

ADMINISTRATIVE PANEL DECISION

Korian v. 徐玉琼 (xuyu qiong)
Case No. D2022-1813

1. The Parties

Complainant is Korian, France, represented by Scan Avocats AARPI, France.

Respondent is 徐玉琼 (xuyu qiong), China.

2. The Domain Name and Registrar

The disputed domain name <tokorian.com> is registered with Xin Net Technology Corp. (the “Registrar”).

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 19, 2022. On May 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 25, 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 May 25, 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 May 25, 2022.

On May 25, 2022, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. Complainant confirmed its request that English be the language of the proceeding on May 25, 2022. 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 English and Chinese of the Complaint, and the proceedings commenced on May 31, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 20, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on June 21, 2022.

The Center appointed Yijun Tian as the sole panelist in this matter on June 23, 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, Korian, is a company incorporated in France. It was established in 2003 when four companies merged (Fingest, SérIENCE, Réacti-Malt, and Medidep) and has become a leading company in Europe, which provides care services to the elderly and the vulnerable, notably through the management of retirement homes and specialized clinics (Annexes D1-D4 to the Complaint). Complainant is serving more than 300,000 patients or residents and employs more than 50,000 people in Europe. According to its 2021 Financial Report, for the nine months of the year, the Complainant's revenues amounted to EUR 3,189.7 million, compared with EUR 2,837.6 million for the same period in 2020 (Annex D15 to the Complaint).

Complainant has exclusive rights in KORIAN marks. Complainant is the exclusive owner of several KORIAN marks worldwide, including European Union word trademark registration for KORIAN registered on August 29, 2007 (the European Union trademark registration number 005192224); International word trademark registration for KORIAN registered on February 27, 2014 (International trademark registration number 1210590); and International word trademark registration for KORIAN registered on August 4, 2016 (International trademark registration number 1327848), which lists China as a designated country (Annexes E1, E3 and E4 to the Complaint).

Complainant is also the owner of various domain names that it uses for its activities, such as <korian.com> registered on May 14, 1999 (Annex F1 to the Complaint).

B. Respondent

Respondent is 徐玉琼 (xuyu qiong), China. The disputed domain name <tokorian.com> was registered on September 26, 2021. The disputed domain name was resolved to a website with links to download pornographic and gambling Apps (Annex G to the Complaint). It is currently resolved to a Chinese food company's website, which contains both Chinese and English versions.¹

5. Parties' Contentions

A. Complainant

Complainant contends that the disputed domain name <tokorian.com> is confusingly similar to Complainant's KORIAN trademarks, company names and domain names as it identically reproduces the denominations "korian" with the sole addition of the word "to" at the beginning of the sign.

Complainant contends that Respondent has no rights or legitimate interests in respect of the disputed domain name.

Complainant contends that Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

Respondent did not reply to Complainant's contentions.

¹ See "<http://tokorian.com>" and "<http://tokorian.com/en/>".

6. Discussion and Findings

6.1. Language of the Proceeding

The language of the Registration Agreement for the disputed domain name <tokorian.com> 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 the following main reasons:

- a) The disputed domain name is registered in Latin lettering rather than Chinese script;
- b) The word “korian”, which has no meaning in French, English, or Chinese languages, refers directly to Complainant’s prior arbitrary company name, trademarks and domain names;
- c) It is very likely that Respondent speaks or at least understands English, while Complainant is unable to speak Chinese;
- d) The time and costs involved in translating the Complaint would be unfair to Complainant; and
- e) The choice of English shall be equitable for both Complainant and Respondent since Complainant is a French company.

Respondent did not make any submissions with respect to the language of the proceeding and did not object to the use of English as the language of the proceeding.

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 UDRP 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](#)). 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.” ([WIPO Overview 3.0](#), section 4.5.1; see also *L’Oreal S.A. v. MUNHYUNJA*, WIPO Case No. [D2003-0585](#)).

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 (“korian”) and particularly the English word (“to”), rather than Chinese script; (b) the disputed domain name <tokorian.com> currently resolves to a food company’s website which has both Chinese and English versions;² (c) the Center has notified Respondent of the proceeding in both Chinese and English, and Respondent has indicated no objection to Complainant’s request that English be the language of the proceeding; and (d) the Center informed the Parties, in English and Chinese, that it would accept a Response in either English or Chinese. The Panel would have accepted a Response in either English or Chinese but none was filed.

