

## **ADMINISTRATIVE PANEL DECISION**

Defence Bank Limited v. 万凌云 (wan ling yun), 东莞市东城新奇特电子商务店 (dong guan shi dong cheng xin qi te dian zi shang wu dian)  
Case No. D2022-1527

### **1. The Parties**

The Complainant is Defence Bank Limited, Australia, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondents are 万凌云 (wan ling yun) and 东莞市东城新奇特电子商务店 (dong guan shi dong cheng xin qi te dian zi shang wu dian), China (collectively, “the Respondent”).

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

The disputed domain name <defencebank.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 27, 2022. On April 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 29, 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 amended Complaint in English on May 2, 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 2, 2022, the Complainant submitted a request that English be the language of the proceeding. On May 3, 2022, the Respondent submitted a request that Chinese be the language of the proceeding, and repeated the request on May 5, 2022.

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 Respondents in English and Chinese of the Complaint, and the proceedings commenced on May 5, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 4, 2022. The Response was filed in Chinese with the Center on June 4, 2022, by the first Respondent 万凌云 (wan ling yun).

On June 8, 2022, the Complainant requested for a suspension of the proceedings to allow time to examine the materials provided by the Respondents and to work towards an amicable settlement. On June 10, 2022, the Center issued a Notification to suspend the proceedings until July 10, 2022. The Respondent raised an objection to the suspension request stating that it did not wish to engage in any settlement discussion with the Complainant. On June 14, 2022, the Center issued a Notification to reinstate the proceedings.

The Center appointed Sok Ling MOI as the sole panelist in this matter on June 27, 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.

Subsequent to the panel appointment, the Complainant filed a Supplemental Filing in Chinese with the Center on June 27, 2022, and the Respondent filed a Supplemental Filing in Chinese with the Center on June 28, 2022.

#### 4. Factual Background

The Complainant is one of Australia's member-owned banks, offering financial products and services to not only the Australian Defence Force, but the broader community as well. The Complainant commenced operations in March 1975 as "*Defence Force Credit Union Limited*" before becoming "*Defence Bank Limited*" in 2012. Today, the Complainant has 39 branches with over 90,000 members across Australia. In June 2021, the Complainant reported three billion Australian Dollars in assets.

The Complainant owns the following trade mark registrations for DEFENCE BANK:

Jurisdiction	Mark	Class	Registration No.	Registration Date
Australia	DEFENCE BANK	9, 16, 36, 39	1467104	December 23, 2011
Australia	DEFENCE BANK	9, 16, 36, 39	1653265	October 20, 2014
Australia	DEFENCE BANK FOUNDATION	36, 41, 44	1662669	December 5, 2014

The Complainant also owns the domain name <defencebank.com.au> (registered on December 27, 2011), and maintains an online presence through its website at this domain name.

The disputed domain name was registered on May 24, 2008. According to the evidence submitted by the Complainant, the disputed domain name resolved to a parking webpage featuring sponsored links to third party websites some of which offered banking and/or financial services competitive to the Complainant's business.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant contends that the disputed domain name is identical with its trade mark DEFENCE BANK, the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith.

The Complainant claims that the Respondent only acquired ownership of the disputed domain name sometime between January 11, 2015, and May 25, 2015, and therefore would be presumed to have knowledge of the Complainant and its trade mark DEFENCE BANK then.

The Complainant requests for the transfer of the disputed domain name.

## **B. Respondent**

The Respondent contends that as the Complainant does not enjoy any fame, business presence or trade mark rights in China, and also that the Parties are not in the same line of business, there is no likelihood of confusion caused by the Respondent's use of the disputed domain name.

The Respondent claims that it has registered the disputed domain name since 2008 and has continuously used the same to host an e-commerce platform selling safe deposit boxes, and is therefore making legitimate use of the disputed domain name. The Respondent further contends that as it has not claimed any affiliation or association with the Complainant, there can be no intent to mislead consumers for commercial gain or to tarnish the trade mark at issue.

The Respondent contends that the Complainant's first use and registration of its trade mark DEFENCE BANK was in 2012, and therefore it could not have known of the Complainant and its trade mark when it registered the disputed domain name back in 2008. As such, there is no basis for the Complainant's contention that the Respondents had registered the disputed domain name in bad faith.

The Respondent contends that the Complainant had since 2017 been sending threatening communication to the Respondent to demand the transfer of the disputed domain name to no avail. The Respondent alleges that the Complainant is abusing the UDRP system by presenting false evidence in an attempt to hijack the disputed domain name despite knowing that it does not have prior rights. As such, the Respondent contends that the Complainant is engaging in reverse domain name hijacking, and seeks a declaration as to the same.

