

## ADMINISTRATIVE PANEL DECISION

Koninklijke Douwe Egberts B.V. v. 杨雷 (ang Lei), Yang Lei  
Case No. DCN2022-0057

### 1. The Parties

The Complainant is Koninklijke Douwe Egberts B.V., Netherlands, represented by Ploum, Netherlands.

The Respondent is 杨雷 (ang Lei), Yang Lei, China.

### 2. The Domain Name and Registrar

The disputed domain name <jdcoffee.cn> is registered with 北京新网数码信息技术有限公司 (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 30, 2022. On November 30, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 1, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the China ccTLD Dispute Resolution Policy (the “Policy”), the China ccTLD Dispute Resolution Policy Rules (the “Rules”), and the WIPO Supplemental Rules for China ccTLD Dispute Resolution Policy and China ccTLD Dispute Resolution Policy Rules (the “WIPO Supplemental Rules”).

In accordance with the Rules, Articles 5 and 6, and Articles 14 to 16, and the WIPO Supplemental Rules, Paragraph 4(d), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on December 7, 2022. In accordance with the Rules, Article 17 and 49, the due date for Response was December 27, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 28, 2022.

The Center appointed Sok Ling MOI as the sole panelist in this matter on January 6, 2023. 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, Article 29.

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

The Complainant is part of the Jacobs Douwe Egberts group, which is one of the key players in the coffee and tea business in the Netherlands. Jacobs Douwe Egberts is abbreviated to JDE. The JDE trade mark is used as an umbrella brand for the Complainant's coffee and tea portfolio and appears on all product packaging along with the individual product brand. The JDE coffee and tea portfolio is available in over 100 countries around the world.

The Complainant owns and operates its official websites at the domain names <jdecoffee.com> and <jacobsdouweegberts.com>.

The Complainant has also applied for trade mark registrations in many jurisdictions worldwide for JDE, including the following:

- International Trade Mark Registration No. 1248744 for JDE (stylised), designating, *inter alia*, Australia, China, Singapore, registered on April 16, 2015.
- Benelux Trade Mark Registration No. 970216 for JDE (stylised) (registered on April 22, 2015).
- United Kingdom Trade Mark Registration No. UK00801248744 for JDE (stylised) (registered on March 30, 2016).

Moreover, the Complainant has pending trademark applications in Brazil for JDE COFFEE, e.g., Trade Mark Application No. 907660193.

The disputed domain name was registered on June 10, 2022. According to the evidence submitted by the Complainant, the disputed domain name does not resolve to any active website.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that the disputed domain name is confusingly similar to its JDE trade mark, as it incorporates the JDE trade mark in its entirety (with an obvious misspelling, namely the omission of the letter "e") and only adds the term "coffee" which describes the activities of the Complainant. The Complainant also contends that for the same reason, the disputed domain name is confusingly similar to its JDE COFFEE mark (with the same misspelling).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name or a major part thereof, and that the disputed domain name has been registered and is being used in bad faith.

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

##### **B. Respondent**

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

#### **6. Discussion and Findings**

##### **6.1 Language of the Proceeding**

Pursuant to Article 6 of the Policy and Article 8 of the Rules, unless otherwise agreed by the Parties, or

determined by the Panel under exceptional circumstances, the language of the administrative proceeding shall be Chinese. The Panel may order that any documents submitted in languages other than Chinese be accompanied by a translation in whole or in part into Chinese.

From the evidence on record, no agreement appears to have been entered into between the Complainant and the Respondent regarding the language issue. The Complainant filed its Complaint in English and has requested that English be the language of the proceeding. The Respondent did not respond on the language issue.

The Panel finds *prima facie* 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; and
- (b) the disputed domain name comprises the English word “coffee”.

Additionally, the Panel notes that:

- (a) the Center has notified the Respondent in both Chinese and English of the proceeding; and
- (b) the Respondent has been given the opportunity to respond on the issue of the language of the proceeding, but did not do so; and
- (c) the Center has informed the Respondent that it would accept a Response in either English or Chinese, but the Respondent has chosen not to file a formal Response.

Article 10 of the Rules requires the Panel, *inter alia*, to “ensure that the parties are treated with equality and that each party is given a fair opportunity to present its case” and to “ensure that the proceedings take place with due expedition”. 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 and all supporting documents 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 that it shall accept the Complaint and all supporting materials as filed in English, that English shall be the language of the proceeding, and that the decision will be rendered in English.

## **6.2 Substantive Issues**

Article 8 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:

- (a) the disputed domain name is identical with or confusingly similar to a name or mark in which the complainant has civil rights or interests;
- (b) the respondent has no rights or legitimate interests in respect of the disputed domain name or major part of the disputed domain name; and
- (c) the respondent has registered or has been using the disputed domain name in bad faith.

