

## ADMINISTRATIVE PANEL DECISION

Knorr-Bremse AG v. 陈秀珍 (chen xiu zhen)

Case No. D2024-2329

### 1. The Parties

The Complainant is Knorr-Bremse AG, Germany, represented by Bardehle Pagenberg Partnerschaft mbB, Germany.

The Respondent is 陈秀珍 (chen xiu zhen), China, self-represented.

### 2. The Domain Name and Registrar

The disputed domain name <knorr-bremse.top> is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the "Registrar").

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 7, 2024. On June 10, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 11, 2024, 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 June 11, 2024 the Center informed the parties in Chinese and English, that the language of the registration agreement for the disputed domain name is Chinese. On June 12, 2024, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant's submission.

The Center verified that 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 Chinese and English of the Complaint, and the proceedings commenced on June 17, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 7, 2024. The Respondent sent informal emails in Chinese on July 4, 2024 and July 6, 2024, respectively. At the Complainant's request, the proceeding was

suspended on July 4, 2024 and then reinstated on July 17, 2024. The Response due date was accordingly July 20, 2024. The Respondent did not submit any formal response. Accordingly, the Center notified the Parties on July 22, 2024 that it would proceed to Panel Appointment.

The Center appointed Francine Tan as the sole panelist in this matter on July 29, 2024. 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.

The Respondent sent further emails in Chinese on July 30, 2024.

#### **4. Factual Background**

The Complainant states is one of the world's leading developers and manufacturers of braking systems, employing over 19,000 employees in 27 countries, with sales exceeding 4 billion Euros. The company was founded in 1905 in Berlin by a Mr. Georg Knorr, one of the world's pioneers in the development of braking systems. The Complainant's name incorporates the German word "bremse", which means "brake".

For over 100 years, the Complainant supplied single-chamber express braking systems to the Prussian State Railways. Since the 1920s, the Complainant has also developed and manufactured braking systems for commercial vehicles, trucks and semi-trailer tractor units over 6 tons, buses, and trailers.

The Complainant owns several registrations for the trade mark KNORR-BREMSE, including International trade mark registration Nos. 726778 and 1483795, registered on October 20, 1999 and March 8, 2019, respectively.

The Complainant owns over 80 domain name registrations incorporating its KNORR-BREMSE trade mark, including the following:

- <knorr-bremse.com>, registered on January 27, 1997;
- <knorrbremse.com>, registered on November 6, 2010;
- <knorr-bremse.asia>, registered on February 22, 2008; and
- <knorr-bremse.cn>, registered on March 19, 2003.

The disputed domain name was registered on March 27, 2024, and as at the time of the filing of the Complaint, resolved to an inactive website.

#### **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 confusingly similar to the KNORR-BREMSE trade mark in which the Complainant has rights. The disputed domain name consists of the entirety of the Complainant's KNORR-BREMSE trade mark with the addition of the generic Top Level Domain ("gTLD") ".top". This does not distinguish the Respondent nor the goods and services offered under the disputed domain name from those of the Complainant. The public might get the impression that the disputed domain name is intended to identify the Complainant.

- The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent does not have any registered trade marks, trade names, or personal names corresponding to “knorr-bremse”, or the disputed domain name. The Respondent is neither licensed nor authorized by the Complainant to use the designation “knorr-bremse.top”. There is also no evidence that the Respondent is making a legitimate, noncommercial or fair use of the disputed domain name.
- The Respondent registered the disputed domain name and is using it in bad faith. The Complainant is well known in its field and owns numerous KNORR-BREMSE trademark registrations worldwide. The Complainant has established a presence in countries across the world and presents its business on a large number of websites. The Respondent would have been aware of the Complainant and its KNORR-BREMSE mark. There is no conceivable bona fide use of the disputed domain name except any use that is related to the Complainant and its field of business. The MX servers of the disputed domain name have been configured, which enables the Respondent to send emails using the disputed domain name, which may lead to spamming, or phishing attacks. The unauthorized use of the disputed domain name by the Respondent is likely to be used to attract and mislead customers, by creating a false impression that the disputed domain name is authorized and supported by the Complainant.

## **B. Respondent**

The Respondent did not file a formal response in this proceeding. However, she sent two informal emails to the Center on July 4 and July 6, 2024, and three further emails to the Center on July 30, 2024 after the Panel Appointment. In her first email of July 4, 2024, the Respondent stated that she had purchased the disputed domain name but not used it since. She further claimed that she did not need the disputed domain name anymore and had informed the Registrar to cancel the disputed domain name. Because the Respondent seemed willing to transfer the disputed domain name to the Complainant, the latter requested a suspension of the proceeding. However, there was no further communication from the Respondent and the proceeding was consequently reinstituted on July 17, 2024.

In the emails of July 30, 2024, the Respondent claimed that she did not need the disputed domain name and had intended to cancel it but could not do so as it had been locked, due to the present proceeding. She sought advice on how to cancel it.

## **6. Discussion and Findings**

### **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:

- The Complainant and its representatives are unable to communicate in Chinese. Requiring the Complainant to submit documents in Chinese would lead to delay and cause the Complainant to incur translation expenses.
- The disputed domain name is used to freeride on the Complainant's rights in its marks and trade name, and it would be inappropriate to require the Complainant to submit the Complaint in Chinese.
- The disputed domain name consists of Latin characters.

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

The Center notified the Respondent of the language of the registration agreement and subsequently of the Complaint in both Chinese and English, and informed Respondent that it would accept a response in either English or 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).

Having considered all the relevant matters and circumstances of this case, including in particular, the disputed domain name incorporating the entirety of the Complainant's trade mark, which contains only English letters; the Respondent's lack of objection to the Complainant's language request, or the Complainant's contentions generally; and, the Panel's below findings, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English. Nevertheless, the Panel notes that the Respondent's informal Chinese communications have been fully considered.

### **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 trade mark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trade mark or 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 identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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. There is no evidence that the Respondent is commonly known by the disputed domain name or that she was licensed or authorized by the Complainant to use the KNORR-BREMSE trade mark or to register the disputed domain name. The Complainant's use and registration of the KNORR-BREMSE trade mark long predates the registration date of the disputed domain name.

There was no rebuttal of the Complainant's prima facie case by the Respondent. Rather, the Respondent stated very clearly in her emails to the Center that she had no interest in the disputed domain name and was prepared to cancel the registration, but was unable to as the disputed domain name was locked due to the present proceeding. As such no rights or legitimate interests in the disputed domain name were being asserted by her.

Moreover, the Panel notes that the disputed domain name, being identical to the Complainant's trade mark, carries a high risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

The Panel therefore 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 Respondent registered the disputed domain name long after the establishment of the Complainant and its initial, and continuing, use of the KNORR-BREMSE trade mark, and configured MX servers while allowing the disputed domain name to resolve to an inactive website. Having reviewed the available record, the Panel notes the distinctiveness of the Complainant's trade mark and the composition of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy. [WIPO Overview 3.0](#), section 3.3. Rather, the registration of disputed domain name, being identical to the Complainant's trade mark, in these circumstances suggests a bad faith attempt to target or otherwise take advantage of the Complainant and its trade mark. Moreover, the Respondent's lack of rights or legitimate interests in the disputed domain name, and lack of explanation for such registration and use, further support a finding of bad faith in this case.

The Panel therefore finds the third element of the Policy has been established.

## **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 <knorr-bremse.top> be transferred to the Complainant.

*/Francine Tan/*

**Francine Tan**

Sole Panelist

Date: August 12, 2024