

## ADMINISTRATIVE PANEL DECISION

Deezer v. 杨信 (Domain Manager)

Case No. D2022-0552

### 1. The Parties

The Complainant is Deezer, France, represented by Domgate, France.

The Respondent is 杨信 (Domain Manager), China, self-represented.

### 2. The Domain Name and Registrar

The disputed domain name <deezer.net> is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

### 3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on February 17, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 18, 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 the same day 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 22, 2022.

On February 18, 2022, the Center transmitted another email communication to the Parties in Chinese and English regarding the language of the proceeding. The original due date for the Complainant to comment on this email was February 21, 2022. On February 20, 2022, the Respondent sent three email communications to the Center, including two requesting that Chinese be the language of the proceeding. On February 21, 2022, at the request of the Complainant, the due date for comments was extended to February 23, 2022. The Complainant filed a request that English be the language of the proceeding on February 22, 2022. On February 28, 2022, the Respondent sent another email communication to the Center.

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 Chinese and English of the Complaint, and the proceedings commenced on March 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 24, 2022. The Respondent sent several email communications in Chinese to the Center between March 4 and March 23, 2022, and filed the Response in Chinese with the Center on March 24, 2022.

On March 29, 2022, the Complainant submitted an unsolicited supplemental filing.

The Center appointed Matthew Kennedy 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.

The Respondent sent an email communication to the Center on April 29, 2022.

#### **4. Factual Background**

The Complainant offers a music streaming service that was launched as “Deezer” in 2007 in France. By 2012, it had about two million paid subscribers and seven million active monthly users and had expanded into many other countries, including some in Asia. The Complainant has registered multiple trademarks in multiple jurisdictions, including the following:

- International trademark registration number 1024994 for DEEZER and device, claimed in colors, registered on October 9, 2009, designating multiple jurisdictions, including China, and specifying services in classes 35, 38 and 41; and
- European Union trademark registration number 008650079 for DEEZER, registered on May 3, 2010, specifying services in classes 35, 38 and 41.

The above trademark registrations remain current. The Complainant has also registered numerous deezer-formative domain names, including <deezer.com>, which it uses in connection with its principal website where it offers its music streaming service. That website includes a Chinese language version. Evidence provided by the Respondent shows that Internet users who try to access the website from mainland China are shown a screen advising that “Deezer is not available in your country” together with links to Deezer accounts and information about Deezer. Evidence provided by the Complainant shows that information about Deezer is available online in China.

The Respondent is an individual resident in China.

The disputed domain name was registered on December 17, 2015. It formerly resolved to a website in Chinese displaying links to topics mostly related to the COVID-19 pandemic, as well as some stock tourism photographs, and a notice seeking donations. The website offered a contact form and an email address for Internet users to contact the Respondent alongside a message in Chinese “契合的域名一定可以锦上添花，但无法雪中送炭” (which could be translated as a suitable domain name is the icing on the cake but it cannot help in your hour of need), and a notice in Chinese “不欢迎任何平台的域名经纪人” (which could be translated as brokers of domain name platforms were not welcome). At the bottom of the webpage, a notice “DEEZER.NET 本网站与其它任何公司及/或商标无任何形式关联或合作” was displayed in Chinese which could be translated as follows: “DEEZER.NET This website is not affiliated or cooperative in any way with any other company or trademark”. The website did not display advertising. At the time of this Decision, the disputed domain name does not resolve to any active website; rather, it is passively held.

The disputed domain name is offered for sale on a domain name broker’s website that invites Internet users to make an offer. The minimum offer for the disputed domain name is USD 3,500.

According to information provided by the Complainant, the Respondent is also the registrant of other domain names incorporating third party trademarks, *i.e.*, <ezsport.cn>, <itiktok.com>, <nikes.cn>, and <swissgear.cn>, all of which redirect to the same website as the disputed domain name and all of which are available for sale on the domain name broker's website.

