

ADMINISTRATIVE PANEL DECISION

Acer Incorporated v. Arcuri William, William H Arcuri
Case No. D2025-0054

1. The Parties

The Complainant is Acer Incorporated, Taiwan Province of China, represented by Cohausz & Florack Patent- und Rechtsanwälte Partnerschaftsgesellschaft mbB, Germany.

The Respondent is Arcuri William, William H Arcuri, Canada.

2. The Domain Name and Registrar

The disputed domain name <acer-de.com> is registered with Hongkong Kouming International Limited (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on January 8, 2025. On January 8, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 24, 2025, 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.

On January 27, 2025, the Center informed the Parties in Chinese and English, that the language of the Registration Agreement for the disputed domain name is Chinese. On January 28, 2025, the Complainant submitted an amended Complaint in English requesting that English be the language of the proceeding. The Respondent did not submit any comment on the 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 the Respondent in English and Chinese of the Complaint, and the proceedings commenced on January 29, 2025. In accordance with the Rules, paragraph 5, the due date for Response was February 18, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 19, 2025.

The Center appointed Rachel Tan as the sole panelist in this matter on February 24, 2025. 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 is a company based in Taiwan Province of China and is a global manufacturer and seller of computer hardware and electronic consumer products.

The Complainant is the owner of the ACER mark in different jurisdictions. For example, International Trademark Registration No. 516344 for ACER, registered on October 6, 1987 in Classes 9 and 16, designating, inter alia, Germany; European Union Trade Mark Registration No. 000653691 for ACER, registered on September 27, 1999 in Class 9; and European Union Trade Mark Registration No. 018081202 for ACER, registered on November 5, 2019 in Class 10.

The disputed domain name was registered on December 19, 2024. At the time of the Complaint and Decision, the disputed domain name resolves to a website in German which allegedly imitates the Complainant's official website. In particular, it is alleged to offer the Complainant's products for sale at heavily discounted prices by prominently displaying the Complainant's ACER mark with the original products images.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant's ACER mark. The disputed domain name incorporates the Complainant's ACER mark in its entirety. The additional generic term "de" is a country abbreviation for Germany and the Complainant's ACER mark remains the most distinctive element in the disputed domain name.

The Complainant further alleges that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has not licensed or otherwise authorized the Respondent to use its ACER mark or to apply any domain name incorporating the mark. The Respondent is not commonly known by the disputed domain name.

Finally, the Complainant argues that the disputed domain name was registered and is being used in bad faith. Given the substantial worldwide recognition, the Complainant claims that the ACER mark is well known. At the time of registering the disputed domain name, the Respondent knew or should have known of the Complainant's mark. Separately, it is alleged that the disputed domain name resolves to a website that does not show any contact information or legal information, nor is it possible to create a user account. Therefore, it can be assumed that the Respondent's website is a fraudulent website.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that (i) the content on the website is in German and the Respondent appears to be a Canadian such that there is no evidence to suggest that Chinese is a preferred or necessary language to be used in the proceeding; (ii) English is widely regarded as the international language of international disputes; and (iii) requiring Chinese as the procedural language would force the Complainant to translate the Complaint, which incurs unnecessary time and cost.

The Respondent did not make any submissions with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, 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 (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.2 Substantive Issues

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here, i.e., a hyphen "-" and the word "de", may bear on assessment of the second and third elements, the Panel finds the addition of such terms do not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Lastly, it is permissible for the Panel to disregard the applicable Top-Level Domain ("TLD") in the disputed domain name, i.e., ".com". [WIPO Overview 3.0](#), section 1.11.1.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Respondent has not provided evidence of a legitimate or noncommercial use of the disputed domain name or reasons to justify the choice of the disputed domain name that is confusingly similar to the Complainant’s ACER mark. There is also no indication to show that the Respondent is commonly known by the disputed domain name or otherwise has rights or legitimate interests in it. Moreover, the Complainant has not granted the Respondent any license or authorization to use the Complainant’s ACER mark or register the disputed domain name.

The Panel notes that the disputed domain name resolves to a website which allegedly imitates the Complainant’s official website by displaying the Complainant’s ACER mark and product photos. The website did not accurately and prominently disclose the lack of a relationship between the Complainant and the Respondent. Therefore, the facts do not support a claim of bona fide use under the “Oki Data test”. See *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#), and [WIPO Overview 3.0](#), section 2.8.

Furthermore, the nature of the disputed domain name carries a risk of implied affiliation with the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Complainant’s ACER mark was registered well before the registration of the dispute domain name. Through use and advertising, the Complainant’s mark is known throughout the world. Search results using the key words “acer” on Internet search engines refers almost exclusively to the Complainant. The Panel notes that the disputed domain name resolves to a website displaying the Complainant’s ACER mark. As such, the Respondent clearly knew of the Complainant’s mark when registering the disputed domain name. [WIPO Overview 3.0](#), section 3.2.2.

The Panel is of the view that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent’s website, by creating a likelihood of confusion with the Complainant’s ACER mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website. This demonstrates bad faith registration and use of the disputed domain name, as provided in paragraph 4(b)(iv) of the Policy.

Given all the circumstances of the case, the Panel finds that the Respondent must have known of the Complainant before registering the disputed domain name, and considering the Respondent's lack of rights or legitimate interests, and by registering and using the disputed domain name as discussed above as well as continuing to hold the disputed domain name, the Panel is led to conclude that the disputed domain name was registered and is being used in bad faith.

Based on the available record, the Panel finds that the Complainant has established the third element 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 name <acer-de.com> be transferred to the Complainant.

/Rachel Tan/

Rachel Tan

Sole Panelist

Date: March 10, 2025