complainant must prove each of the three elements in paragraph 4(a) of the Policy in order to prevail.

#### **A. Identical or Confusingly Similar**

The Panel finds that the Complainant has rights in the Trade Mark acquired through use and registration.

The disputed domain name incorporates the entirety of the Trade Mark (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7) followed by the word "security".

Where a relevant trade mark is recognisable within a disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element (see [WIPO Overview 3.0](#), section 1.8).

The Panel therefore finds that the disputed domain name is confusingly similar to the Trade Mark.

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

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to the respondent of the dispute, the respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name even if the respondent has acquired no trade mark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

The Complainant has not authorised, licensed, or permitted the Respondent to register or use the disputed domain name or to use the Trade Mark. The Panel finds on the record that there is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and the burden is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that he has acquired any trade mark rights in respect of the disputed domain name or that the disputed domain name has been used in connection with a *bona fide* offering of goods or services. To the contrary, the disputed domain name was previously used in respect of the Website, which on its face does not appear to be a legitimate commercial Website; and it is presently not being used for an active website.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain name; and there has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

In addition, the Panel notes the nature of the disputed domain name, which is clearly intended to, and does, play on the Trade Mark.

The Panel finds that the Respondent has failed to produce any evidence to rebut the Complainant's *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Panel therefore finds that the Respondent lacks rights or legitimate interests in the disputed domain name.

## **C. Registered and Used in Bad Faith**

Given (i) the notoriety of the Complainant and of its Trade Mark in the high end watch field (including in China, where the Respondent is based); (ii) the distinctiveness of the Trade Mark; (iii) the fact the Trade Mark has no meaning in the Chinese language; (iv) the fact the disputed domain name is confusingly similar to the Trade Mark; (v) the Respondent's prior use of the disputed domain name in respect of the Website,

which does not appear to be a genuine commercial website; (vi) the Respondent's act of taking down the Website at some time following the filing of the Complaint; and (vii) the lack of any substantiated credible explanation from the Respondent, the Panel finds, in all the circumstances, that the requisite element of bad faith has been made out. The Panel considers it is most likely the Respondent was aware of the Complainant's Trade Mark at the time he registered the disputed domain name. Furthermore, the Respondent's present non-use or passive holding of the disputed domain name would not prevent a finding of bad faith under the Policy.

For all the foregoing reasons, the Panel concludes that the disputed domain name has been registered and is being used in bad faith, and that the Complainant has satisfied paragraph 4(a)(iii) 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 <breitlingsecurity.com> be transferred to the Complainant.

*/Sebastian M.W. Hughes/*

**Sebastian M.W. Hughes**

Sole Panelist

Dated: March 29, 2022