On January 31, 2022, the Complainant sent a letter of demand in English to the Respondent. The Respondent replied on February 7, 2022, in English, refusing to comply with the Complainant's demands, which he considered unreasonable.

## **5. Parties' Contentions**

### **A. Complainant**

The disputed domain name is identical to the Complainant's DEEZER mark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has never licensed or otherwise authorized the Respondent to use the DEEZER trademark as a domain name. The Respondent is not known under the name "Deezer" and the fact that the disputed domain name is for sale confirms this fact. The webpage to which the disputed domain name resolves displays sponsored links. It also displays a disclaimer, which is irrelevant because "Deezer" is not a dictionary word.

The disputed domain name was registered and is being used in bad faith. According to the notoriety of the Complainant and the fact that the Respondent redirected the disputed domain name to a "generic" website, it is obvious that the Respondent knew of the Complainant's existence and registered the disputed domain name with the objective to make money from it. The Respondent configured the disputed domain name and other domain names to resolve to pay-per-click ads and, at the same time, is trying to sell the domain names.

### **B. Respondent**

DEEZER is not an original or well-known trademark, nor is it English vocabulary. The Complainant's website displays the following notice when accessed from China: "Deezer is not available in your country/region". As the Complainant is not authorized to operate in China, it enjoys no reputation in that country.

The Respondent's website displays a notice disclaiming any affiliation with any other company or trademark. The disputed domain name was registered in 2015, which is the legal property of the Respondent and should be protected. As long as the Respondent does not infringe any third party rights, he has the discretion how to use his own legal property. The Respondent refers to recent UDRP decisions regarding <coinbase.info>, <harima.com>, and <irsn.com>.

The Respondent's website is intended to give Internet users from anywhere the correct guidance on the pandemic and links to websites of authoritative sources, including the Chinese government, a social networking service for healthcare professionals, the World Health Organization, and Harvard University.

## **6. Discussion and Findings**

### **6.1. Procedural issues**

#### **A. Language of the Proceeding**

Paragraph 11(a) of the Rules provides that "unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the

Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding". The Registrar confirmed that the Registration Agreement for the disputed domain name is in Chinese.

The Complainant requests that the language of the proceeding be English. Its main arguments are that pre-Complaint correspondence between the Parties was in English and that translation of the Complaint into Chinese will cause a high financial burden to the Complainant and unwarranted delay.

The Respondent requests that the language of the proceeding be Chinese. His arguments are that he has only elementary or intermediate level English, which makes it difficult for him to understand fully the Complaint. He submits that he used online translation tools, and that he does not fully understand the Complaint and hopes he will not be treated unfairly. He claims that he has been deprived of the basic right of defense as the domain name holder and that this is unfair.

Paragraph 10(b) and (c) of the Rules require the Panel to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding take place with due expedition. Prior UDRP panels have decided that the choice of language of the proceeding should not create an undue burden for the parties. See, for example, *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#); *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. Ltd.*, WIPO Case No. [D2008-0293](#).

The Panel observes that in this proceeding the Complaint and amended Complaint were filed in English and the Response was filed in Chinese. The Parties communicated prior to the filing of the Complaint in English, which demonstrates that the Respondent is able to communicate in that language. The Response addresses the issues in dispute and refers to UDRP jurisprudence. Therefore, the Panel considers that requiring the Complainant to translate the amended Complaint into Chinese would create an undue burden and delay whereas accepting each Party's submission as filed, without translation, does not create unfairness to either Party.

Having considered all the circumstances above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English but that the Panel will accept the Response as filed in Chinese.

## **B. Supplemental Filing**

The Complainant made an unsolicited supplemental filing on March 29, 2022 following receipt of the Response and prior to the appointment of the Panel. The Respondent did not comment on the supplemental filing.

