

ADMINISTRATIVE PANEL DECISION

u-blox Holding AG v. 冯澎涛 (Peter.feng)

Case No. DCN2022-0027

1. The Parties

The Complainant is u-blox Holding AG, Switzerland, represented by Corsearch B.V., Netherlands.

The Respondent is 冯澎涛 (Peter.feng), China.

2. The Domain Name and Registrar

The disputed domain name <ublogps.cn> is registered with 阿里云计算有限公司 (万网) (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on April 15, 2022. On April 19, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, the Respondent sent an email communication in Chinese to the Complainant and the Center. On April 20, 2022, 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 April 26, 2022, the Center received an email communication in English from the Respondent.

The Center verified that the Complaint satisfied the formal requirements of the China ccTLD Dispute Resolution Policy (the “Policy”), the China ccTLD Dispute Resolution Policy Rules (the “Rules”), and the WIPO Supplemental Rules for China ccTLD Dispute Resolution Policy and China ccTLD Dispute Resolution Policy Rules (the “WIPO Supplemental Rules”).

In accordance with the Rules, Articles 5, 6, 14, 15 and 16, and the WIPO Supplemental Rules, Paragraph 4(d), the Center formally notified the Respondent in Chinese and English of the Complaint, and the proceedings commenced on May 4, 2022. On the same day, the Center received a supplemental filing in English from the Complainant. In accordance with the Rules, Articles 17 and 49, the due date for Response was May 24, 2022. Apart from his prior email communications, the Respondent did not file a formal Response. Accordingly, on May 27, 2022, the Center notified the commencement of the panel appointment process.

The Center appointed Matthew Kennedy as the sole panelist in this matter on May 31, 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, Article 29.

On June 3, 2022, the Panel issued Administrative Panel Procedural Order No. 1 in Chinese and English, inviting the Respondent to comment on the Complainant's unsolicited supplemental filing by June 8, 2022. The Respondent did not submit any comments by the due date.

4. Factual Background

The Complainant, founded in 1997, provides positioning and wireless communication technologies for the automotive, industrial and consumer markets. The Complainant has developed and provided semiconductors on its signal receivers issued by the Global Navigational Satellite Systems ("GNSS"), including the American Global Positioning System ("GPS"). The Complainant has been active in China since 2001 and has offices in Beijing, Shanghai, Wuhan, Shenzhen, and Chongqing. The Complainant holds international trademark registrations number 946859 for U-BLOX and number 946858 for UBLOX and device, registered on May 25, 2007 and July 24, 2007, respectively, both designating multiple jurisdictions, including China, and both specifying goods and services in classes 9, 38, and 42, including GPS devices. Those trademark registrations remain current. The Complainant has also registered various domain names including <u-blox.com> that it uses in connection with its official website where it provides information about itself and its products.

The Respondent is related to a company named 深圳市环天世纪科技有限公司 (which may be translated as Shenzhen Huantian Century Technology Co., Ltd), which holds Chinese trademark registration number 40432183 for UBLOXGPS, registered on October 21, 2020 (application filed on August 18, 2019), specifying goods in class 9, including GPS equipment. That trademark registration remains current. The Respondent's company is a professional GNSS systems navigation solution provider and electronic components agency.

According to evidence submitted by the Complainant, the Respondent previously operated a website associated with the domain name <ubloxgps.com>. The Complainant sent a cease-and-desist letter to the Respondent in English on November 8, 2018 alleging trademark infringement on that website. The Respondent replied in English on November 14, 2018, asserting that all products sold on the site were legitimate products. On August 16, 2019, the Complainant sent another cease-and-desist letter to the Respondent reiterating its allegation of trademark infringement and requesting transfer of the domain name <ubloxgps.com>. There were further email exchanges between the Parties in English regarding that domain name between August 17 and 22, 2019.

The Complainant later initiated a proceeding regarding that domain name under the Uniform Domain Name Dispute Resolution Policy ("UDRP"). On December 24, 2019, which was the day after the Center notified the Respondent of the complaint under the UDRP, the Respondent registered an identical domain name in the ".cn" country code Top-Level Domain ("ccTLD"), which is the disputed domain name in the current proceeding. The panel in the UDRP proceeding later found that the Respondent had registered and was using the ".com" domain name in bad faith. See *u-blox Holding AG v. Peter.feng (冯澎涛)*, WIPO Case No. [D2019-2990](#).

The disputed domain name <ubloxgps.cn> was registered on December 24, 2019. It formerly resolved to a website that included an English version, which prominently displayed the Complainant's UBLOX and device mark followed by the letters "GPS". The site displayed images of the Complainant's products, images of HTGNSS brand global positioning system products (which it recommended), as well as information regarding the Complainant's products (such as how to change the baud rate, the refresh speed, and the output language). At the time of this Decision, the disputed domain name no longer resolves to an active website; rather, it is passively held.

