

## ADMINISTRATIVE PANEL DECISION

DFDS A/S v. 甘小飞 (ganxiao fei)

Case No. D2022-1882

### 1. The Parties

The Complainant is DFDS A/S, Denmark, represented by BrandIT GmbH, Switzerland.

The Respondent is 甘小飞 (ganxiao fei), China.

### 2. The Domain Name and Registrar

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

### 3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on May 25, 2022. On May 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 28, 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 the Complainant on May 31, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint in English on June 3, 2022.

On May 31, 2022, the Center transmitted another email communication to the Parties in English and Chinese regarding the language of the proceeding. On June 3, 2022, the Complainant confirmed its request in its amended Complaint 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 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 proceeding commenced on June 8, 2022. In accordance with the

Rules, paragraph 5, the due date for Response was June 28, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 7, 2022.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on July 21, 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**

The Complainant is an international shipping and logistics company founded in Denmark in 1866 and operating under the trade mark DFDS (the "Trade Mark").

The Complainant is the owner of numerous registrations for the Trade Mark in jurisdictions worldwide, including European Union Trade Mark registration No. 353243, with a registration date of October 26, 1998; and International registration No. 897881 with a registration date of October 7, 2005.

The Complainant is the owner of numerous domain names comprising the Trade Mark, such as <dfds.com>, <dfds.travel>, <dfdslogistics.com>, <dfdsseaways.cn>, and <dfdsseaway.hk>, and promotes and provides its business and services via its official website resolved to such domain names, available in several languages, including Chinese.

The Complainant purchased the Danish shipping companies Lys-Line Rederi A/S and Lys-Line A/S in 2005; and these subsidiary companies of the Complainant continue to operate under the names DFDS Lys-Line Rederis A/S and DFDS Lys-Line A/S.

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

The Respondent is apparently an individual resident in China.

##### **C. The Disputed Domain Name**

The disputed domain name was registered on September 24, 2021.

##### **D. Use of the Disputed Domain Name**

The disputed domain name is resolved to a Chinese language website with multiple links to websites offering free copies of novels that have been uploaded by Internet users, apparently without the authorisation of the copyright owners, including some apparently with pornographic content (the "Website").

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

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

The Complainant contends that the disputed domain name is identical or confusingly similar to the Trade Mark; the Respondent has no rights or legitimate interests in respect of the disputed domain name; and the disputed domain name has been registered and is being used 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

The language of the registration agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11, 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. However, 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 order to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. Language requirements should not lead to undue burdens being placed on the parties and undue delay to the proceeding.

The Complainant has requested that the language of the proceeding be English for several reasons, including the following:

- (i) the disputed domain name is registered using Latin text and the generic Top-Level Domain (“gTLD”), which shows that the Respondent understands English and that the disputed domain name is intended for users worldwide;
- (ii) the Website contains some English language text which demonstrates that the Respondent understands English;
- (iii) as the Complainant is based in Denmark, it would be fair for the proceeding to be conducted in English which is an international language English; and
- (iv) translating the Complaint into English would entail significant additional cost and delay.

The Respondent did not make any submissions regarding the language of the proceeding, and did not file any response. The Panel would have accepted a response in Chinese.

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)..

Although there is insufficient evidence before the Panel to support a conclusion that the Respondent is fully conversant in English, the evidence suggests the Respondent has some knowledge of the English language; and the Panel also notes that the Respondent has taken no part in this proceeding; and that all of the Center’s communications with the Parties have been sent in English and Chinese.

The Panel is also mindful of the need to ensure the proceeding is conducted in a timely and cost effective manner.

In all the circumstances, the Panel therefore finds it is not foreseeable that the Respondent would be prejudiced, should English be adopted as the language of the proceeding.

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 Elements of the Policy

The Complainant must prove each of the three elements in paragraph 4(a) of the Policy in order to prevail.

### A. Identical or Confusingly Similar

The Panel finds that the Complainant has rights in the Trade Mark acquired through use and registration.

Disregarding the gTLD, the disputed domain name incorporates the entirety of the Trade Mark, together with the additional letters “lysline” – referring to the Complainant’s subsidiary companies purchased in 2005 (see [WIPO Overview 3.0](#), section 1.7). Disregarding the gTLD and the suffix A/S (the abbreviation for Aktieselskab, meaning joint stock company, in Danish), the disputed domain name is also identical to the name of the Complainant’s subsidiary company DFDS Lys-Line A/S.

Where a relevant trade mark is recognisable within a disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element (see [WIPO Overview 3.0](#), section 1.8).

The Panel therefore finds that the disputed domain name is confusingly similar to the Trade Mark.

### B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to the respondent of the dispute, the respondent’s use 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) the respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name even if the respondent has acquired no trade mark or service mark rights; or
- (iii) the 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 the trade mark or service mark at issue.

The Complainant has not authorised, licensed, or permitted the Respondent to register or use the disputed domain name or to use the Trade Mark. The Panel finds on the record that there is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and the burden is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that he has acquired any trade mark rights in respect of the disputed domain name or that the disputed domain name has been used in connection with a *bona fide* offering of goods or services. To the contrary, the disputed domain name is resolved, for commercial gain, to the Website, containing links to websites providing free, apparently unauthorised copies of novels, some of which apparently with pornographic content. Furthermore, there is no indication on the Website as to who the owner and operator of the Website is.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain name; and there has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

The Panel finds that the Respondent has failed to produce any evidence to rebut the Complainant’s *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Panel therefore finds that the Respondent lacks rights or legitimate interests in the disputed domain name.

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

Given the notoriety of the Complainant and of its Trade Mark; the distinctiveness of the Trade Mark; the fact the disputed domain name is confusingly similar to the Trade Mark and is essentially identical to the name of the Complainant's subsidiary company DFDS Lys-Line A/S, disregarding the gTLD in the disputed domain name, and the hyphen and the suffix A/S (the abbreviation for Aktieselskab, meaning joint stock company, in Danish) in the company name; and the manner of the Respondent's use of the disputed domain name referred to above; the Panel finds, in all the circumstances, that the requisite element of bad faith has been made out pursuant to paragraph 4(b)(iv) of the Policy. The Panel has also considered the evidence submitted by the Complainant that Internet searches of the terms "DFDS" and "DFDS LYS LINE" overwhelmingly show up results relating to the Complainant and its business and Trade Mark.

The evidence therefore suggests that the Respondent has targeted the Complainant in registering and using the disputed domain name; and that there cannot be any actual or contemplated good faith use of the inherently misleading disputed domain name by the Respondent.

For all the foregoing reasons, the Panel concludes that the disputed domain name has been registered and is being used in bad faith.

### **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 <dfdslyslines.com> be transferred to the Complainant.

*/Sebastian M.W. Hughes/*

**Sebastian M.W. Hughes**

Sole Panelist

Dated: August 4, 2022