## **6. Discussion and Findings**

### **6.1 Procedural Issue – Language of the Proceeding**

Pursuant to paragraph 11(a) of the Rules, 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.

Paragraphs 10(b) and (c) of the Rules require the Panel to ensure that the proceeding takes place with due expedition and that the Parties are treated equitably and given a fair opportunity to present their respective cases.

The language of the Registration Agreement for the disputed domain name is Chinese. From the evidence on record, no agreement appears to have been entered into between the Complainant and the Respondents regarding the language issue. The Complainant filed its Complaint in English and has requested that English be the language of the proceeding. The first Respondent submitted a request that Chinese be the language of the proceeding, claiming that she does not understand English.

The Panel finds persuasive evidence in the present proceeding to suggest that the Respondent has sufficient knowledge of English. In particular, the Panel notes that:

- (a) the disputed domain name is registered in Latin characters, rather than Chinese script;
- (b) the disputed domain name is comprised of the English words "defence" and "bank"; and

(c) according to the evidence submitted by the Complainant, the website to which the disputed domain name resolves contains contents in English, such as links entitled “Defence Bank”, “Sign Up for Banks Online” and “Open Online Business Check”.

Additionally, the Panel notes that:

- (a) the Center has notified the Respondent in both Chinese and English of the proceeding;
- (b) the Respondent has been given the opportunity to present its case in this proceeding; and
- (c) the Center has informed the Respondent that it would accept a Response in either English or Chinese.

Considering the above circumstances, the Panel finds that 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.

The Panel has taken into consideration the fact that to require the Complaint to be translated into Chinese would, in the circumstances of this case, cause an unnecessary cost burden to the Complainant and would unnecessarily delay the proceeding.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that it shall accept the Complaint and all supporting materials as filed in English, that it shall accept the Response and all supporting materials as filed in Chinese, that English shall be the language of the proceeding, and that the decision will be rendered in English.

## **6.2 Procedural Issue – Supplemental Filings**

Paragraph 10 of the UDRP Rules vests the panel with the authority to determine the admissibility, relevance, materiality and weight of the evidence, and also to conduct the proceedings with due expedition. A supplemental filing has the potential to delay and complicate proceedings. Consequently, whether it is appropriate to admit an unsolicited supplemental filing will depend *inter alia* on its relevance to the issues in the case, whether the panel considers the content of the submission essential to reaching a fair decision on the facts, and whether the submission could have been made earlier and, if so, why it was not. This is the consensus view of previous UDRP panels – see section 4.6 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

As the Response does in fact provide new information regarding the Respondent’s ownership of the disputed domain name since 2008 and make allegations of reverse domain name hijacking, the Complainant is entitled to file a response to rebut the information and allegations. In fairness to both Parties, the Panel accepts the Supplemental Filing from the Complainant and Supplemental Filing from the Respondent filed subsequent to the panel appointment as the contents of the supplemental filings may help the Panel reach a fair decision on the disputed facts.

## **6.3 Substantive Issues - Findings**

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

- (i) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the complainant has rights;
- (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.

On the basis of the arguments and evidence introduced by the Complainant, the Panel concludes as follows:

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

The Panel accepts that the Complainant has rights in DEFENCE BANK by virtue of its use and registration of the same as a trade mark. There is no requirement for the Complainant to have registered its trade mark in the country where the Respondent is located (*i.e.*, China), for a positive determination of trade mark rights under this first element; this may however be relevant under the second and/or third elements. See section 1.1.2 of the WIPO Overview 3.0.

The disputed domain name incorporates the Complainant's trade mark DEFENCE BANK in its entirety. The addition of the generic Top-Level Domain ("gTLD") ".com" is a standard registration requirement and does not usually impact the analysis of whether the disputed domain name is identical or confusingly similar to the Complainant's trade mark.

Consequently, the Panel finds that the disputed domain name is identical with the Complainant's trade mark.

Accordingly, the Complainant has satisfied the requirements of the first element under paragraph 4(a) of the Policy.

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

Under paragraph 4(a)(ii) of the Policy, a complainant bears the burden of proof to establish that the respondent lacks rights or legitimate interests in the disputed domain name. However, once the complainant makes a *prima facie* showing under paragraph 4(a)(ii) of the Policy, the burden of production shifts to the respondent to come forward with evidence in support of its rights or legitimate interests in the disputed domain name. The respondent may establish its rights in the disputed domain name by demonstrating any of the following, without limitation, under paragraph 4(c) of the Policy:

- (i) before any notice to it 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 has been commonly known by the disputed domain name, even if it 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.