5. Parties' Contentions

A. Complainant

The disputed domain name is confusingly similar to the Complainant's U-BLOX mark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name or major part of the disputed domain name. The Complainant has not authorized, licensed or otherwise permitted the Respondent to use the U-BLOX mark in the disputed domain name or for any other purpose. The Respondent has not been commonly known by the disputed domain name. The Respondent's website uses the Complainant's trademark and logo to sell and advertise his own products under his HTGNSS mark. It does not disclose accurately and prominently the Respondent's lack of a relationship with the Complainant. The concurrent sale of competing products under his own brand cannot be considered a *bona fide* offering of goods or fair use of the disputed domain name. The website appears to be clearly designed to give the impression that it belongs to a distributor or agent authorized or endorsed by the Complainant.

The disputed domain name holder has registered or has been using the disputed domain name in bad faith. The Respondent was certainly aware, and intended to take advantage of, the U-BLOX mark as the website associated with the disputed domain name offers, promotes and advertises the Complainant's U-BLOX products, as well as the Respondent's own brand.

The Respondent has registered its trademark in China to facilitate taking unfair advantage of the Complainant's previously existing trademark rights and to circumvent the application of the Policy. The Parties are in the same line of business and the Respondent was certainly aware of the Complainant's trademark when he registered his own trademark. The Respondent filed its trademark application two days after it was put on notice of the Complainant's trademark. It seems unlikely that the trademark application and the disputed domain name registration were not targeting the Complainant and its trademarks and circumventing the Policy. The Respondent has not been using the trademark UBLOXGPS in commerce in China or elsewhere. Rather, the Respondent uses the Complainant's trademarked logo, only adding the letters "gps". No products are being offered under the trademark "ubloxgps" but products are offered for sale under the trademark of the Complainant. Shortly after this proceeding commenced, the disputed domain name was deactivated, a new domain name <u-gps.com> was registered on April 20, 2022, and began resolving to the same website. The Complainant finds this conduct highly suspicious.

B. Respondent

HTGNSS and U-BLOX are competing companies in the same category. What reason does the Complainant have to suppress competition by such bad means? The Respondent has registered Chinese trademark registration number 40432183 for UBLOXGPS through reasonable and lawful procedures. The disputed domain name is based on the trademark and the reasonable registration is a domain name.

6. Discussion and Findings

6.1 Preliminary Issues

A. Language of the Proceeding

According to Article 6 of the Policy and Article 8 of the Rules, the language of the proceeding shall be Chinese, unless otherwise agreed by the Parties or determined by the Panel in exceptional circumstances. The Complainant requests that the language of the proceeding be English. Its arguments are that the prior UDRP proceeding between the Parties was conducted in English, other websites allegedly connected to the Respondent are available in English, the Respondent replied to the Complainant's prior communications in English, and the disputed domain name is in Latin script and incorporates an English acronym ("gps").

The Panel observes that, although the Parties have not formally agreed on the language of the Complainant, they have both made their substantive submissions and communications in that language (with evidence of trademark registrations and screen captures annexed in its original language, whether Chinese or English). The Complainant filed its submissions in English and the Respondent replied to the contentions in the Complaint in that same language, even though the Respondent's initial, very brief email to the Center was in Chinese. The Parties have also previously corresponded with each other in English. Despite the Center having informed the Respondent in the Notification of the Complaint (in both Chinese and English) that the Complainant had requested that English be the language of the proceeding, that the Respondent could comment on the language of the proceeding, and that the Response could be filed in either Chinese or English, he did not submit any further response.

Further, Article 31 of the Rules provides, *inter alia*, that in all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, give out its reasons and provide the evidence. The Panel shall also ensure that the proceedings take place with due expedition. In the above circumstances, the Panel notes that both Parties have taken the opportunity to present their respective cases. The Panel considers that translation of their submissions and communications would create an undue delay, whereas accepting them as filed in their original language will not cause unfairness to either Party.

Having considered all the circumstances, this Panel determines under Article 6 of the Policy and Article 8 of the Rules that the language of the proceeding is English but the Panel will accept the evidence submitted in Chinese without translation.

B. Supplemental Filing

The Complainant made an unsolicited supplemental filing on May 4, 2022, after the Respondent's email of April 26, 2022 and prior to the appointment of the Panel. In the supplemental filing, the Complainant submitted that new facts had been brought to its attention after the Complaint was filed, specifically, the Chinese trademark registration for UBLOXGPS, and a change in use of the disputed domain name.

Article 32 of the Rules provides, relevantly, that in principle the Panel would not accept additional documents submitted by either Party besides the Complaint and the Response, unless the Parties have additional agreement or the Panel has made additional decision in that respect. The Panel also recalls the provisions of Article 31 of the Rules (set out in Section 6.1A above).

