

ADMINISTRATIVE PANEL DECISION

The Institute of Electrical and Electronics Engineers, Incorporated v. 陈绍玲
(Shao Ling Chen)
Case No. D2022-0472

1. The Parties

Complainant is The Institute of Electrical and Electronics Engineers, Incorporated, United States of America (“U.S.”), represented by Dorsey & Whitney, LLP, U.S.

Respondent is 陈绍玲 (Shao Ling Chen), China.

2. The Domain Name and Registrar

The disputed domain name <ieee-xplore.com> is registered with Cloud Yuqu LLC (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on February 10, 2022. On February 11, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 14, 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 Complainant on February 14, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint in English on February 16, 2022.

On February 14, 2022, the Center transmitted another email communication to the Parties in English and Chinese regarding the language of the proceeding. On February 16, 2022, Complainant confirmed its request that English be the language of the proceeding. 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 Respondent in Chinese and English of the Complaint, and the proceedings commenced on February 23, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 15, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on March 24, 2022.

The Center appointed Yijun Tian as the sole panelist in this matter on April 13, 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

Complainant is a company incorporated in the U.S. It is one of the world's largest technical professional association for the advancement of technology, with more than 400,000 members in over 160 countries, dedicated to advancing technological innovation and excellence for the benefit of humanity. Complainant is recognized as a leading authority in technical areas ranging from computer engineering, biomedical technology, and telecommunications to electric power, aerospace, and consumer electronics, among others. It is well known worldwide, particularly to those in the engineering and technology-related industries.

Complainant is the exclusive owner of numerous IEEE and IEEE related trademarks worldwide, including the U.S. Trademark IEEE registered on May 11, 1993 (the U.S. registration number 1770511), the U.S. Trademark IEEE XPLORE registered on July 16, 2002 (the U.S. registration number 2595086), and the Chinese Trademark IEEE registered on July 21, 1999 (the Chinese Trademark registration number 1297355).

Complainant owns and uses numerous domain names incorporating the IEEE mark, including <ieee.org>. It actively uses its main domain name, <ieee.org>, to host its official website for its organization and the IEEE XPLORE digital library at <ieeexplore.ieee.org>.

B. Respondent

Respondent is 陈绍玲 (Shao Ling Chen), China.

C. The Disputed Domain Name

The disputed domain name <ieee-xplore.com> was registered on March 8, 2021. The disputed domain name resolves to a website with a warning that says "[t]he domain has expired and cannot be accessed. It can be restored after renewal."

5. Parties' Contentions

A. Complainant

Complainant contends that the disputed domain name is identical and confusingly similar to Complainant's IEEE trademarks. It fully incorporates Complainant's distinctive IEEE mark and IEEE XPLORE mark in their entirety. The only difference between the disputed domain and the IEEE XPLORE mark is the inclusion of the generic Top-Level Domain ("gTLD") ".com", which is insufficient to remove the likelihood of confusion and should be ignored for purposes of this analysis.

Complainant contends that Respondent cannot demonstrate it has any rights or legitimate interests in the disputed domain name.

Complainant contends that the disputed domain name was registered and is being used in bad faith.

Complainant requests that the disputed domain name be transferred to it.

B. Respondent

Respondent did not reply to 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(a), in the absence of an agreement between the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement. From the evidence presented on the record, no agreement appears to have been entered into between Complainant and Respondent to the effect that the language of the proceeding should be English. Complainant filed initially its Complaint in English, and has requested that English be the language of the proceeding for following reasons:

- (a) Respondent has demonstrated a clear grasp of the English language, as is evident from the prior correspondence between Complainant and an entity that purports to be the Registrant of the disputed domain name, which is entirely in English.
- (b) Complainant and the apparent Registrant entered into an Assignment Agreement by which the apparent Registrant agreed to transfer rights in the disputed domain name to Complainant. This agreement was in English and signed by the apparent Registrant.
- (c) As a result of these prior communications, Respondent will not be materially prejudiced if this proceeding was conducted in English.
- (d) Complainant would incur substantial expense if the Complaint must be translated into Chinese.
- (e) The disputed domain name <ieeee-xplore.com> is in English, and Complainant's trademarks, which Respondent has infringed, are all in English, and registered in English with the U.S. Patent and Trademark Office.

Respondent did not comment on the language of the proceeding despite the fact that the Center has sent the email regarding the language of the proceedings and the notification of Complaint in both Chinese and English.

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 other words, it is important to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes (*Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. ltd.*, WIPO Case No. [D2008-0293](#); *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#)). The language finally decided by the panel for the proceeding should not be prejudicial to either one of the parties in its abilities to articulate the arguments for the case (*Groupe Auchan v. xmxzl*, WIPO Case No. [DCC2006-0004](#)). Section 4.5.1 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") further states:

“Noting the aim of conducting the proceedings with due expedition, paragraph 10 of the UDRP Rules vests a panel with authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case.

