

ADMINISTRATIVE PANEL DECISION

Weir Minerals Australia Limited v. 乔路飞 (Qiao Lu Fei)
Case No. D2022-4512

1. The Parties

Complainant is Weir Minerals Australia Limited, Australia, represented internally.

Respondent is 乔路飞 (Qiao Lu Fei), China.

2. The Domain Name and Registrar

The disputed domain name <warmanslurrypump.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 November 28, 2022. On November 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On November 29, 2022, 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 and contact information in the Complaint. The Center sent an email communication to Complainant on December 7, 2022, 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 December 8, 2022.

On December 7, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On December 8, 2022, Complainant confirmed its request that English be the language of the proceeding. On the same day, Respondent requested that Chinese be 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 Respondent in English and Chinese of the Complaint, and the proceedings commenced on December 13, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 2, 2023. Respondent’s informal communication

was received on December 13, 2022. The Center notified the Commencement of Panel Appointment Process to the Parties on January 5, 2023.

The Center appointed Kimberley Chen Nobles as the sole panelist in this matter on February 20, 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

Complainant, Weir Minerals Australia Ltd., subsidiary of The Weir Group PLC (Weir), is an engineering business which operates in the Minerals and ESCO (ground engaging tools) industries. It serves customers in over 60 countries, headquartered in Glasgow, United Kingdom, and employing approximately 13,000 people. Weir is listed on the London Stock Exchange and is a constituent of the FTSE 250 Index. Warman pumps are sold across the globe under the WARMAN trademark in over 100 countries including Australia, China, European Union countries, United States of America, Canada, South Africa, Brazil, Chile, Peru, and numerous African and Asian countries.

Complainant, directly or through its affiliates owns more than 160 registered trademarks globally for the WARMAN mark, including

- Australian trademark number 130107 for WARMAN word mark, registered on November 22, 1956;
- Chinese trademark number 298989 for WARMAN word mark, registered on September 20, 1987; and
- Chinese trademark number 298996 for WARMAN word mark, registered on September 20, 1987.

The Domain Name was registered on April 29, 2022. At the time of filing of the Complaint, the Domain Name reverted to a website that offered pumps for the mining industry, prominently featuring "WARMAN PUMPS", and providing information, drawings, and specifics of those pumps under the WARMAN mark. At the time of the Decision, the Domain Name reverted to an error or inactive 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 WARMAN and that Respondent registered and is using the Domain Name with the intention to confuse Internet users looking for *bona fide* and well-known Warman products and services.

Complainant notes that it has no affiliation with Respondent and contends that Respondent has used Complainant's reputation to sell plagiarisms on the website associated with the Domain Name. Complainant further contends that Respondent is using the Domain Name as a tool to exploit Complainant's reputation for its own commercial gain, and that Respondent has no rights or legitimate interests in the registration and use of the Domain Name other than trademark infringement. 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, however, Respondent sent an email communication to the Center on December 13, 2022, indicating that it agreed to cancel the Domain Name.

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, 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.

According to the information received from the Registrar, the language of the Registration Agreement for the Domain Name is Chinese.

Complainant submitted its original Complaint in English. In its Complaint and amended Complaint, Complainant submitted a request that the language of the proceeding should be English. Complainant mainly contends that the Domain Name resolved to a website providing content entirely in English and asserts that Respondent is thus familiar with the English language.

In an email dated December 8, 2022, Respondent requested for Chinese to be the language of the proceeding, stating that Respondent did not understand English.

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 notes that the Domain Name is composed of Complainant's trademark plus an English terms "slurrypump", and the content of the website that the Domain Name reverted to, prior to the time of filing of the Complaint, was in English. In addition, 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 commencement of the proceeding and indicated that Respondent may file a Response in either Chinese or English. Respondent chose not to file a Response.

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 while conducting the proceeding in English would not cause unfairness to either Party in this case.

