

ADMINISTRATIVE PANEL DECISION

Century Time Gems Ltd v. Century Aluminum SysAdmins, Century Aluminum Case No. D2023-3480

1. The Parties

The Complainant is Century Time Gems Ltd, Switzerland, represented by FMP Fuhrer Marbach & Partners, Switzerland.

The Respondent is Century Aluminum SysAdmins, Century Aluminum, United States of America (“United States”), represented by Frost Brown Todd LLC, United States.

2. The Domain Name and Registrar

The disputed domain name <century.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 16, 2023. On August 17, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 18, 2023, 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 (“unknown”) and contact information in the Complaint.

The Center sent an email communication to the Complainant on August 24, 2023, 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 on August 29, 2023.

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 of the Complaint, and the proceedings commenced on September 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 21, 2023. Following various extensions of the due date, the Response was filed with the Center on October 16, 2023.

The Center appointed Steven A. Maier as the sole panelist in this matter on October 27, 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.

On November 9, 2023, the Parties jointly requested a suspension of the proceeding to enable settlement discussions to take place. The Panel directed that a 30-day suspension be granted accordingly, which terminated on December 9, 2023. On December 6, 2023, the Complainant indicated that it no longer wished to participate in a settlement process, and submitted an unsolicited supplemental filing to the Center. On December 8, 2023, the Complainant submitted a further unsolicited supplemental filing. On December 8, 2023, the Respondent submitted an unsolicited supplemental filing in response to the first of the Complainant's such filings.

4. Factual Background

The Complainant is a company registered in Switzerland. It is a supplier of luxury watches under the name and trademark CENTURY.

The Complainant is the owner of various registrations for the trademark CENTURY, including for example:

- Switzerland trademark registration number P-375224 for the word mark CENTURY, registered on March 14, 1990 for watches in International Class 14; and
- United States trademark registration number 1386743 for a stylized word mark CENTURY, registered on March 18, 1986 for chronometers in International Class 14.

According to the Complainant's evidence, which is not disputed, it acquired the disputed domain name in December 2006 and continued to own the disputed domain name until the date of its acquisition by the Respondent. The Complainant exhibits evidence of the renewal of the disputed domain name via its hosting provider until January 19, 2024.

The Respondent is a company located in Illinois, United States. It is a supplier of aluminum products, primarily under the name and trademark CENTURY ALUMINUM.

The Respondent is also the owner of United States trademark number 3588205 for the word mark CENTURY, registered on March 10, 2009, for aluminum ingots in International Class 9.

The disputed domain name was acquired by the Respondent on or about July 11, 2023.

The disputed domain name appears at all material times thereafter to have resolved to a registrar-operated "parking page".

5. Parties' Contentions

The Parties' contentions summarized below are based on the Parties original Complaint and Response filed respectively in the proceeding and do not take account of the Complainant's first unsolicited supplemental filing, to which further reference is made below, or any subsequent unsolicited supplemental filing received from either Party.

A. Complainant

The Complainant submits that it has continuously maintained and renewed the registration of the disputed domain name since first acquiring it in 2006, for what it states was a considerable six-digit sum. It provides

evidence of significant use of the disputed domain name, including analytics to suggest that its website linked to the disputed domain name was viewed over 2.5 million times during the relevant period.

The Complainant states that, notwithstanding its renewal of the disputed domain name on December 20, 2022, it discovered that its website was down in mid-July 2023. On further investigation, it found that there had been two changes of the registrar of the disputed domain name without any reference to or involvement of itself, including the transfer to the current Registrar on July 19, 2023.

