

## ADMINISTRATIVE PANEL DECISION

Landis+Gyr AG v. 王志安  
Case No. DCN2023-0034

### 1. The Parties

The Complainant is Landis+Gyr AG, Switzerland, represented by SafeNames Ltd., United Kingdom.

The Respondent is 王志安, China.

### 2. The Domain Name and Registrar

The disputed domain name <landis-gyr.com.cn> is registered with 腾讯云计算（北京）有限责任公司 (the “Registrar”).

### 3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on May 14, 2023. On May 15, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 15, 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 (Redacted for privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 19, 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 in English on May 22, 2023.

The Center verified that the Complaint together with the amended 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 and 6, and Articles 14 to 16, and the WIPO Supplemental Rules, Paragraph 4(d), the Center formally notified the Respondent in English and Chinese of the Complaint, and the proceedings commenced on May 23, 2023. In accordance with the Rules, Article 17 and 49, the due date for Response was June 12, 2023. The Respondent did not submit any response. The Center received the Respondent’s communications by email on June 5, 2023, June 13, 2023, and July 21, 2023. On June 13, 2023, the Center informed the Parties that it would proceed to panel appointment.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on July 10, 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, Article 29.

#### 4. Factual Background

The Complainant was founded in 1896 and is a Swiss publicly traded multinational corporation which provides energy management solutions to customers across the Americas, Europe and the Asia Pacific regions. The Complainant particularly offers a broad portfolio of energy management solutions products and services to over 3,500 utility companies worldwide. It provides a wide range of devices including that of communications units, electricity meters, and heating & cooling meters. The Complainant has a widespread global presence, operating in more than 30 countries. It has over 6,800 employees and made a revenue of USD 1.464 billion in financial year 2021.

The Complainant owns a trademark portfolio protecting the mark LANDIS & GYR (and also its alternative series of marks for LANDIS+GYR), including, amongst others, the following trademark registrations, European Union Trade Mark registration number 000921072 for the LANDIS & GYR word mark, registered on November 23, 2000; International trademark registration number 713229 for the LANDIS & GYR mark, registered on November 4, 1998, and designating, *inter alia*, China; and Chinese trademark registration number G803815 for the LANDIS+GYR mark, registered on January 9, 2003. The Complainant also provides evidence that it has a strong online presence and owns a portfolio of official domain names incorporating the LANDIS & GYR mark, including its official domain name for Chinese speakers <landisgyr.com.cn>, registered on July 11, 2002.

The disputed domain name was registered on July 18, 2020, and is therefore of a later date than the abovementioned registered trademarks of the Complainant. The Complainant submits evidence that the disputed domain name directs to an inactive website.

The Panel also notes that the Complainant has attempted to settle this matter amicably by sending a cease-and-desist letter to the Respondent on January 30, 2023, but that the Respondent did not reply to this letter.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant essentially contends that the disputed domain name is identical to its trademark for LANDIS & GYR, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name was registered and is being used in bad faith.

The Complainant claims that its trademarks are distinctive and well known, and refers to a prior decision in which the panel recognized its rights in its LANDIS & GYR marks (see *Landis+Gyr AG v. 王志安(Wang Zhi An)*, WIPO Case No. [DCN2020-0017](#)). The Complainant also submits company and marketing information regarding its business operations. The Complainant particularly claims that there are no justifications for the use of its trademark in the disputed domain name and contends that the Respondent has not used or prepared to use the disputed domain name, which only resolves to an inactive website. The Complainant claims that this does not confer any rights or legitimate interests on the Respondent in respect of the disputed domain name. Furthermore, the Complainant claims that given its ongoing business activities, including in China, and given the distinctiveness and fame of its LANDIS & GYR trademarks, the Respondent has registered and is using the disputed domain name in bad faith. Finally, the Complainant also contends that the Respondent has engaged in a pattern of registering numerous domain names comprising the brands of third parties, which also shows its bad faith.

