

## **ADMINISTRATIVE PANEL DECISION**

### **DEUTZ AG v. Hao Xiao Zhang (郝晓章)**

#### **Case No. D2022-2847**

#### **1. The Parties**

The Complainant is DEUTZ AG, Germany, represented by Bardehle Pagenberg Partnerschaft mbB, Germany.

The Respondent is Hao Xiao Zhang (郝晓章), China.

#### **2. The Domain Name and Registrar**

The disputed domain name <chinadeutz.net> is registered with eName Technology Co., Ltd. (the "Registrar").

#### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on August 2, 2022. On August 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 4, 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 August 5, 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 amendment to the Complaint in English on August 8, 2022.

On August 5, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On August 8, 2022, the Complainant confirmed 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 in English and Chinese of the Complaint, and the proceedings commenced on August 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 31, 2022. The Respondent did not submit any response. Accordingly, the Center notified of the Respondent's default on September 1, 2022.

The Center appointed Joseph Simone as the sole panelist in this matter on September 7, 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**

The Complainant, DEUTZ AG, is a leading company in the manufacturing industry, founded in 1864 and based in Cologne, Germany.

The Complainant has an extensive global portfolio of trade marks including the term “deutz”, including the following:

- International Registration for DEUTZ No. 739507 in Classes 7, 9, 12, 16, 35, 36, 37, 41, and 42, registered on March 30, 2000, designating China;
- China Registration for DEUTZ No. 872557 in Class 7, registered on September 21, 1996; and
- China Registration for DEUTZ No. 14132095 in Class 7, registered on July 14, 2015.

The Complainant owns the domain names <deutz.com> and <deutz.cn>, among others.

The disputed domain name was registered on November 17, 2020.

According to screenshots provided by the Complainant, at the time of filing the Complaint, the disputed domain name resolved to a website promoting the Complainant's products, *i.e.*, DEUTZ-branded engines and spare parts as well as third party branded products. At the time of this decision, the disputed domain name resolves to an error page.

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

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

The Complainant asserts that it has prior rights in the DEUTZ trade marks and that it is a leading player in its fields of business.

The Complainant further notes that the disputed domain name registered by the Respondent is identical or confusingly similar to the Complainant's DEUTZ trade marks, and the addition of the generic Top-Level Domain (“gTLD”) “.net” does not affect the analysis as to whether the disputed domain name is identical or confusingly similar to the Complainant's trade marks.

The Complainant also argues that the addition of the geographical wording “china” is insufficient to distinguish the disputed domain name from the Complainant’s DEUTZ trade marks, but will only induce further confusion and lead customers and users to the false impression that the disputed domain name is related to the Complainant.

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

The Complainant also asserts that there is no evidence suggesting that the Respondent has any connection to the DEUTZ mark in any way, and that, under the circumstance, there is no plausible good faith reason for the Respondent to have registered the disputed domain name. The Complainant therefore concludes that the registration and any use of the disputed domain name whatsoever must be in bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **6.1. 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 Complainant has requested that the language of the proceeding be English to which the Respondent has not objected.

When deciding to use a language other than that of the Registration Agreement, the Panel must exercise its discretion judicially and 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.

Based on the case file, the Panel notes the following:

- (1) the disputed domain name resolved to a website in English at the time of filing of the Complaint;
- (2) the disputed domain name is composed of Latin characters rather than Chinese characters; and
- (3) although the Center notified the Respondent in English and Chinese of the language of the proceeding and of the commencement of the proceeding, the Respondent did not comment on the language of the proceeding nor did the Respondent file any Response.

Considering all of the circumstances, the Panel finds it is not foreseeable that the Respondent in this case would be prejudiced by the use of English as the language of the proceeding.

As such, and pursuant to paragraph 11(a) of the Rules, the Panel determines that the language of the proceeding shall be English.

## 6.2. Substantive Elements of the Policy

### A. Identical or Confusingly Similar

The Panel acknowledges that the Complainant has established rights in the DEUTZ trade mark in many jurisdictions around the world.

Disregarding the gTLD “.net”, the disputed domain name incorporates the Complainant’s trade mark DEUTZ in its entirety. Thus, the disputed domain name should be regarded as confusingly similar to the Complainant’s DEUTZ trade mark. The additional term “china” does 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 DEUTZ trade mark and in showing that the disputed domain name is confusingly similar to its mark.

### B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, the complainant is required to establish a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such *prima facie* case is made out, the respondent bears the burden of producing evidence in support of its rights or legitimate interests in the disputed domain name. 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 of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“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 name 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 name. As such, the Panel concludes that 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 name, and that none of the circumstances of paragraph 4(c) of the Policy is applicable in this case.

Therefore, there is no evidence adduced to show that the Respondent, prior to the notice of the dispute, has used or has demonstrated its preparation to use the disputed domain name in connection with a *bona fide* offering of goods or services. There is also no evidence adduced to show that the Respondent has been commonly known by the disputed domain name or the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

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 name 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.

The examples of bad faith registration and use set forth in paragraph 4(b) of the Policy are not meant to be exhaustive of all circumstances in which bad faith may be found. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). The overriding objective of the Policy is to curb the abusive registration of domain names in circumstances where the registrant seeks to profit from and exploit the trade mark of another party. See *Match.com, LP v. Bill Zag and NWLAWS.ORG*, WIPO Case No. [D2004-0230](#).

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 name.

When the Respondent registered the disputed domain name, the DEUTZ trade marks were 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 to a famous or widely-known trade 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 name.

The Respondent has provided no evidence to justify his choice of the term "deutz" in the disputed domain name. In light of the foregoing, it would be unreasonable to conclude that the Respondent – at the time of the registration of the disputed domain name – was unaware of the Complainant's trade mark.

The Complainant's registered trade mark rights in DEUTZ in China for its products and services predate the registration date of the disputed domain name by almost three decades. A simple online search (e.g., via Google and Baidu) for the term "deutz" would have revealed that it is a world-renowned brand.

The Panel is therefore of the view that the Respondent registered the disputed domain name with full knowledge of the Complainant's trade mark rights.

At the time of filing the Complaint, the disputed domain name resolved to a website promoting the Complainant's products, i.e., DEUTZ-branded engines and spare parts as well as third party branded products. As the disputed domain name currently resolves to an inactive website, it is necessary to consider whether the currently inactive status of the disputed domain name prevents a finding of bad faith under the doctrine of passive holding. The factors usually considered material to such an assessment have been set out in a number of earlier decisions of UDRP panels, including in *Johnson & Johnson v. Daniel Wistbacka*, WIPO Case No. [D2017-0709](#). Each of these considerations points to the Respondent's passive holding of the disputed domain name being in bad faith. Specifically: (i) the Complainant's DEUTZ mark is distinctive and well established, (ii) the Respondent has failed to submit a response to the Complaint or provide any evidence of good-faith use, (iii) the Respondent has provided false or incomplete contact information in light of the courier's inability to deliver the Center's written communication, and (iv) there is no conceivable good-faith use to which the disputed domain name could be put by the Respondent.

The Panel therefore finds the Respondent to have registered and used the disputed domain name 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, <chinadeutz.net>, be transferred to the Complainant.

*/Joseph Simone/*

**Joseph Simone**

Sole Panelist

Date: September 21, 2022