

ADMINISTRATIVE PANEL DECISION

Sullair, LLC v. 叶茂盛 (Ye Mao Sheng)

Case No. D2022-1491

1. The Parties

The Complainant is Sullair, LLC, United States of America (“United States”), represented by Fieldfisher LLP, United Kingdom.

The Respondent is 叶茂盛 (Ye Mao Sheng), China.

2. The Domain Name and Registrar

The disputed domain name <fjsullair.com> is registered with Alibaba Cloud Computing (Beijing) Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on April 26, 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 April 28, 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 April 29, 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 amendment to the Complaint in English on May 4, 2022.

On April 29, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On May 4, 2022, the Complainant submitted a 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 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 in English and Chinese of the Complaint, and the proceedings commenced on May 9, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 29, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 30, 2022.

The Center appointed Matthew Kennedy as the sole panelist in this matter on June 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.

On June 27, 2022, the Complainant sent an email communication to the Center in which it requested that the disputed domain name be transferred to itself, rather than cancelled as it had requested in the Complaint. On June 29, 2022, the Panel issued Administrative Panel Procedural Order No. 1 in which it invited the Respondent to comment by July 3, 2022 on the Complainant's request to change the remedy in this matter. The Respondent did not submit any comments.

4. Factual Background

The Complainant manufactures air compressors. It has manufacturing plants in the United States and China. The Complainant holds multiple trademark registrations in multiple jurisdictions, including Chinese trademark registration numbers 759366 and 6544837, both for SULLAIR, registered on August 7, 1995 and March 28, 2010, respectively, specifying goods in classes 7 and 1, respectively. The Complainant also holds multiple trademark registrations for a figurative mark (the "Sullair logo"), including Chinese trademark registration number 33629348, registered on May 14, 2019, specifying goods in class 7. These trademark registrations remain current. The Complainant has also registered the domain name <sullair.com> that it uses in connection with a website where it provides information about itself and its products.

The Respondent is an individual resident in China.

The disputed domain name was registered on February 16, 2021. According to the evidence presented by the Complainant, the disputed domain name was formerly used in connection with a website that prominently displayed the Complainant's Sullair logo and SULLAIR mark and presented information about the Complainant and a "Sullair Fujian Sales and Service Center" in Fujian Province, China. The disputed domain name was also formerly used in connection with a website for "Sullair (China) Sales and Service Center" also located in Fujian Province, China. Both websites offered sales and service for what were purported to be the Complainant's air compressors. At the time of this Decision, the disputed domain name does not resolve to any active website; rather, it is passively held.

5. Parties' Contentions

A. Complainant

The disputed domain name is confusingly similar to the Complainant's SULLAIR mark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is using the website associated with the disputed domain name to cause further confusion with the Complainant's legitimate website.

The disputed domain name was registered and is being used in bad faith. The disputed domain name is being used to sell second-hand and/or counterfeit goods bearing the Complainant's marks. The associated website displays the SULLAIR trademark in such a way as to suggest a common origin with the Complainant or that it is otherwise connected with, affiliated to, or endorsed by, the Complainant.

The Complainant initially requested that the disputed domain name be cancelled but later requested that the disputed domain name be transferred to itself.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issues

A. Identity of the Respondent

The amended Complaint purports to initiate a complaint against three parties, namely (i) 四川中尚优品商贸有限公司 (Sichuan Zhong Shang You Pin Trading Co., Ltd); (ii) 厦门闽德机电设备有限公司 (Xiamen Minde Mechanical and Electrical Equipment Co., Ltd.); and (iii) 叶茂盛 (Ye Mao Sheng).

Paragraph 1 of the Rules defines "Respondent" as "the holder of a domain-name registration against which a complaint is initiated". In the present dispute, the Registrar has verified that only the third of the three parties listed in the preceding paragraph is the holder of the disputed domain name registration.

Accordingly, the Panel finds that the only Respondent in this proceeding is 叶茂盛 (Ye Mao Sheng).