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 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 KORIAN marks. The disputed domain name comprises the KORIAN mark in its entirety. The disputed domain name only differs from Complainant’s KORIAN marks by adding “to” as a prefix, and the generic Top-Level Domain (“gTLD”) “.com” as a suffix to the KORIAN marks. This does not compromise the recognizability of Complainant’s marks within the disputed domain name, nor eliminate the confusing similarity between Complainant’s registered trademarks and the disputed domain name (*Decathlon v. Zheng Jianmeng*, WIPO Case No. [D2019-0234](#)).

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 suffix, [WIPO Overview 3.0](#) states: “The 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.” ([WIPO Overview 3.0](#), section 1.11.1.)

The Panel therefore holds that the disputed domain name is confusingly similar to Complainant’s KORIAN marks, and the Complaint fulfils the first condition of paragraph 4(a) of the Policy.

² See “<http://tokorian.com/en/>”.

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 the respondent to rebut the complainant's contentions. If the respondent fails to do so, the 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).

According to the Complaint, established in 2003, Complainant is a leading company in Europe, which provides care services to the elderly and the vulnerable, notably through the management of retirement homes and specialized clinics. It is serving more than 300,000 patients or residents and employs more than 50,000 people in Europe. Complainant is the exclusive owner of several KORIAN marks worldwide, including European Union word trademark registration for KORIAN registered in 2007 and International word trademark registration for KORIAN registered in 2016 which lists China as a designated country.

Moreover, Respondent is not an authorized dealer of KORIAN branded products or services. 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 "korian" in the disputed domain name and in her business operation. There has been no evidence to show that Complainant has licensed or otherwise permitted Respondent to use the KORIAN marks or to apply for or use any domain name incorporating the KORIAN 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, after the KORIAN marks became internationally known. The disputed domain name is confusingly similar to the KORIAN marks.

(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 disputed domain name was resolved to a website with links to download pornographic and gambling Apps. It is currently resolved to a Chinese food

company's website. It seems that Respondent is making profits through the Internet traffic attracted to the website under the disputed domain name. (See *BKS Bank AG v. Jianwei Guo*, WIPO Case No. [D2017-1041](#); *BASF SE v. Hong Fu Chen, Chen Hong Fu*, WIPO Case No. [D2017-2203](#).)

Accordingly, Complainant has established that Respondent has no 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 disputed 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 the circumstances referred to in paragraph 4(b)(iv) of the Policy are applicable to the present case and 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) Registration in Bad Faith

The Panel finds that Complainant has a widespread reputation in the KORIAN marks with regard to its products and services. As mentioned above, KORIAN marks are distinctive and registered internationally, including international trademarks KORIAN registered in 2016, which lists China as a designated country. It is most likely that Respondent had knowledge of the KORIAN marks at the time of the registration of the disputed domain name (in 2021).

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) Use in Bad Faith

Respondent was using the website resolved by the disputed domain name to provide links to pornographic and gambling Apps. The disputed domain name is currently resolved to a website of a Chinese food

company. Thus, the Panel concludes that Respondent is using the confusingly similar disputed domain name with the intention to attract, for commercial gain, Internet users to Respondent's website.

Given the reputation and distinctiveness of the KORIAN marks, the Panel finds that the public is likely to be confused into thinking that the disputed domain name has a connection with Complainant, contrary to the fact. There is a strong likelihood of confusion as to the source, sponsorship, affiliation or endorsement of the website to which the disputed domain name resolves. In other words, Respondent has through the use of a confusingly similar disputed domain name created a likelihood of confusion with the KORIAN marks. Moreover, as mentioned above, Respondent offered links to pornographic and gambling Apps via the website to which the disputed domain name was resolved, presumably for commercial gain. The disputed domain name is currently resolved to a website of a Chinese food company, presumably for commercial gain also. The Panel therefore concludes that the disputed domain name was registered and is being used by Respondent in bad faith. Such use of the disputed domain name is also disruptive in relation to the interests of Complainant.

In summary, Respondent, by choosing to register and use the disputed domain name, which is confusingly similar to the KORIAN marks, intended to ride on the goodwill of these trademarks in an attempt to exploit, for commercial gain, Internet users destined for Complainant. In the absence of evidence to the contrary and rebuttal from Respondent, the choice of the disputed domain name and the conduct of Respondent as far as the website to which the disputed domain name has resolved is 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 <tokorian.com> be transferred to Complainant.

/Yijun Tian/

Yijun Tian

Sole Panelist

Date: July 12, 2022