See *Taylor Wimpey PLC, Taylor Wimpey Holdings Limited v. honghao Internet foshan co, ltd*, WIPO Case No. D2013-0974.

The Complainant has confirmed that the Respondent is not in any way affiliated with the Complainant or otherwise authorized or licensed to use the DEFENCE BANK trade mark or to seek registration of any domain name incorporating the trade mark. The first Respondent appears to be an individual by the name of "万凌云 (wan ling yun)" while the second Respondent appears to be an organization by the name of "东莞市 城新奇特 子商 店 (dong guan shi dong cheng xin qi te dian zi shang wu dian)". There is no evidence suggesting that the Respondent is commonly known by the disputed domain name or has acquired any trade mark rights in the term "defence bank".

According to the evidence submitted by the Complainant, the disputed domain name resolves to a parking webpage featuring sponsored links to third party websites some of which offered banking and/or financial services competitive to the Complainant's business. Presumably, the Respondent receives pay-per-click ("PPC") fees from the linked websites. UDRP panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users. See

section 2.9 of the WIPO Overview 3.0.

The Panel is satisfied that the Complainant has made out a *prima facie* case showing that the Respondent lacks rights or legitimate interests in the disputed domain name. The burden of production thus shifts to the Respondent to come forward with evidence of its rights or legitimate interests in the disputed domain name.

The Respondent contends that it is in the business of selling safe deposit boxes, and the disputed domain name comprising the word “defence” and “bank” was suitably selected. The Respondent contends that it has been legitimately using the disputed domain name in connection with a *bona fide* offering of goods and services before it receives notice of the Complaint. However, according to the evidence submitted by the Complainant, prior to filing the Complaint, the disputed domain name resolved to a parking webpage featuring sponsored links to third party websites some of which offered banking and/or financial services competitive to the Complainant’s business. Further, in its Supplemental Filing, the Complainant submitted evidence of Whois information to show that the disputed domain name was owned by a British firm by the name of “Melford Capital Ltd” for the period 2008-2013, contrary to the Respondent’s claim. The Complainant also submitted InternetArchive evidence to show that as early as 2014, the website connected to the disputed domain name contained links and contents related to banking services, and did not feature safe deposit boxes, contrary to the Respondent’s claim. Apart from a webpage screenshot presumably taken on April 8, 2020, the Respondent did not provide objective verifiable evidence (such as sales receipts, accounting statements and other advertising materials) of its use of the disputed domain name and/or *bona fide* offering for sale of the safe deposit boxes between the period of 2008-2015 to rebut the evidence submitted by the Complainant.

In the Panel’s opinion, the *prima facie* case has not been rebutted.

Accordingly, the Complainant has satisfied the requirements of the second element under 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 the respondent has registered or acquired the disputed 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 trade mark or service mark 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; or
- (ii) the respondent has registered the disputed domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) the 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, 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 Complainant alleges that the Respondent only acquired ownership of the disputed domain name sometime between January 11, 2015 and May 25, 2015. In its supplemental filing, the Complainant submitted evidence of Whois information to show that the disputed domain name was owned by a British firm by the name of “Melford Capital Ltd” for the period 2008-2013. In response, the Respondent explained

that it had registered the disputed domain name in May 2008 and held it under the name of a local Internet company, until August 2013 when the local Internet company informed that it will be ceasing business whereupon it transferred the domain name registration to a local domain name registrar and held it under the Respondent's own name. The Respondent contends that it has continuously owned and controlled the disputed domain name for 14 years, albeit with different registrant information. In support of this claim, the Respondent provided a receipt with a handwritten note in Chinese dated May 24, 2008, as well as eName records reflecting the disputed domain name being held under the account name "wan ling yun" with effect from August 31, 2013.

The Panel notes from the Whois information submitted by the Complainant that the change in ownership of the disputed domain name from "Melford Capital Ltd" to "姜春元" appears to have taken place sometime between May 27, 2013 and July 3, 2013. (According to the business profile extract evidence provided by the Complainant, "姜春元" is the person-in-charge of the second Respondent.) This evidence seems more consistent with the Respondent's assertions rather than the Complainant's allegations that the Respondent only acquired ownership sometime in 2015.