The Complainant submits that the disputed domain name is identical to its CENTURY trademark.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith. It contends that the Respondent must have been aware of its rights in the CENTURY trademark when it acquired the disputed domain name, and that by registering the disputed domain name the Respondent has infringed its prior rights in that trademark, and is engaging in unfair competition and a criminal offence under Swiss law. The Complainant alleges that "it can only be concluded that the Respondent acquired the [disputed domain name] using or as the result of unlawful or fraudulent means," and that the Respondent is not making any *bona fide* commercial use or legitimate noncommercial or fair use of the disputed domain name. The Complainant states that it also "assumes that Respondent intended to sell the [disputed domain name] for a hefty profit; engage in fraudulent activities; capitalize on Complainant's reputation; and/or intentionally mislead and confuse customers who have been visiting the [disputed domain name] since 2006 to find Complainant's goods."

The Complainant requests the transfer of the disputed domain name.

B. Respondent

The Respondent submits that it was founded in 1995 and is a well-known global producer of primary aluminum with aluminum reduction in the United States and Iceland. It provides further information about its history and business activities.

The Respondent submits that it owns a portfolio of CENTURY ALUMINUM trademarks and that it has used the domain name <centuryaluminum.com> since 1996. It also refers to and relies upon its CENTURY trademark referred to above, and contends that there is no evidence that it obtained that trademark in order to circumvent the Policy.

The Respondent accepts that the disputed domain name is identical to the Complainant's CENTURY trademark. However, it contends that it uses its own CENTURY trademark for products and services wholly unrelated to those of the Complainant. It also submits evidence of a total of 48 registrations for the mark CENTURY with the United States Patent and Trademark Office, including the Complainant's and its own.

The Respondent submits that it has rights or legitimate interests in respect of the disputed domain name by virtue of its own CENTURY trademark and its trading history.

The Respondent denies that the disputed domain name was acquired or has been used in bad faith. It states that: "Respondent had no intent in acquiring the domain unlawfully or through illegitimate means, nor could it have acquired the domain as Complainant has suggested. Instead, Respondent's employee inquired about the domain and was allowed to purchase it." It states that the purchase took place on July 7, 2023. The Respondent provides no further detail or documentation relating to the relevant inquiry or negotiation, although it does exhibit an invoice dated July 11, 2023, apparently for the "domain transfer" of the disputed domain name, with the name of the purchaser and the purchase price redacted.

The Respondent submits that it intended to use the disputed domain name either to redirect to its existing website at "www.centuryaluminum.com" or to use it for the purpose of its primary domain name and website. It states that it did not have time to progress these intentions because its employee who acquired the

disputed domain name, and subsequently transferred it to the Respondent, left the company soon afterwards, and the Complainant then commenced this proceeding. The Respondent states that the disputed domain name has continued to redirect to the Registrar's parking page for that reason.

The Respondent denies that it had any actual knowledge of the Complainant's CENTURY trademark or its business when it acquired the disputed domain name. It objects to the Complainant's "unsupported allegations" that it has acquired the disputed domain name by unlawful or fraudulent means, or that it intends to use it to divert Internet users away from the Complainant or tarnish its trademark.

6. Discussion and Findings

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has established that it has registered trademark rights in the mark CENTURY. The disputed domain name is identical to that trademark and the Panel therefore finds that the disputed domain name is identical to a trademark or service mark in which the Complainant has rights.

B. Rights or Legitimate Interests

The Respondent has established that it has traded under the name and mark CENTURY ALUMINUM for many years, and that it has independent registered trademark rights in the mark CENTURY dating from well before the date of its acquisition of the disputed domain name. There is no evidence before the Panel to indicate that the Respondent's business is anything other than *bona fide* or that it registered its CENTURY trademark in an attempt to circumvent the UDRP, or primarily for the purpose of targeting the Complainant's trademark. Nor, as further discussed below, is the Panel in a position to conclude that the Respondent acquired the disputed domain name as the result of dishonest activity on its part.

The Panel finds in the circumstances that, by virtue of its independent rights in its CENTURY trademark, the Respondent has a claim to rights or legitimate interests in respect of the disputed domain name and the Complainant has failed to show otherwise.

The Complainant must necessarily fail accordingly.