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 is generally sufficient evidence 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 WARMAN trademarks, as noted above under section 4. Complainant has also submitted evidence, which supports that the WARMAN trademarks are widely known and a distinctive identifier of Complainant’s products and services. Complainant has therefore proven that it has the requisite rights in the WARMAN trademarks.

With Complainant’s rights in the WARMAN 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 WARMAN trademarks. These WARMAN trademarks are recognizable in the Domain Name. In particular, the Domain Name’s inclusion of Complainant’s trademark WARMAN in its entirety, with an addition of the terms “slurypump”, does not prevent a finding of confusing similarity between the Domain Name and the WARMAN trademarks. See [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 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.

From the record in this case, it is evident that Respondent was, and is, aware of Complainant and its WARMAN trademarks, and does not have any rights or legitimate interests in the Domain Name. In addition, 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 WARMAN 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, at the time of filing of the Complaint, the Domain Name reverted to a website that offered pumps for the mining industry, prominently featuring “WARMAN PUMPS”, and providing information, drawings, and specifics of those pumps under the WARMAN mark, which could mislead Internet users into thinking that the website has been authorized or operated by or affiliated with Complainant, and offered WARMAN-branded products for sale. At the time of the Decision, the Domain Name reverted to an error or inactive page. 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](#).

Moreover, the nature of the Domain Name is inherently misleading, and carries a risk of implied affiliation (see [WIPO Overview 3.0](#), section 2.5.1).

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 ample evidence to show that registration and use of the WARMAN trademarks long predate the registration of the Domain Name. Complainant is also well established and known. Indeed, the record shows that Complainant's WARMAN trademarks and related products and services are widely known and recognized. Therefore, Respondent was likely aware of the WARMAN trademarks when it registered the Domain Name or knew or should have known that the Domain Name was confusingly similar to Complainant's trademarks. 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](#).

The Panel therefore finds that Respondent's awareness of Complainant's trademark rights at the time of registration suggests bad faith. See *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite*, WIPO Case No. [D2001-1070](#); and *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#).

Further, the registration of the Domain Name incorporating Complainant's WARMAN trademark in its entirety suggests Respondent's actual knowledge of Complainant's rights in the WARMAN trademarks at the time of registration of the Domain Name and its effort to opportunistically capitalize on the registration and use of the Domain Name. Moreover, the additional descriptive terms “slurrypump” in the Domain Name is also directly

associated with Complainant's business activities in the field of pumps and related products, further indicating Respondent's actual knowledge of Complainant and its trademarks, and that Respondent's registration of the Domain Name was in bad faith.

In addition, the evidence provided by Complainant indicated that at the time of filing of the Complaint, the Domain Name reverted to a website that offered pumps for the mining industry, prominently featuring "WARMAN PUMPS", and providing information, drawings, and specifics of those pumps under the WARMAN mark. Such use included Respondent's unauthorized reproduction of Complainant's WARMAN marks, which could mislead Internet users into thinking that the respective website has been authorized or operated by or affiliated with Complainant, and offered WARMAN-branded products for sale, all of which have not been rebutted by Respondent. Such use cannot be considered in good faith.

Moreover, Respondent registered and is using the Domain Name to confuse and mislead consumers looking for *bona fide* and well-known WARMAN products and services of Complainant or authorized partners of Complainant. The use of the WARMAN mark as the dominant part of the Domain Name is intended to capture Internet traffic from Internet users who are looking for Complainant's products and services. 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 WARMAN marks as to the source, sponsorship, affiliation, or endorsement of Respondent's website.

Further, the Panel also notes the failure of Respondent to submit a Response or to provide any evidence of actual or contemplated good-faith use, and the implausibility of any good-faith use to which the Domain Name may be put.

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, <warmanslurrypump.com>, be transferred to Complainant.

/Kimberley Chen Nobles/

Kimberley Chen Nobles

Sole Panelist

Date: March 2, 2023