The Complainant requests that the disputed domain name be transferred to it.

## **B. Respondent**

The Respondent did not submit any formal response. However, the Center received the Respondent's communications by email on June 5, 2023, June 13, 2023, and July 21, 2023. In these communications, the Respondent essentially requests the cancellation of the disputed domain name, but at the same time contests the transfer of the disputed domain name to the Complainant, without, however, providing any arguments on the merits or any evidence. The Respondent submitted that the Complainant filed the Complaint in bad faith on the basis that in the previous case *Landis+Gyr AG v. 王志安 (Wang Zhi An)*, WIPO Case No. [DCN2020-0017](#), the Panel ordered transfer of the domain name <landisgyr.cn> to the Complainant but the Complainant has not used the domain name.

## **6. Discussion and Findings**

### **6.1. Preliminary Issue: Language of the Proceeding**

Pursuant to Article 6 of the Policy, Article 8 of the Rules and Paragraph 18 of the WIPO Supplemental Rules, unless otherwise agreed by the Parties, or determined by the Panel under exceptional circumstances, the language of the administrative proceeding shall be Chinese.

The Complainant filed its Complaint in English, including a request that the language of the proceeding be English. The Center formally notified the Respondent in Chinese and English of the Complaint and of the commencement of the proceeding, including that the Complaint was filed in English. The Center also notified the Respondent in Chinese and English of its right to file a Response in either Chinese or English, and to comment on the language of the proceeding in its Response. Nevertheless, the Respondent did not submit any formal response or comment on the language of proceeding in this proceeding.

The present Panel, which is familiar with both English and Chinese, has carefully considered all elements of this case, in particular, the Complainant's request that the language of the proceeding be English, the lack of comment on the language of the proceeding and the lack of formal response on the merits from the Respondent (the Panel notes that the Respondent was duly invited to respond in either Chinese or English but chose not to respond formally); the fact that the disputed domain name is written in Latin letters and contains the entirety of the Complainant's trademark LANDIS & GYR (provided that the ampersand is replaced by the hyphen); the evidence produced by the Complainant which proves that the Respondent has registered a number of domain names including third party brands in languages other than Chinese; the fact that the Respondent replied to the Complainant's cease-and-desist letter in English in another domain name dispute; and the fact that Chinese as the language of the proceeding could lead to unwarranted delays and additional costs for the Complainant. In view of these exceptional circumstances, the Panel grants the Complainant's request, and decides that the language of this administrative proceeding shall be English.

### **6.2. Discussion and Findings on the Merits**

The Policy requires the Complainant to prove three elements:

- (a) the disputed domain name is identical or confusingly similar to the Complainant's name or mark in which the Complainant has civil rights or interests;
- (b) the Respondent has no rights or legitimate interests in respect of the disputed domain name or major part of the disputed domain name; and
- (c) the Respondent has registered or has been using the disputed domain name in bad faith.

Based on the evidence and arguments submitted, the Panel's findings are as follows:

### **A. Identical or Confusingly Similar to the Complainant's Name or Mark in which the Complainant has Civil Rights or Interests**

The Panel finds that the Complainant has shown that it has valid rights in the mark LANDIS & GYR based on its registration of the same as a trademark in several jurisdictions, including in China.

Moreover, as to whether the disputed domain name is identical or confusingly similar to the Complainant's aforementioned trademark, the Panel finds that the disputed domain name consists of only the Complainant's registered trademark LANDIS & GYR except that the ampersand (which cannot be used in the domain name system) was replaced by the hyphen and that second-level domain ".com" and the country code Top-Level Domain ("ccTLD") ".cn" was added. The hyphen, the second-level domain ".com", and the applicable ccTLD (here ".cn") may be disregarded by the Panel under the first element confusing similarity test. Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark in which the Complainant has civil rights or interests and the first element required by the Policy is fulfilled.

