

ADMINISTRATIVE PANEL DECISION

APERAM v. 李晓坤 (li xiao kun), 江苏泰思克钢铁有限公司 (jiang su tai si ke gang tie you xian gong si)

Case No. D2024-0939

1. The Parties

Complainant is APERAM, Luxembourg, represented by Nameshield, France.

Respondent is 李晓坤 (li xiao kun), 江苏泰思克钢铁有限公司 (jiang su tai si ke gang tie you xian gong si), China.

2. The Domain Name and Registrar

The disputed domain name <aperammetal.com> (the “Domain Name”) is 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 March 4, 2024. On March 4, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On March 5, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to Complainant on March 5, 2024, 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 March 5, 2024.

On March 5, 2024, the Center informed the Parties in Chinese and English, that the language of the Registration Agreement for the Domain Name is Chinese. On March 5, 2024, Complainant requested English to be the language of the proceeding. Respondent did not submit any comment on Complainant’s submission.

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 March 13, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 2, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on April 3, 2024.

The Center appointed Kimberley Chen Nobles as the sole panelist in this matter on April 9, 2024. 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

Complainant is in the stainless steel business, operating with 2.5 million tons of flat stainless steel capacity in Europe and Brazil. Complainant also produces value-added specialty products, including electrical steel and nickel alloys. Its production capacity is concentrated in six production facilities located in Brazil, Belgium, and France.

Complainant owns numerous registered trademarks with the APERAM mark (including China where Respondent is located), such as:

- International registered trademark number 1083497 for the APERAM word mark, registered on June 6, 2011, designating numerous jurisdictions including China; and
- International registered trademark number 1097502 for the APERAM design and word mark, registered on August 17, 2011, designating numerous jurisdictions including China.

Complainant also owns a portfolio of domain names, including the APERAM mark and operates its main website at "www.aperam.com".

The Domain Name was registered on January 13, 2023, and prior to the filing of the Complaint, the Domain Name directed to a website prominently displaying the APERAM mark and featuring products offered by Shanghai Aperam Metal Co. Ltd without any disclaimer disclosing the (lack of) relationship between the Parties. According to Complainant, it is one of Complainant's competitors. At the time of filing of the Complaint, the Domain Name directs to an error page.

5. Parties' Contentions

A. Complainant

Complainant contends that (i) the Domain Name is identical or confusingly similar to Complainant's trademarks; (ii) Respondent has no rights or legitimate interests in the Domain Name; and (iii) Respondent registered and is using the Domain Name in bad faith.

In particular, Complainant contends that it has trademark registrations for APERAM, and that Respondent registered and is using the Domain Name with the intention to divert Internet traffic to one of Complainant's competitors.

Complainant notes that it has no affiliation with Respondent. Complainant further contends that Respondent is using the Domain Name to deceive Internet users who would expect to find a website that is affiliated with or sponsored by Complainant, and that Respondent has no rights or legitimate interests in the registration and use of the Domain Name. Further, Complainant contends that Respondent has acted in bad faith in acquiring and setting up the Domain Name, when Respondent clearly knew of Complainant's rights.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

6.1. Preliminary Issue: Language of the Proceeding

The Rules, in paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement between the respondent and the registrar in relation to the disputed domain name, the language of the 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.

Complainant submitted its original Complaint in English. In its email dated March 5, 2024, and amended Complaint, Complainant submitted its request that the language of the proceeding should be English. According to the information received from the Registrar, the language of the Registration Agreement for the Domain Name is Chinese.

Complainant submits that English should be the language for the current proceeding mainly because: Complainant asserts that English is the language most widely used in international relations and is one of the working languages of the Center; the Domain Name is composed of Latin characters and is not in Chinese script; Complainant further submitted that if the proceedings were conducted in Chinese, Complainant would have to incur significant translation expenses, which would add considerable costs to Complainant, cause undue burden on Complainant and result in delay to the proceeding.

In exercising its discretion to use a language other than that of the Registration Agreement for the Domain Name, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both Parties, taking into account all relevant circumstances of the case, including matters such as the Parties' ability to understand and use the proposed language, time, and costs.

The Panel accepts Complainant's submissions regarding the language of the proceeding. The Panel also notes that the Domain Name does not have any specific meaning in the Chinese language, and that the Domain Name contains Complainant's APERAM trademark in its entirety, and the addition of the English term "metal" to Complainant's trademark in the Domain Name, the Domain Name directed to an English language webpage; all of which indicate that Respondent understands English. The Panel further notes that the Center notified the Parties in Chinese and English of the language of the proceeding as well as notified Respondent in Chinese and English of the Complaint. Respondent chose not to respond to the language of the proceeding, nor did Respondent choose to file a Response in Chinese or English.

The Panel is also mindful of the need to ensure that the proceeding is conducted in a timely and cost-effective manner. Complainant may be unduly disadvantaged by having to translate the Complaint into Chinese and to conduct the proceeding in Chinese.

Having considered all the circumstances of this case, the Panel determines that English be the language of the proceeding.

6.2. Substantive Issues

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

- (i) the Domain Name 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 Domain Name; and
- (iii) the Domain Name was registered and is being used in bad faith.

