

ADMINISTRATIVE PANEL DECISION

ThyssenKrupp AG v. 卓阳钢铁（上海）有限公司 (zhuo yang gang tie shang hai you xian gong si)

Case No. D2023-0881

1. The Parties

The Complainant is ThyssenKrupp AG, Germany, internally represented.

The Respondent is 卓阳钢铁（上海）有限公司 (zhuo yang gang tie shang hai you xian gong si), China.

2. The Domain Names and Registrar

The disputed domain names <kruppss.com> and <krupp-steel.com> are registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on February 27, 2023. On February 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On March 2, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing further contact details. The Center sent an email communication to the Complainant on March 2, 2023, providing the registrant and further 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 March 3, 2023.

On March 2, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On March 2, 2023, the Complainant submitted its 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 of the Complaint, and the proceedings commenced on March 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 28, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 29, 2023.

The Center appointed Joseph Simone as the sole panelist in this matter on April 12, 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, paragraph 7.

4. Factual Background

The Complainant, Thyssenkrupp AG, is a German company specializing in the manufacturing of steel.

It is one of the world's largest steel producers and was ranked 10th-largest worldwide by revenue in 2015.

The Complainant has an extensive global portfolio of trade marks, including the following:

- European Union Trade Mark Registration No. 016785982 for KRUPP in Classes 1, 6, 7, 9, 11, 12, 17, 19, 28, 37 and 42, registered on October 30, 2017;
- International Trade Mark Registration No. 1407236 for KRUPP in Classes 1, 6, 7, 9, 11, 12, 17, 19, 28, 37 and 42, registered on September 20, 2017; and
- China Trade Mark Registration No. 32418536 for KRUPP in Class 6, registered on December 14, 2020.

The disputed domain name <kruppss.com> was registered on May 26, 2022 while the disputed domain name <krupp-steel.com> was registered on November 14, 2022.

The Complainant's evidence shows that at the time of filing of the Complaint, both of the disputed domain names resolved to very similar websites purporting to be the official websites selling steel products in the name of Krupp Thyssen Nirosta GmbH Ltd, and were used for sending fraudulent emails. At the time of this decision, the disputed domain name <krupp-steel.com> continues to resolve to the same page, and the disputed domain name <kruppss.com> resolves to a page with the content "Your sites will be launched in HongKong(178) soon!".

5. Parties' Contentions

A. Complainant

The Complainant asserts that it has prior rights in the KRUPP trade mark and that it has acquired a strong reputation in its field of business.

The Complainant further notes that the disputed domain names registered by the Respondent are confusingly similar to the Complainant's KRUPP trade mark.

The Complainant asserts that it has not authorized the Respondent to use its KRUPP mark, and there is no evidence to suggest that the Respondent has used, or undertaken any demonstrable preparations to use, the disputed domain names in connection with a *bona fide* offering of goods or services.

The Complainant has presented evidence showing that both of the disputed domain names were used in association with very similar sites purportedly offering for sale the Complainant's products, in parallel with using email addresses associated with the disputed domain names sending phishing emails to the

Complainant's customers to seek business opportunities and that it is implausible that the Respondent registered the disputed domain names in good faith, and that any use of the disputed domain names must be in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Issue: Language of the Proceeding

In accordance with paragraph 11(a) of the Rules:

"[...] 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."

In this case, the language of the Registration Agreement for the disputed domain names is Chinese. Hence, the default language of the proceeding should be Chinese.

However, the Complainant filed the Complaint in English, and requested that English be the language of the proceeding, asserting mainly the followings:

- the disputed domain names are entirely in English letters;
- English is the world trade language and therefore the most important language for International communication;
- several phishing emails sent by the Respondent to the Complainant's customers are in English; and
- the Complainant has no knowledge of the Chinese language, and translation would therefore lead to a significant delay of the proceeding.

The Respondent was notified in both Chinese and English of the language of the proceeding and the commencement of the proceeding and did not comment on the language of the proceeding or submit any response in either Chinese or English.

Considering the circumstances of this case, the Panel has determined that the language of the proceeding shall be English, and as such the Panel has issued this decision in English. The Panel further finds that such determination should not cause any prejudice to either Party and should ensure that the proceeding takes place with due expedition.

6.2. Substantive Elements

A. Identical or Confusingly Similar

The Panel acknowledges that the Complainant has established rights in the KRUPP trade mark.

Disregarding the generic Top-Level Domain ("gTLD") ".com", the disputed domain name <krupps.com> incorporates the Complainant's trade mark KRUPP in its entirety with the addition of the alphabets "ss". Section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") makes clear that a domain name which consists of a common, obvious, or intentional misspelling of a trade mark is considered to be confusingly similar to the relevant mark for purposes of the first element. The Panel considers that the disputed domain name is an obvious misspelling of the Complainant's trade mark as it adds two more alphabetic letters "ss" but is otherwise identical or confusingly similar to the Complainant's trade mark.