If in fact the Respondent had registered the disputed domain name in 2008, then no presumption could arise that the Respondent had targeted the Complainant as it could not have been aware of the Complainant and its trade mark when it registered the disputed domain name. See section 3.1 of the [WIPO Overview 3.0](#). Based on the available record, the Panel finds that the Respondent more likely than not registered the disputed domain name in 2013. Given that the Complainant's operations and customers are mostly, if not wholly, based in Australia, the Panel is reluctant to presume that the Respondent was aware of the Complainant and its trade mark when it registered the disputed domain name and therefore must consider various circumstances in assessing whether the Respondent's registration of the disputed domain name was in bad faith.

The Complainant alleged that the Respondent has a history of registering domain names comprising well-known third party trade marks, such as <baidutieba.com>, <orbitz.com>, and <hengsheng.com.cn> – the last of which was registered with the same email address on record for the disputed domain name, confirming that the respondents are one and the same entity. The Complainant also alleged that the Respondent was engaged in UDRP disputes involving <baidutieba.com> (see *Baidu vs. 东莞市东城新奇特电子商务店*, CN-2101456) and <orbitz.com> (see *Orbitz Worldwide, LLC v. wanlingyun*, FA1303001489116), in which the panels determined that there had been bad faith registration and use of the domain names in question.

The Complainant further alleged that the Respondent had filed a trade mark application for "DEFENCEBANK" in China three days after receiving the cease-and-desist letter from the Complainant; this strikes the Panel as an attempt by the Respondent to posthumously seek to create legitimacy surrounding the disputed domain name – in fact it seems to corroborate the pattern of bad faith described below.

The Complainant contended that the Respondent has a history of registering trade marks which are similar to well-known third party trade marks, such as "skyscanner" (a typographical variant of "SKYSCANNER") and "creigslist" (a typographical variant of "CRAIGSLIST"). Although the aforementioned trade mark registrations are filed in the name of "Jiang Chunyuan, 姜春元", the business profile extract evidence indicates that "姜春元" is the person-in-charge of the second Respondent.

On the face of it, the panel findings in the two UDRP previous cases highlighted above (*i.e.*, that 东莞市东城新奇特电子商务店 and *wanlingyun* had engaged in bad faith registration of domain names) and the evidence of registration of third party trade marks by "姜春元" suggests that the Respondent has a pattern of cybersquatting and targeting well-known third party trade marks (including those of banks). The Panel may take these circumstances into account in assessing whether a respondent's registration of a domain name is in bad faith. See section 3.2.1 of the [WIPO Overview 3.0](#).

The first Respondent 万凌云 (wan ling yun) claimed that she had been offering for sale safe deposit boxes via its website connected to the disputed domain name since 2008, and explained that the recent inactivity of

the website was caused by disruption to her business due to the COVID lockdown situation in China since 2020. The Panel does not find this explanation convincing. In its Supplemental Filing, the Complainant submitted InternetArchive evidence to show that as early as 2014, the website connected to the disputed domain name contained links and contents related to banking services, and did not feature safe deposit boxes, contrary to the Respondent's claim. Apart from a webpage screenshot presumably taken on April 8, 2020, the Respondent did not provide objective verifiable evidence (such as sales receipts, accounting statements and other advertising materials) of its use of the disputed domain name and/or *bona fide* offering for sale of the safe deposit boxes between the period of 2008-2015 to rebut the contrary evidence submitted by the Complainant.

The consensus view of previous UDRP panels is that a domain name registrant is normally deemed responsible for content appearing on a website at its domain name, even if such registrant may not be exercising direct control over such content – for example, in the case of advertising links appearing on an “automatically” generated basis. The Panel notes the presumption that the Respondent or a third party stands to profit or make a “commercial gain” from advertising revenue by such an arrangement trading on third-party trade marks. In the Panel's opinion, such links clearly seek to capitalize on the trade mark value of the Complainant's DEFENCE BANK trade mark. The Panel therefore determines that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to source, sponsorship, affiliation, or endorsement of the Respondent's website, and the Panel finds that the circumstances referred to in paragraph 4(b)(iv) of the Policy are applicable to the present case.

Taking into account all the circumstances, the Panel is satisfied that the Respondent's registration and use of the disputed domain name is in bad faith.

Accordingly, the Complainant has satisfied the requirements of the third element under paragraph 4(a) of the Policy.

#### **D. Reverse Domain Name Hijacking**

As the Complainant has been successful in proving all three elements under paragraph 4(a) of the Policy, the Respondent's claim of reverse domain name hijacking must be rejected.

#### **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 <defencebank.com> be transferred to the Complainant.

*/Sok Ling MOI/*

**Sok Ling MOI**

Sole Panelist

Date: August 12, 2022