The Panel notes that information regarding the Chinese trademark registration for UBLOXGPS is central to the defense and was provided by the Respondent after the Complaint was filed, and the UBLOXGPS trademark is not registered under the Respondent's own name but under his company's name. The Panel considers that the Complainant should have the opportunity to address this fact, that the Respondent should have an opportunity to comment, and that neither procedure need delay the proceeding. Accordingly, the Panel decides to accept the Complainant's supplemental filing and will consider it according to its relevance, materiality and weight. The Panel issued Administrative Panel Procedural Order No. 1, in which it gave the Respondent an opportunity to comment, but the Respondent did not submit any comments. The decision due date is unchanged.

6.2 Substantive Issues

Article 8 of the Policy provides that a complaint against a registered domain name shall be supported if the following conditions are fulfilled:

- (a) the disputed domain name is identical with or confusingly similar to the Complainant's name or mark in which the Complainant has civil rights or interests;
- (b) the disputed domain name holder has no rights or legitimate interests in respect of the disputed domain name or major part of the disputed domain name;

(c) the disputed domain name holder has registered or has been using the disputed domain name in bad faith.

Article 7 of the Policy states that the Complainant and the Respondent shall bear the burden of proof for their own claims.

A. Identical or Confusingly Similar to the Complainant's name or mark in which the Complainant has civil rights or interests

Based on the evidence submitted, the Panel finds that the Complainant has civil rights in the U-BLOX mark and in the UBLOX and device mark.

The disputed domain name incorporates the Complainant's U-BLOX mark as its initial element, omitting only the hyphen. The disputed domain name also wholly incorporates the textual element of the Complainant's UBLOX and device mark. The figurative elements of the latter mark may be disregarded for the purposes of the first element of Article 8 of the Policy as they cannot be reflected in a domain name for technical reasons.

The disputed domain name adds the letters "gps", which are an acronym for "global positioning system". Given that the U-BLOX mark (minus the hyphen) remains recognizable within the disputed domain name, the Panel does not consider that the addition of this acronym prevents a finding of confusing similarity with the Complainant's mark.

The only other element in the disputed domain name is a ccTLD extension (".cn"). This element is generally disregarded in the comparison between a domain name and a trademark for the purposes of the first element in Article 8 of the Policy. See *VIOOH Limited / JCDecaux SA v. 郑碧莲 (Zheng Bi Lian)*, WIPO Case No. [DCN2019-0007](#).

Therefore, the Panel finds that the disputed domain name is confusingly similar to a mark in which the Complainant has civil rights. The Complainant has satisfied the first element in Article 8 of the Policy.

B. Rights or Legitimate Interests

Article 10 of the Policy sets out the following circumstances which, without limitation, if found by the panel, may be evidence of the respondent's rights to, or legitimate interests in, a disputed domain name, for the purposes of Article 8 of the Policy:

- (a) the Respondent uses of the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services;
- (b) the Respondent has been commonly known by the [disputed] domain name, even if he has acquired no trademark or service mark rights;
- (c) the Respondent is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent of or commercial gain to misleadingly divert consumers.

With respect to the first and third circumstances set out above, the disputed domain name formerly resolved to a website that prominently displayed the Complainant's UBLOX and device mark with the letters "GPS" and displayed images of global positioning system products, including the Complainant's products. Regardless of whether or not the site actually offered the Complainant's products for sale, and regardless of whether any such products were genuine, the site offers for sale competitor products of the HTGNSS brand. Moreover, the website did not disclose the Respondent's lack of relationship with the Complainant. Currently, the disputed domain name is passively held. In view of these circumstances, the Panel considers that the Complainant has shown that the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods and services, nor is he making a legitimate noncommercial or fair use of the disputed domain name.

With respect to the second circumstance set out above, the Respondent's name is “冯澎涛” (which may be transliterated as Feng Pengtao), or “Peter.feng”, not the disputed domain name. Nothing on the record indicates that he has been commonly known by the disputed domain name.

In summary, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Turning to the Respondent's arguments, he submits evidence of a Chinese trademark registration for UBLOXGPS, specifying GPS equipment and other goods in class 9. The trademark holder is 深圳市环天世纪科技有限公司 (which may be translated as “Shenzhen Huantian Century Technology Co., Ltd”). The Respondent claims ownership of this trademark and the Complaint also identifies this company in the Respondent's contact information. Assuming that the Respondent is an officer or owner of the trademark holder, the Panel notes that the trademark is identical to the disputed domain name and was registered on October 21, 2020, prior to the filing of the Complaint. While this would ordinarily support a finding of rights or legitimate interests in the disputed domain name, a respondent's trademark rights do not automatically generate such rights or legitimate interests. See, for example, *PCCW OTT (Hong Kong) Limited v. 广州万加网络科技有限公司 (guang zhou wan jia wang luo ke ji you xian gong si)*, WIPO Case No. [DCN2020-0021](#). In the Panel's view, a respondent's trademark rights would not justify the denial of a complaint where those rights were not obtained for *bona fide* use but primarily to legitimize registration of a domain name and thereby circumvent the application of a domain name dispute resolution policy.