Article 7 of the Policy states that the complainant and the respondent shall bear the burden of proof for their own claims.

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

**A. Identical or Confusingly Similar to the Complainant's name or mark in which the Complainant has civil rights or interests**

The Panel accepts that the Complainant has rights in the JDE trade mark by virtue of registration.

The disputed domain name is composed of the letters "jd" coupled with the word "coffee" in its main section. The Panel finds that the term "jd" is an obvious misspelling of the Complainant's JDE trade mark. The addition of the word "coffee" does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's JDE trade mark. The addition of the country code Top-Level Domain ".cn" is usually disregarded in the confusing similarity assessment.

Consequently, the Panel finds that the disputed domain name is confusingly similar to the Complainant's JDE trade mark in which the Complainant has civil rights or interests.

Accordingly, the Complainant has satisfied the condition under Article 8(a) of the Policy.

**B. Rights or Legitimate Interests**

Under Article 10 of the Policy, a respondent may establish its rights to and legitimate interests in the disputed domain name by demonstrating any of the following before receiving the complaint:

- (a) the respondent uses of the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services;
- (b) the respondent has been commonly known by the disputed domain name, even if it has acquired no trade mark or service mark rights;
- (c) the respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent of or commercial gain to misleadingly divert consumers.

The Complainant has confirmed that the Respondent is not in any way affiliated with the Complainant or otherwise authorized or licensed to use the JDE trade mark or to seek registration of any domain name incorporating the JDE trade mark. The Respondent appears to be an individual by the name of "杨雷 (ang Lei)". There is no evidence suggesting that the Respondent is commonly known by the disputed domain name or that he has any rights or legitimate interests in the term "jd".

According to the evidence submitted by the Complainant, the disputed domain name does not resolve to any active website. There is no evidence suggesting that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services, or is otherwise making a legitimate noncommercial or fair use of the disputed domain name.

The Panel is therefore 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 establish his rights or legitimate interests in the disputed domain name. Since the Respondent did not file a formal Response or provide any evidence to support a right or legitimate interest in the disputed domain name, the *prima facie* case has not been rebutted.

Consequently, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

Accordingly, the Complainant has satisfied the condition under Article 8(b) of the Policy.

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

Article 9 of the Policy provides certain examples of circumstances which, may be evidence of the registration and use of the disputed domain name in bad faith, namely:

- (a) the purpose for registering or acquiring the disputed domain name is to sell, rent, or otherwise transfer the disputed domain name registration to the complainant who is the owner of the name or mark or to a competitor of that complainant, and to obtain unjustified benefits;
- (b) the respondent registers the disputed domain name in order to prevent owners of the names or marks from reflecting the names or marks in corresponding domain names;
- (c) the respondent has registered or acquired the disputed domain name for the purpose of damaging the complainant's reputation, disrupting the complainant's normal business or creating confusion with the complainant's name or mark so as to mislead the public;
- (d) other circumstances which may prove the bad faith.

The disputed domain name <jdcoffee.cn> is a typographical variant of the Complainant's domain name <jdecoffee.com> linked to its official website. Considering the close similarity of the domain names and the composition of the disputed domain name (which includes the term "coffee" which describes the activities of the Complainant), there is a strong presumption that the Respondent was aware of the Complainant and its trade marks when he registered the disputed domain name. Moreover, a cursory Internet search would have disclosed the Complainant's domain name as well as its JDE trade mark. The Panel therefore accepts that the Respondent more likely than not registered the disputed domain name either for the purpose of selling it at a profit to the Complainant, or for creating confusion with the Complainant's trade marks and websites, or both. The circumstances referred to in Article 9(a) and (c) of the Policy are applicable to the present case. The fact that the disputed domain name does not resolve to any active website does not prevent a finding of bad faith.

The Respondent has not denied the Complainant's allegations of bad faith. In view of the Panel's above finding that the Respondent lacks rights or legitimate interests in the disputed domain name, and taking into account all the circumstances, the Panel concludes that the Respondent has registered and is using the disputed domain name in bad faith.

Accordingly, the Complainant has satisfied the condition under Article 8(c) of the Policy.

### **7. Decision**

For the foregoing reasons, in accordance with Articles 14 of the Policy and 40 of the Rules, the Panel orders that the disputed domain name <jdcoffee.cn> be transferred to the Complainant.

*/Sok Ling MOI/*

**Sok Ling MOI**

Sole Panelist

Date: February 19, 2023