Paragraph 12 of the Rules provides that in addition to the complaint and the response, the Panel may request or permit, in its sole discretion, further statements or documents from either of the Parties. At the same time, the Panel recalls that paragraphs 10(b) and (c) of the Rules require the Panel to ensure that each Party is given a fair opportunity to present its case and that the administrative proceeding takes place with due expedition. Accordingly, the Panel will only permit the supplemental filing in exceptional circumstances. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.6.

The Complainant did not state any reason as to why the Panel should exercise its discretion to accept the supplemental filing. The supplemental filing mainly reiterates that the Respondent understands English, and attaches email correspondence between itself and a domain name broker that the Complainant initiated on the day that it filed the Complaint and that would not alter the outcome of the dispute.

The Panel sees no exceptional circumstances in this case that would justify accepting the Complainant's supplemental filing. Therefore, the Panel declines to accept the Complainant's supplemental filing.

### **C. Delay in Bringing the Complaint**

The Respondent mentioned that he registered the disputed domain name in 2015. The Panel notes that the Complaint was filed in 2022. UDRP panels have widely recognized that mere delay between the registration of a domain name and the filing of a complaint neither bars a complainant from filing such case, nor from potentially prevailing on the merits. See [WIPO Overview 3.0](#), section 4.17.

### **6.2. Substantive Issues**

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the 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.

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

Based on the evidence presented, the Panel finds that the Complainant has rights in the DEEZER mark.

The disputed domain name wholly incorporates the DEEZER mark as its operational element. Its only additional element is a generic Top-Level Domain (“gTLD”) extension (“.net”) which, as a standard requirement of domain name registration, may be disregarded in the comparison between the disputed domain name and the mark. See [WIPO Overview 3.0](#), section 1.11.

Therefore, the Panel finds that the disputed domain name is identical to a trademark in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy.

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

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the Panel, shall demonstrate that the respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- (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 trademark 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 trademark or service mark at issue.

The Complainant submits that it has never licensed or otherwise authorized the Respondent to use the DEEZER trademark as a domain name. The Respondent does not dispute that submission.

As regards the first circumstance set out above, the disputed domain name formerly resolved to a website that did not directly offer anything for sale. At the time of this Decision, it is passively held. Nothing indicates that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services that would create rights or legitimate interests in respect of the disputed domain name for the purposes of the Policy.

As regards the second circumstance set out above, the Respondent's name, according to the Registrar's Whois database, is 杨信, which may be transliterated as "Yang Xin", and his English name is listed as "Domain Manager", not "Deezer". Nothing in the case file indicates that the Respondent has been commonly known by the disputed domain name.

As regards the third circumstance set out above, the disputed domain name formerly resolved to a website that displayed links to topics mostly related to the COVID-19 pandemic and allegedly served a public health purpose. The term "deezer" in the disputed domain name does not appear to have any connection with the website content. Further, very little of the website content appears to have been original, and the photographs displayed had no apparent connection to the public health topics that it mentioned. Most of the site consisted of hyperlinks to noncommercial websites, hence it is improbable that the Respondent received revenue for directing traffic to them or that his website operated for the commercial gain of the linked websites. As for the invitation soliciting donations, it was allegedly to be used for setting up a public welfare foundation. Nevertheless, the website displayed a contact form and an email address to contact the Respondent next to a message in Chinese "契合的域名一定可以锦上添花, 但无法雪中送炭" (which could be translated as a suitable domain name is the icing on the cake but it cannot help in your hour of need, implying that the Respondent was selling the disputed domain name). Elsewhere, the disputed domain name was indeed, and still is, offered for sale on a broker's website for a minimum of USD 3,500. Accordingly, the Panel does not consider that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain. The fact that the Respondent's website displayed a disclaimer denying any affiliation with any company or trademark did not render his use of the disputed domain name noncommercial.

Moreover, the disputed domain name is identical to the DEEZER trademark, adding only the gTLD suffix (".net"), so that its use by the Respondent carries a high risk of implied affiliation with the Complainant. See [WIPO Overview 3.0](#), section 2.5.1 and, for example, *Deezer v. Bichevaya Polina Vladimirovna*, WIPO Case No. [D2021-1020](#).