In the present case, the Panel notes that the UBLOXGPS trademark application was filed on August 18, 2019, prior to the registration of the disputed domain name on December 24, 2019. The trademark application underwent a substantive examination and the registration was obtained in the country in which the Respondent operates (*i.e.*, China). However, the trademark application was filed after the Respondent received notice of the Complainant's trademark rights in connection with another website that also displayed the Complainant's U-BLOX products, which was associated with the same domain name in another Top-Level Domain (“TLD”, *i.e.*, “.com”). By the time that the Center notified the Respondent of the commencement of the UDRP proceeding, the trademark application had not yet proceeded to grant and the Respondent registered the disputed domain name in the current proceeding within a day. It may be inferred that the trademark application was filed in order to circumvent the application of a domain name dispute resolution policy to a “ubloxgps” domain name, whether in the .com TLD or a subsequently-registered domain name in another TLD, such as the disputed domain name. This inference is confirmed by the way in which the Respondent has used the trademark. The website formerly associated with the disputed domain name prominently displayed the UBLOXGPS trademark in the form of the Complainant's UBLOX and device mark followed by the acronym “GPS” to describe the Complainant's global positioning system products. The Respondent does not offer any actual UBLOXGPS-branded products. Moreover, the website offered for sale competitor HTGNSS brand products. At the present time, the Respondent does not make active use of the disputed domain name. Nothing indicates that the trademark was obtained for the purpose of making a *bona fide* use of it rather than to take advantage of the Complainant's trademark. In view of these circumstances, the Panel does not consider that the UBLOXGPS trademark demonstrates that the Respondent has rights or legitimate interests in respect of the disputed domain name.

The Respondent does not assert any other rights or legitimate interests. Accordingly, the Respondent has failed to rebut the Complainant's *prima facie* case.

Therefore, based on the record of this proceeding, the Panel finds that the Complainant has satisfied the second element in Article 8 of the Policy.

C. Registered or Used in Bad Faith

Article 9 of the Policy provides that certain circumstances may be evidence of the registration or use of a domain name in bad faith. The third of these is as follows:

- (c) the disputed domain name holder has registered or acquired the [disputed] domain name for the

purpose of damaging the Complainant's reputation, disrupting the Complainant's normal business or creating confusion with the Complainant's name or mark so as to mislead the public.

As regards registration, the disputed domain name was registered in 2019, years after the registration of the Complainant's trademarks, including in China, where the Respondent is resident. The disputed domain name incorporates the U-BLOX mark, minus the hyphen, or the UBLOX and device mark, minus the figurative elements, and combines that with the acronym "gps", which describes the Complainant's products. The website to which the disputed domain name formerly resolved displayed images of, among other things, the Complainant's U-BLOX products. Moreover, the Respondent registered the disputed domain name after it had received a cease-and-desist letter notifying him of the Complainant's trademark rights, and on the day after the Center notified him of a complaint in a UDRP proceeding based on the Complainant's trademark rights. See *u-blox Holding AG v. Peter.feng (冯澎涛)*, *supra*. The Respondent's website associated with the ".com" domain name at issue in the UDRP proceeding also displayed images of the Complainant's U-BLOX products. In these circumstances, it is abundantly clear that the Respondent had the Complainant's trademark in mind when he registered the disputed domain name at issue in the present proceeding.

As regards use, the disputed domain name formerly resolved to a website that prominently displayed the Complainant's UBLOX and device mark followed by the acronym "GPS" as its title. The site displayed images of the Complainant's products, images of competitor HTGNSS brand products (which it recommended), and provided information regarding the Complainant's products. In these circumstances, and given the findings in Section 6.2B above, the Panel finds that the Respondent has registered the disputed domain name for the purpose of creating confusion with the Complainant's name or mark so as to mislead the public within the terms of Article 9(c) of the Policy.

The Panel takes note that the use of the disputed domain name has recently changed, and that it no longer resolves to an active website. This change in use does not alter the Panel's conclusion; if anything, it may be a further indication of bad faith.

Therefore, the Panel finds that the Respondent registered and has been using the disputed domain name in bad faith. The Complainant has satisfied the third element in Article 8 of the Policy.

7. Decision

For the foregoing reasons, in accordance with Articles 14 of the Policy and 40 of the Rules, the Panel orders that the disputed domain name <ubloxgps.cn> be transferred to the Complainant.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: June 14, 2022