B. 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 translation of the Complaint would create an unreasonable burden and disproportionate expense for it, and that the website associated with the disputed domain name includes English words which indicates that the Respondent must be able to understand English.

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 the Complaint and amendment to the Complaint in this proceeding were filed in English. Despite the Center having sent an email regarding the language of the proceeding, and the Notification of the Complaint, in both Chinese and English, the Respondent did not comment on the language of the proceeding or express any interest in otherwise participating in this proceeding. Therefore, the Panel considers that requiring the Complainant to translate the Complaint into Chinese would create an undue burden and delay whereas accepting the Complaint in English does not cause prejudice 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. The Panel would have accepted a Response in Chinese, but none was filed.

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 submitted, the Panel finds that the Complainant has rights in the SULLAIR mark.

The disputed domain name wholly incorporates the SULLAIR mark, preceded by the letters “fj”, which are an abbreviation for Fujian Province of China. Given that the mark remains clearly recognizable within the mark, the addition of the letters does not prevent a finding of confusing similarity between the disputed domain name and the mark. See [WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition \(“WIPO Overview 3.0”\)](#), section 1.8.

The only additional element in the disputed domain name is a generic Top-Level Domain (“gTLD”) suffix “.com”. As a mere standard requirement of domain name registration, this element may be disregarded in the comparison between the disputed domain name and the SULLAIR mark. See [WIPO Overview 3.0](#), section 1.11.

Therefore, the Panel finds that the disputed domain name is confusingly similar 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.

As regards the first and third circumstances set out above, the disputed domain name was formerly used in connection with websites that purported to be for the Complainant, or a Fujian-based affiliate of the Complainant (either “Sullair Fujian Sales and Service Center” or “Sullair (China) Sales and Service Center”), or both. However, it is clear from the Complaint that there is no relationship between the Respondent and the Complainant. At the present time, the disputed domain name is passively held. None of these uses constitutes a use in connection with a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use of the disputed domain name.

As regards the second circumstance set out above, the Respondent’s name is “叶茂盛 (Ye Mao Sheng)”, not the disputed domain name. Apart from the websites formerly associated with the disputed domain name,

there is no evidence that the Respondent has been known as “Sullair Fujian Sales and Service Center” or “Sullair (China) Sales and Service Center”, let alone as “fjsullair”. There is no evidence on the record that the Respondent is commonly known by the disputed domain name.

In summary, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent failed to rebut that case because he did not respond to the Complaint.

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 fourth circumstance is as follows:

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

The disputed domain name was registered in 2021, years after the Complainant obtained its trademark registrations for SULLAIR, including in China, where the Respondent is resident. The disputed domain name wholly incorporates the SULLAIR mark, preceded by the letters “fj” as a reference to Fujian Province of China. The disputed domain name was formerly associated with websites offering sales and service for the Complainant’s SULLAIR products, displaying images of what were purported to be the Complainant’s products. One of the websites presented the Complainant and prominently displayed its Sullair logo and SULLAIR mark. In view of these circumstances, the Panel finds that the Respondent had the Complainant and its SULLAIR trademark in mind at the time that he registered the disputed domain name.

The Respondent formerly used the disputed domain name in connection with websites that offered sales and services for the Complainant’s SULLAIR products. These websites gave the false impression that they were for the Complainant or a Fujian-based affiliate of the Complainant, or both, and they were operated for commercial gain. Accordingly, the Panel considers that the disputed domain name was intended to attract Internet users by creating a likelihood of confusion with the Complainant’s SULLAIR trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s websites or of a good or a service offered on those websites within the terms of paragraph 4(b)(iv) of the Policy.

The Panel takes note that the use of the disputed domain name has recently changed and that it no longer resolves to any active website. The Panel does not consider that this change in use alters its conclusion; if anything, it may constitute a further indication 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 <fjsullair.com> be transferred to the Complainant.

/Matthew Kennedy/
Matthew Kennedy
Sole Panelist
Date: June 28, 2022