

ADMINISTRATIVE PANEL DECISION

MAGT Holding B.V. v. Translation Failed Translation Failed Case No. D2022-0938

1. The Parties

The Complainant is MAGT Holding B.V., Netherlands, represented by Fifth Advocatuur, Netherlands.

The Respondent is Translation Failed Translation Failed, China.

2. The Domain Name and Registrar

The disputed domain name <dwrs.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

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

- (a) confirming it is the Registrar for the disputed domain name;
- (b) disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint;
- (c) stating the registration agreement is in English;
- (d) confirming that the registration agreement included an acknowledgement that the disputed domain name was registered subject to the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”).

On March 24, 2022, there was an exchange of communications between the Center and the Registrar seeking to clarify the identity of the Respondent. The Registrar confirmed that the only information it had about the Respondent’s name was “Translation Failed Translation Failed”.

The Center sent an email communication to the Complainant on March 28, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. There was a further round of communications between the Complainant, the Center, and the

Registrar relating to the identification of the Respondent. The Complainant filed an amendment to the Complaint on May 10, 2022.

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 May 13, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 2, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 3, 2022.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on June 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

The Complainant claims to have commenced business in 2015. It has a number of registered trademarks for DWRS (figurative) and DWRS. The earliest of which date from January 21, 2016 and October 6, 2017, respectively, Benelux Registered Trademarks Nos 985093 and 1017989. There are more recent, corresponding registrations as European Union Registered Trademarks. The registrations cover a range of goods in International Classes 18 and 25 and retail services in International Class 35.

The Complainant claims further that it is well known for its "eye-catching shoes" which it sells under the trademarks. It says, presumably in the Netherlands, the first eight pages of results for a Google search on "dwrs" are for the Complainant and its products. (That is not the case in the Panel's location, however, the Complainant's website at "www.dwrslabel.com" is prominent on the first page of results and the frame for "Images for dwrs" consists solely of images of the Complainant's products.)

The disputed domain name was first registered on January 17, 2001. The Whois record was most recently updated on January 2, 2022. Publicly available information about the disputed domain name record indicates that there have been a number of changes to the Whois record between those dates. It is not clear from the Complaint or the Registrar's verification response, therefore, when the Respondent became the registrant.

The disputed domain name has not resolved to an active website. Prior to December 2014, it usually resolved to one or other web page stating "This domain may be for sale" or "This domain dwrs.com may be for sale by its owner" according to captures by the Wayback Machine at "www.archive.org". Between January 2016 and October 21, 2016, the disputed domain name resolved to web pages stating "The domain dwrs.com is for sale" or for a page in Chinese characters apart from the word "Sale", the disputed domain name, some contact details including an email address "support@xz.com" and a copyright notice "Copyright © dwrs.com. All Rights Reserved."

There have been no captures by the Wayback Machine since October 2016. On February 22, 2022, and currently, the disputed domain name does not resolve to any sort of website.

The website at "www.xz.com" appears to be an online domain name market place.

Between June and November 2021, the Complainant's representative sought to negotiate the purchase of the disputed domain name through a GoDaddy broker. The Complainant offered EUR 1,000. Initially, the GoDaddy broker advised raising the bid to between USD 2,500 and 5,000 and then USD 10,000.

The Complainant raised its bid to USD 1,000. In November 2021, however, the GoDaddy broker advised the Complainant's representative that the Respondent had informed her it was only willing to accept payment of USD 40,000. The Complainant was unwilling to pay this amount and moved to file this Complaint.

5. Discussion and Findings

No response has been filed. The Complaint and Written Notice have been sent, however, to the Respondent at the electronic and physical coordinates confirmed as correct by the Registrar in accordance with paragraph 2(a) of the Rules. The courier attempting delivery of the Written Notice was unable to complete delivery as the address in the Whois record does not exist. Bearing in mind the duty of the holder of a domain name to provide and keep up to date, correct Whois details, therefore, the Panel finds that the Respondent has been given a fair opportunity to present his or her case.

When a respondent has defaulted, paragraph 14(a) of the Rules requires the Panel to proceed to a decision on the Complaint in the absence of exceptional circumstances. Accordingly, paragraph 15(a) of the Rules requires the Panel to decide the dispute on the basis of the statements and documents that have been submitted and any rules and principles of law deemed applicable.

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

- (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

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

The Complainant has proven ownership of registered trademarks DWRS and DW/RS (figurative) referred to in section 4 above.

The second stage of this inquiry simply requires a visual and aural comparison of the disputed domain name to the proven trademarks. This test is narrower than and thus different to the question of "likelihood of confusion" under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. e.g. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([WIPO Overview 3.0](#)), section 1.7.

In undertaking that comparison, it is permissible in the present circumstances to disregard the generic Top Level Domain ("gTLD") component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

Disregarding the ".com" gTLD, the disputed domain name is identical to the DWRS registered trademarks. It is at least confusingly similar to the figurative trademarks although, as the "v" is merely a typographical

element and it is also usual to disregard the design elements (see e.g. [WIPO Overview 3.0](#), section 1.10), the Panel considers it can also be treated as identical to them as well. Apart from anything else, the Complainant's trademark remains visually and aurally recognisable within the disputed domain name.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is identical with the Complainant's trademark and the requirement under the first limb of the Policy is satisfied.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the 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 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.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement, like each element, falls on the Complainant. Panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is usually sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden will shift to the respondent to rebut that *prima facie* case. The ultimate burden of proof, however, remains with the Complainant. See e.g., [WIPO Overview 3.0](#), section 2.1.