Nothing in the record of this proceeding indicates that the Respondent owns any trademark or has any other right or legitimate interest in respect of the disputed domain name.

Therefore, based on the record of this proceeding, the Panel finds that the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

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

Paragraph 4(b) of the Policy provides that certain circumstances, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The first circumstance is as follows:

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

As regards registration, the disputed domain name was registered in 2015, years after the Complainant obtained its trademark registrations for DEEZER, including in China, where the Respondent is resident. The disputed domain name is identical to the DEEZER trademark, which is a coined or made-up term, not a descriptive word. See *Deezer SA v. Yogi Lama, Buddha Tunes Ltd*, WIPO Case No. [D2015-1898](#). As far as the Panel is aware, "deezer" has no significance other than as the Complainant's trademark. The Panel notes that the disputed domain name is one of at least five domain names that the Respondent has registered that incorporate a third party trademark. In these circumstances, it does not appear to be a coincidence that the disputed domain name incorporates the DEEZER trademark.

The Respondent points out that the Complainant's music streaming service is not legally available in China. However, the evidence shows that information about the service is indeed available in China, including on Baidu, the most popular search engine in China, so that it is clearly plausible that the Respondent had heard of the Complainant before he registered the disputed domain name. Moreover, if the Respondent had not heard of the DEEZER mark before this dispute, there is no explanation available on the record as to why he registered the disputed domain name. The Respondent refers to the decision in *Harima Chemicals Group, Inc. v. Domain Administrator, DomainMarket.com*, WIPO Case No. [D2021-3512](#), but that dispute concerned a disputed domain name registered seven years prior to the complainant's trademark, which had another meaning, neither of which is true in the present case. The Respondent also refers to the decision in *Institut de Radioprotection et de Sûreté Nucléaire v. Domain Admin, FindYourDomain*, WIPO Case No. D2021-4361, but that dispute concerned a mark that consisted of a short combination of letters that was not inherently distinctive, and the respondent established that it acquired the domain name due to the value of that short combination of letters rather than by reference to the complainant, unlike the present case.

In view of the above circumstances, the Panel is persuaded that the Respondent had the Complainant's DEEZER mark in mind when he registered the disputed domain name.

As regards use, the disputed domain name resolved to a website displaying hyperlinks to public health information while the disputed domain name is offered for sale on a broker's website. The Panel notes that the disputed domain name is one of at least five domain names incorporating other parties' trademarks that the Respondent uses in this same way. None of these domain names, including the disputed domain name, has any connection to the website content. Thus, the registration and use of the disputed domain name in the present case forms part of a pattern of conduct, unlike the various domain names registered by the respondent in *Institut de Radioprotection et de Sûreté Nucléaire v. Domain Admin, FindYourDomain, supra*. The Panel considers the minimum price of USD 3,500 advertised for the disputed domain name likely to be in excess of the Respondent's out-of-pocket costs directly related to the disputed domain name, even allowing for seven years' worth of registration and renewal fees and the costs of developing the fairly basic website to which it resolves. In any case, the Respondent does not document any costs in excess of that amount. In view of all these circumstances, the Panel is persuaded that the Respondent has registered the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring its registration to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the disputed domain name within the terms of paragraph 4(b)(i) of the Policy.

The fact that the Respondent's website displayed a disclaimer denying any affiliation with any company or trademark did not alter the fact that the Respondent was and is using the disputed domain name primarily for the purpose described above.

The Panel notes that the use of the disputed domain name has now changed and that it no longer resolves to any active website, although it is still offered for sale on a broker's website. This recent change in use does not alter the Panel's conclusion and, in the circumstances, may constitute further evidence of bad faith.

Therefore, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant has satisfied the third element in paragraph 4(a) 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 <deezer.net> be transferred to the Complainant.

*/Matthew Kennedy/*

**Matthew Kennedy**

Sole Panelist

Date: April 29, 2022