Section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") states that failure to respond to the complainant's contentions would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true.

Thus, although in this case, Respondent has failed to respond to the Complaint, the burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence.

A. Identical or Confusingly Similar

Ownership of a trademark registration prima facie satisfies that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See [WIPO Overview 3.0](#), section 1.2.1. Complainant has provided evidence of its rights in the APERAM trademarks, as noted above under section 4. Complainant has therefore proven that it has the requisite rights in the APERAM trademarks.

With Complainant's rights in the APERAM trademarks established, the remaining question under the first element of the Policy is whether the Domain Name, typically disregarding the Top-Level Domain ("TLD") in which it is registered (in this case is, ".com"), is identical or confusingly similar to Complainant's trademark. See, e.g., *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#).

Here, the Domain Name is confusingly similar to Complainant's APERAM trademarks. The use of Complainant's trademark in its entirety, with the addition of the word "metal", does not prevent a finding of confusing similarity between the Domain Name and the APERAM trademark as it is recognizable in the Domain Name. [WIPO Overview 3.0](#), section 1.8.

Thus, the Panel finds that Complainant has satisfied the first element of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make a prima facie showing that a respondent possesses no rights or legitimate interests in a disputed domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes out such a prima facie showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with relevant evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

The composition of the Domain Name carries a risk of implied affiliation with Complainant. [WIPO Overview 3.0](#), section 2.5.1. From the record in this case, Complainant asserts that Respondent is not an authorized reseller and is not related to Complainant. Respondent is also not known to be associated with the APERAM trademarks and there is no evidence showing that Respondent has been commonly known by the Domain Name.

In addition, Respondent has not used the Domain Name in connection with a bona fide offering of goods or services or a legitimate noncommercial or fair use. Rather, the Domain Name previously directed to a webpage that prominently displaying the APERAM mark and offered products by Shanghai Aperam Metal Co. Ltd without any disclaimer disclosing the (lack of) relationship between the Parties. According to Complainant, it is one of Complainant's competitors.

Prior to the filing of the Complaint, the Domain Name changed to an inactive or error page, and remains inactive at the time of this decision. Such use does not constitute a bona fide offering of goods or services or a legitimate noncommercial or fair use and cannot under the circumstances confer on Respondent any rights or legitimate interests in the Domain Name. See, e.g., *Intesa Sanpaolo S.p.A. v. Charles Duke / Oneandone Private Registration*, WIPO Case No. [D2013-0875](#).

Accordingly, Complainant has provided evidence supporting its prima facie claim that Respondent lacks any rights or legitimate interests in the Domain Name. Respondent has failed to produce countervailing evidence of any rights or legitimate interests in the Domain Name.

Thus, the Panel concludes that Respondent does not have any rights or legitimate interests in the Domain Name, and Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that Respondent's actions indicate that Respondent registered and is using the Domain Name in bad faith.

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances indicating bad faith registration and use on the part of a domain name registrant, namely:

“(i) circumstances indicating that you have registered or you have acquired the 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 trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location.”

The Panel finds that Complainant has provided evidence to show that registration and use of the APERAM trademarks long predate the registration of the Domain Name. Complainant is also well established and known. Indeed, the record shows that Complainant's APERAM trademarks and related products and services are widely known and recognized. Furthermore, the additional term “metal” in the Domain Name, and the website to which the Domain Name resolved to indicates the Respondent's knowledge of Complainant. Therefore, the Panel findings Respondent knew the APERAM trademarks when it registered the Domain Name which suggests bad faith. See [WIPO Overview 3.0](#), section 3.2.2; see also *TTT Moneycorp Limited v. Privacy Gods / Privacy Gods Limited*, WIPO Case No. [D2016-1973](#).

Moreover, the evidence provided by Complainant indicated that prior to the filing of the Complaint, the Domain Name reverted to a website prominently displaying the APERAM mark and which apparently offered products by Shanghai Aperam Metal Co. Ltd without any disclaimer disclosing the (lack of) relationship between the Parties. According to Complainant, it is one of Complainant's competitors. The Panel finds that the use of the APERAM mark in the Domain Name is more likely than not intended to capture Internet traffic from Internet users who are looking for Complainant's products. Therefore, by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's webpage by creating a likelihood of confusion with Complainant's APERAM marks as to the source,

sponsorship, affiliation, or endorsement of Respondent's website. The addition of the term "metal" in addition to the use of the APERAM mark in the Domain Name serves to reinforce such likelihood of confusion, as Complainant's industry is in the steel industry.

Prior to the filing of the Complaint, the Domain Name changed to an inactive or error page, and remains inactive at the time of this decision. Considering the circumstances of this case, such use does not prevent a finding of bad faith under the doctrine of passive holding. See [WIPO Overview 3.0](#), section 3.3.

Further, the Panel also notes the failure of Respondent to respond to the Complaint.

Accordingly, the Panel finds that Respondent registered and is using the Domain Name in bad faith and Complainant succeeds under the third element of 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 Domain Name <aperammatal.com> be transferred to Complainant.

/Kimberley Chen Nobles/

Kimberley Chen Nobles

Sole Panelist

Date: April 18, 2024