Against this background, panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios include (i) evidence showing that the respondent can understand the language of the complaint, (ii) the language/script of the domain name particularly where the same as that of the complainant’s mark, (iii) any content on the webpage under the disputed domain name, (iv) prior cases involving the respondent in a particular language, (v) prior correspondence between the parties, (vi) potential unfairness or unwarranted delay in ordering the complainant to translate the complaint, (vii) evidence of other respondent-controlled domain names registered, used, or corresponding to a particular language, (viii) in cases involving multiple domain names, the use of a particular language agreement for some (but not all) of the disputed domain names, (ix) currencies accepted on the webpage under the disputed domain name, or (x) other indicia tending to show that it would not be unfair to proceed in a language other than that of the registration agreement.” (See also *L’Oreal S.A. v. MUNHYUNJA*, WIPO Case No. [D2003-0585](#)).

The Panel has taken into consideration the fact that Complainant is a company from the U.S., and Complainant would be burdened by working in Chinese as the language of the proceeding. The Panel has also taken into consideration the fact that the disputed domain name includes Latin characters (“ieee”, and “xplore”), and is registered in the gTLD space comprising of the Latin characters “.com” (*Compagnie Gervais Danone v. Xiaole Zhang*, WIPO Case No. [D2008-1047](#)).

On the record, Respondent appears to be a Chinese resident and is thus presumably not a native English speaker. However, considering the following, the Panel has decided that English should be the language of the proceeding: (a) the disputed domain name includes Latin characters, rather than mere Chinese scripts; (b) Respondent has demonstrated a clear grasp of the English language, as is evident from the prior correspondence between Complainant and an entity that purports to be the Registrant of the disputed domain name, which is entirely in English; (c) Complainant and the apparent Registrant entered into an Assignment Agreement by which the apparent Registrant agreed to transfer rights in the disputed domain name to Complainant. This agreement was in English and signed by the apparent Registrant; (d) the Center has notified Respondent of the proceeding in both Chinese and English; and (e) the Center informed the Parties, in English and Chinese, that it would accept a Response in either English or Chinese.

Accordingly, the Panel finds the choice of English as the language of the present proceeding is fair to both Parties and is not prejudicial to either one of the Parties in its ability to articulate the arguments for this case. Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that English shall be the language of the proceeding, and the decision will be rendered in English.

6.2. Substantive Issues

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that the disputed domain name should be cancelled or transferred:

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

On the basis of the evidence introduced by Complainant and in particular with regard to the content of the relevant provisions of the Policy (paragraphs 4(a)-(c)), the Panel concludes as follows:

A. Identical or Confusingly Similar

The Panel finds that Complainant has rights in the IEEE and IEEE XPLORE marks acquired through registration. The IEEE marks have been registered in the U.S. since 1993, and registered in China since 1999. The IEEE XPLORE mark has been registered in the U.S. since 2002. The disputed domain name comprises the IEEE and IEEE XPLORE marks in their entireties. The disputed domain name only differs from Complainant's IEEE XPLORE trademark by the hyphen "-", and the gTLD ".com". This does not prevent a finding of confusing similarity between Complainant's registered trademark and the disputed domain name.

Previous UDRP panels have consistently held that a domain name is identical or confusingly similar to a trademark for purposes of the Policy "when the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name" (*Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale*, WIPO Case No. [D2000-0662](#)).

Further, in relation to the gTLD, section 1.11.1 of the [WIPO Overview 3.0](#) states: "[t]he applicable Top Level Domain ('TLD') in a domain name (e.g., '.com', '.club', '.nyc') is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test."

The Panel therefore holds that the disputed domain name is confusingly similar to the mark in which Complainant has rights and thus the Complaint fulfils the first condition of paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

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

(i) before any notice to Respondent of the dispute, the use by Respondent 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) Respondent has been commonly known by the disputed domain name, even if Respondent has acquired no trademark or service mark rights; or

(iii) 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 Complainant's trademarks.

The overall burden of proof on this element rests with Complainant. However, it is well established by previous UDRP panel decisions that once a complainant establishes a *prima facie* case that a respondent lacks rights or legitimate interests in a domain name, the burden of production shifts to respondent to rebut complainant's contentions. If respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. (*Danzas Holding AG, DHL Operations B.V. v. Ma Shikai*, WIPO Case No. [D2008-0441](#); [WIPO Overview 3.0](#), section 2.1, and cases cited therein).

Complainant has registered rights in the IEEE marks in the U.S. since 1993 and in China since 1999, and the IEEE XPLORE mark in the U.S. since 2002, which precede Respondent's registration of the disputed domain name in 2021. According to the Complaint, Complainant is one of the world's largest technical professional association for the advancement of technology, with more than 400,000 members in over 160 countries. It is well known worldwide, particularly to those in the engineering and technology-related industries.