It is clear from the Complaint that the Complainant has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with the Complainant.

Apart from being offered for sale before 2017, there is no evidence that the disputed domain name has been used in connection with the provision of any goods or services or any demonstrable preparations for such use. Although the Complaint has been notified to the electronic co-ordinates nominated by the Respondent and recorded in the Whois record, the Respondent has not suggested any such use or demonstrable preparations for such use.

As the Respondent has not seen fit to disclose its name when registering the disputed domain name, there is no way of knowing whether the disputed domain name is derived from the Respondent's name or some name by which it is commonly known. The Respondent has not made any such claim.

The Complainant further points to the changing nature of the use of the disputed domain name outlined in section 4. At some point after October 21, 2016, the disputed domain name ceased to resolve to a website where it was offered for sale at "www.xz.com". The Complainant contends that this shows the Respondent became the registrant at some point after that date. The Respondent has also not sought to rebut this allegation.

The disputed domain name can be seen as a four-letter acronym. The fact that a disputed domain name can be seen as a four-letter acronym, however, does not necessarily confer rights or legitimate interests. As the [WIPO Overview 3.0](#), section 2.10.2 records:

“For a respondent to have rights or legitimate interests in a domain name comprising an acronym, the respondent’s evidence supporting its explanation for its registration (and any use) of the domain name should indicate a credible and legitimate intent which does not capitalize on the reputation and goodwill inherent in the complainant’s mark.”

The Respondent has not offered any explanation here. Unlike many cases where a respondent has been found to have rights or legitimate interests in a domain name comprised of an acronym, there is no evidence that the Respondent engages in a business of registering such names for their intrinsic value. Most importantly, there is also no evidence about what steps, if any, the Respondent took to avoid conflict with another’s trademark.

The only objective evidence of the Respondent’s use of the disputed domain name is the offer to transfer it to the Complainant for USD 40,000.

There is a further consideration. As already noted, the Respondent has not disclosed its name in the Whois record. The Whois record has further problems. Many of the fields such as Province, Postal Code, Country and registrant email are recorded in Roman letters and Arabic numerals. The Respondent’s name and the city within Fujian province where the Respondent is located have been entered, however, in some script or characters for which the Registrar has recorded “Translation Failed”. Why these two components necessary for the identification of the Respondent have been entered in a script which is unable to be recorded when the other details are in Roman letters and Arabic numerals has not been explained. In addition the street address, while given in Roman letters and Arabic numerals does not identify the street itself.

In these circumstances, therefore, the Respondent appears to have given false Whois data. Although the Respondent has been given an opportunity to correct the record through service of the Complaint, it has not chosen to do so.

The Panel considers the provision of apparently false Whois information, despite an opportunity to correct the record through a Response, in conjunction with the other considerations outlined above disqualifies the Respondent from claiming rights or a legitimate interest in the disputed domain name on the record in this case. See also *e.g.* in the context of claims to legitimate noncommercial or otherwise fair use, [WIPO Overview 3.0](#), section 2.5.3 and also the matters discussed in relation to bad faith below.

Accordingly, the Panel finds the Complainant has established the second requirement under the Policy also.

C. Registered and Used in Bad Faith

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see *e.g.* *Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd*, WIPO Case No. [D2010-0470](#).

The fact that the disputed domain name does not resolve to an active website does not preclude a finding of registration and use in bad faith under the Policy. See *e.g.* [WIPO Overview 3.0](#), section 3.3.

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take unfair advantage of its significance as a trademark owned by (usually) the complainant.

In the present case, the Complainant plausibly argues that the Respondent became the registrant of the disputed domain name after the Complainant's trademark had become well known.

The Respondent has not denied this. Nor has the Respondent denied knowledge of the Complainant and its trademarks. On the contrary, through the GoDaddy broker, it offered to transfer the disputed domain name for the sum of USD 40,000. There is no evidence before the Panel which would suggest this amount reflects the intrinsic value of a domain name comprised of a four letter acronym rather than the Respondent's assessment of the value of the disputed domain name to the Complainant. On the contrary, the GoDaddy broker's recommendation that the Complainant's representative make an offer of USD 2,500 – 5,000, and subsequently USD 10,000, tends to suggest that USD 40,000 does not reflect the intrinsic value of the disputed domain name apart from its association with the Complainant's trademarks.

Where a respondent has been found not to have rights or legitimate interests in a domain name, however, the provision of apparently false Whois information has often been found to be a strong indicator of bad faith. See e.g. [WIPO Overview 3.0](#), sections 3.2.1, 3.3, 3.6 and see also section 4.4.6. As noted in section 5B above, there is also no evidence what steps, if any, the Respondent took to avoid conflicts with another person's trademark rights. See e.g. [WIPO Overview 3.0](#), section 3.2.3.

In circumstances where the Respondent has not sought to claim, let alone establish, that he or she has rights or legitimate interests in the disputed domain name, therefore, the Panel finds the Respondent has registered and used it in bad faith.

Accordingly, the Complainant has established all three requirements under the Policy.

6. 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 <dwrs.com> be transferred to the Complainant.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: June 29, 2022