C. Registered and Used in Bad Faith

While it is unnecessary in the circumstances to consider the issues of registration and use of the disputed domain name in bad faith, the Panel nevertheless comments as follows.

The Complainant submits that the disputed domain name was transferred out of its ownership by its hosting company (or the relevant registrar), without any knowledge or involvement on its part. However, it provides no information about any enquiries it may have made about the circumstances surrounding the transfer of the disputed domain name, or any explanation it may have been provided. That omission seems remarkable to the Panel, particularly in circumstances where the Complainant then goes on to accuse the Respondent (a company who has made substantial use of a trademark identical to the disputed domain name prior to the present dispute) of unlawful, fraudulent, and indeed criminal activity in acquiring the disputed domain name.

Equally, the Panel finds the Respondent's explanation of the circumstances surrounding the acquisition of the disputed domain name to be somewhat unclear. While it submits that it was "allowed to purchase" the disputed domain name, it does not state, for example, whether the disputed domain name was offered for sale, whether it made a speculative enquiry regarding the same, or whether some other situation obtained. There is also reference to an unnamed employee, who has subsequently left, being the original transferee of the disputed domain name.

Despite the lack of comprehensive evidence on the part of either of the Parties, the position remains that, despite the Complainant's serious allegations, there is insufficient evidence before the Panel to conclude that the Respondent acquired (or has used) the disputed domain name either in fraudulent circumstances, or for any purpose other than in connection with its existing business name and trademarks. The Complainant cannot therefore establish that the disputed domain name was registered or has been used in bad faith.

7. The Parties' Unsolicited Supplemental Filings

The Complainant submitted an unsolicited supplemental filing on December 6, 2023. The filing refers to further investigations the Complainant has made subsequent to the filing of the Complaint, including information provided by its hosting company. It also raises concerns about the veracity of the (redacted) purchase documentation provided by the Respondent. The Complainant repeats its allegation that the Respondent can only have obtained the disputed domain name by fraudulent means.

The Respondent filed an unsolicited supplemental filing on December 8, 2023, objecting to the Complainant's unsolicited supplemental filing, particularly insofar as it contains material gathered during the 30-day suspension period intended for settlement discussions.

The circumstances in which a panel will accept a party's unsolicited supplemental filing are discussed in Section 4.6 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). That discussion states that "unsolicited supplemental filings are generally discouraged, unless specifically requested by the panel" and that "in all such cases, panels have repeatedly affirmed that the party submitting or requesting to submit an unsolicited supplemental filing should clearly show its relevance to the case and why it was unable to provide the information contained therein in its complaint or response (e.g., owing to some "exceptional" circumstance)."

In this case, it is unclear why the Complainant could not have carried out relevant investigations (and otherwise as may have been appropriate) before issuing the Complaint, so as to have been in a position to furnish the Panel with its concluded submissions from the outset. The Panel does not find there to be an exceptional or compelling reason to permit the Complainant to submit additional material of this nature at this stage in the proceeding.

Insofar as the Complainant comments upon the nature of the Respondent's documentation, the Panel has already made its own observations in that regard above.

Furthermore, the Complainant's (first) unsolicited supplemental filing alludes to a detailed factual and technical enquiries into the circumstances in which the disputed domain name may have been transferred to the Respondent, including such matters as the presence or otherwise of any "EPP code" which would have been necessary to effect the transfer. Given that the Policy is intended to determine relatively straightforward cases of "cybersquatting" and related activity, the Panel does not consider the allegations raised by the Complainant, which would require an investigation into alleged fraud and criminal activity, to be matters properly within the remit of the Panel.

In the circumstances, the Parties' unsolicited supplemental filings do not alter the Panel's views on the merits of the proceeding as outlined above.

The denial of the Complainant under the terms of the Policy does not, of course, prevent the Complainant from pursuing its claims in other arenas should it consider it appropriate it to do.

8. Decision

For the foregoing reasons, the Complaint is denied.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: December 21, 2023