Moreover, Respondent is not an authorised dealer of IEEE branded products or services, and Respondent has not used the disputed domain name in connection with an active website. Complainant has therefore established a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name and thereby shifted the burden to Respondent to produce evidence to rebut this presumption (*The*

Argento Wine Company Limited v. Argento Beijing Trading Company, WIPO Case No. [D2009-0610](#); *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

Based on the following reasons the Panel finds that Respondent has no rights or legitimate interests in the disputed domain name:

(a) There has been no evidence adduced to show that Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services. Respondent has not provided evidence of a legitimate use of the disputed domain name or reasons to justify the choice of the term “ieee” or “ieeee-xplore” in the disputed domain name and in its business operation. There has been no evidence to show that Complainant has licensed or otherwise permitted Respondent to use the IEEE or IEEE XPLORE marks or to apply for or use any domain name incorporating the IEEE or the IEEE XPLORE marks.

(b) There has been no evidence adduced to show that Respondent has been commonly known by the disputed domain name. There has been no evidence adduced to show that Respondent has any registered trademark rights with respect to the disputed domain name. Respondent registered the disputed domain name in 2021, long after the IEEE and IEEE XPLORE marks became internationally known. The disputed domain name is confusingly similar to Complainant’s IEEE and IEEE XPLORE marks and carries a risk of implied affiliation to Complainant contrary to the fact;

(c) There has been no evidence adduced to show that Respondent is making a legitimate noncommercial or fair use of the disputed domain name. By contrast, the website resolved by the disputed domain name is currently inactive with a warning saying it has expired and cannot be accessed.

The Panel finds that Respondent has failed to produce any evidence to establish rights or legitimate interests in the disputed domain name. The Panel therefore holds that the Complaint fulfils the second condition of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out four circumstances which, without limitation, shall be evidence of the registration and use of the disputed domain name in bad faith, namely:

(i) circumstances indicating that Respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to Complainant who is the owner of the trademark or service mark or to a competitor of Complainant, for valuable consideration in excess of Respondent’s documented out-of-pocket costs directly related to the disputed domain name; or

(ii) Respondent has registered the disputed domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or

(iii) Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent’s website or other online location, by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of Respondent’s website or location or of a product or service on the website or location.

The Panel concludes that upon the evidence of these circumstances and other relevant circumstances, it is adequate to conclude that Respondent has registered and used the disputed domain name in bad faith.

(a) Registered in Bad Faith

The Panel finds that Complainant has a widespread reputation in the IEEE and IEEE XPLORE marks with regard to its products or services. As introduced above, it is one of the world's largest technical professional association for the advancement of technology, with more than 400,000 members in over 160 countries. It is well known worldwide, particularly to those in the engineering and technology-related industries. Complainant has registered its IEEE marks in the U.S. since 1993, and in China since 1999, and the IEEE XPLORE mark in the U.S. since 2002. Therefore, it is not conceivable that Respondent would not have had actual notice of Complainant's trademark rights at the time of the registration of the disputed domain name in 2021.

In addition, the reference to "xplore" in the disputed domain name strongly suggests Respondent was aware of Complainant, and its distinctive IEEE XPLORE mark when it registered the disputed domain name.

The Panel therefore finds that the IEEE and IEEE XPLORE mark is not one that a trader could legitimately adopt other than for the purpose of creating an impression of an association with Complainant (*The Argento Wine Company Limited v. Argento Beijing Trading Company, supra*).

Moreover, Respondent has chosen not to respond to Complainant's allegations. According to the UDRP decision in *The Argento Wine Company Limited v. Argento Beijing Trading Company, supra*, "the failure of the Respondent to respond to the Complaint further supports an inference of bad faith". See also *Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. [D2002-0787](#).

Thus, the Panel concludes that the disputed domain name was registered in bad faith.

(b) Used in Bad Faith

The disputed domain name is currently inactive. In terms of inactive domain names, section 3.3 of the [WIPO Overview 3.0](#) provides: "[f]rom the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or 'coming soon' page) would not prevent a finding of bad faith under the doctrine of passive holding."

Section 3.3 of the [WIPO Overview 3.0](#) further states:

"While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put."

As discussed above, Complainant's IEEE and IEEE XPLORE marks are widely known. Taking into account all the circumstances of this case, the Panel concludes that the current inactive use of the disputed domain name by Respondent does not prevent a bad faith finding.

In summary, Respondent, by choosing to register and use the disputed domain name, which is confusingly similar to Complainant's well-known trademarks, intended to disrupt Complainant's business. In the absence of convincing evidence and rebuttal to the contrary from Respondent, the choice of the disputed domain name and the conduct of Respondent are indicative of registration and use of the disputed domain name in bad faith.

The Panel therefore holds that the Complaint fulfils the third condition of paragraph 4(a) of the Policy.

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 name <ieee-xplore.com> be transferred to Complainant.

/Yijun Tian/

Yijun Tian

Sole Panelist

Dated: May 24, 2022