Disregarding the gTLD “.com”, the disputed domain name <krupp-steel.com> incorporates the Complainant’s trade mark KRUPP in its entirety. Thus, the disputed domain name should be regarded as confusingly similar to the Complainant’s KRUPP trade mark. The additional term “steel” and a hyphen do not prevent a finding of confusing similarity.

The Panel therefore finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in establishing its rights in the KRUPP trade mark and in showing that the disputed domain names are identical or confusingly similar to its mark.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a complainant is required to establish a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain names. Once such a *prima facie* case has been made out, the respondent bears the burden of producing evidence in support of its rights or legitimate interests in the disputed domain names. If the respondent fails to do so, the complainant may be deemed to have satisfied paragraph 4(a)(ii) of the Policy. See [WIPO Overview 3.0](#), section 2.1.

The Complainant asserts that it has not authorized the Respondent to use its trade marks and there is no evidence to suggest that the Respondent has used, or undertaken any demonstrable preparations to use, the disputed domain names in connection with a *bona fide* offering of goods or services.

Thus, the Complainant has established its *prima facie* case with satisfactory evidence.

The Respondent did not file a response and has therefore failed to assert factors or put forth evidence to establish that it enjoys rights or legitimate interests in the disputed domain names. As such, the Respondent has failed to rebut the Complainant’s *prima facie* showing of the Respondent’s lack of rights or legitimate interests in the disputed domain names, and none of the circumstances of paragraph 4(c) of the Policy is applicable in this case.

Therefore, the Respondent has not shown that prior to the notice of the dispute, it has used or has demonstrated its preparation to use the disputed domain names in connection with a *bona fide* offering of goods or services. There is also no evidence showing that the Respondent has been commonly known by the disputed domain names or that the Respondent is making legitimate noncommercial or fair use of the disputed domain names.

Furthermore, given the composition of the disputed domain name <krupp-steel.com>, which combines the Complainant’s trade mark with the terms “steel” descriptive of its products, this disputed domain name carries a risk of implied affiliation, contrary to the fact, which cannot constitute fair use. [WIPO Overview 3.0](#), section 2.5.1.

Accordingly, and based on the Panel’s findings below, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names pursuant to paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that any of the following circumstances in particular but without limitation, shall be considered as evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant (the owner of the trade mark or service mark) or to a competitor of that complainant, for valuable consideration in excess of the respondent’s documented out-of-pocket costs directly related to the domain name; or

- (ii) circumstances indicating that the respondent registered the 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) circumstances indicating that the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its 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 its website or location.

For reasons discussed under this and the preceding heading, the Panel believes that the Respondent's conduct in this case constitutes bad faith registration and use of the disputed domain names.

When the Respondent registered the disputed domain names, the KRUPP trade mark was already widely known and directly associated with the Complainant's activities. UDRP panels have consistently found that the mere registration of a domain name that is confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known mark by an unaffiliated entity can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

Given the extensive prior use and fame of the Complainant's marks, in the Panel's view, the Respondent should have been aware of the Complainant's marks when registering the disputed domain names and ultimately, given the use of the disputed domain names, it is clear that the Respondent was aware of the Complainant and intentionally targeted the Complainant when registering the disputed domain names.

At the time of filing of the Complaint, both of the disputed domain names resolved to very similar websites purporting to be the official websites promoting the sale of steel products in the name of Krupp Thyssen Nirosta GmbH Ltd. Meanwhile, the Panel has independently established that the website in association with the disputed domain name <krupp-steel.com> continues to state the operating company behind as Krupp Thyssen Nirosta GmbH Ltd. This, combined with the composition of the two disputed domain names and the evidence of email-based probing to the Complainant's customers, demonstrate a clear intention on the part of the Respondent to target the Complainant at the time of registration of the disputed domain names and clearly indicates that the disputed domain names were registered in bad faith (*Intesa Sanpaolo S.p.A. v. Intesasanpaolo*, WIPO Case No. [D2009-1550](#)).

As for bad faith use, it is well accepted that use of a domain name to perpetuate fraud constitutes bad faith use ([WIPO Overview 3.0](#) at section 3.4). The Complainant's evidence establishes that the disputed domain names have been used for email-based fraud.

In light of the foregoing facts, the Panel concludes there are no plausible reasons to suggest the Respondent registered and is using the disputed domain names in good faith and constitutes bad faith under paragraph 4(b)(iv) 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 names, <krupps.com> and <krupp-steel.com>, be transferred to the Complainant.

/Joseph Simone/

Joseph Simone

Sole Panelist

Date: April 26, 2023