### **B. Rights or Legitimate Interests**

On the basis of the evidence and arguments submitted, the Panel finds that the Complainant makes out a *prima facie* case that the Respondent is not, and has never been, an authorized reseller, service provider, licensee or distributor of the Complainant, is not a *bona fide* provider of goods or services under the disputed domain name and is not making legitimate noncommercial use or fair use of the disputed domain name. The Panel also notes that the Respondent is not commonly known by the disputed domain name. As such, the Panel finds that the burden of production regarding this element shifts to the Respondent, see in this regard also earlier decisions such as *OLT and Olympia Le-Tan IP S.à r.l. v. 何荣财 (herong cai)*, WIPO Case No. [DCN2021-0044](#). However, no relevant evidence or arguments have been submitted by the Respondent in reply.

Upon review of the facts, the Panel notes that the disputed domain name directs to an inactive website and that there are no elements in this case that point to the Respondent having made any reasonable and demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. In this regard, the Panel concludes that holding a domain name passively, without making any use of it, does not confer any rights or legitimate interests on the Respondent, see in this regard also earlier decisions such as *OLT and Olympia Le-Tan IP S.à r.l. v. 何荣财 (herong cai)*, WIPO Case No. [DCN2021-0044](#).

Furthermore, the nature of the disputed domain name, being almost identical to both the Complainant's trademark for LANDIS & GYR and to its official domain name used for Chinese speakers, namely <landisgyr.com.cn>, carries a serious risk of implied affiliation and cannot constitute fair use, as it effectively impersonates or suggests sponsorship or endorsement by the Complainant.

The Panel therefore considers that none of the circumstances of rights or legitimate interests envisaged by Article 10 of the Policy apply. The Panel also notes that no evidence or arguments have been submitted by the Respondent in reply. The Panel therefore finds that the Complainant has satisfied the requirements for the second element under the Policy.

### **C. Registered or Used in Bad Faith**

The registration of the disputed domain name, which is almost identical to the Complainant's intensively used trademarks, is clearly intended to mislead and divert consumers away from the Complainant's official website hosted at its official domain names, to the disputed domain name. Moreover, the Panel considers the disputed domain name to be so closely linked and so obviously connected to the Complainant and its trademarks that the Respondent's registration of this disputed domain name persuasively points towards the Respondent's bad faith. Furthermore, given the distinctiveness and well-established reputation of the Complainant's trademarks, including in China through the Complainant's ongoing business operations in

China, the Panel finds that the registration of the disputed domain name clearly and purposefully targeted such trademarks, and that the Respondent therefore knew of the existence of the Complainant's trademarks. In the Panel's view, the preceding elements clearly establish the bad faith of the Respondent in registering the disputed domain name.

As to use in bad faith, the disputed domain name links to an inactive website. However, the Panel considers that holding a domain name passively does not prevent a finding of bad faith. The Panel has reviewed all elements of this case, and attributes particular relevance to the fact that the disputed domain name contains the entirety of the Complainant's trademark (provided that the ampersand was replaced by the hyphen), to the high degree of distinctiveness and fame of the Complainant's trademarks, including in China, to the fact that the Respondent did not reply to the Complainant's cease-and-desist letter, and to the unlikelihood of any good faith use to which the disputed domain name may be put by the Respondent. In these circumstances, the Panel considers that the passive holding of the disputed domain name by the Respondent does not prevent a finding of bad faith. On the basis of the foregoing elements, the Panel finds that it has been demonstrated that the Respondent has used the disputed domain name in bad faith.

Moreover, the Panel finds that the Complainant sufficiently proves that the Respondent has been engaged in a pattern of registering domain names comprising the brands of third parties, which also shows its bad faith. In this regard, the Panel refers to the evidence submitted by the Complainant, from which it can be concluded that the Respondent has registered a number of domain names including distinctive third party trademarks such as <baumuller.com.cn>.

Finally, the Respondent has failed to provide any relevant response or evidence to establish its good faith or absence of bad faith. The Panel therefore finds that the Complainant has satisfied the requirements of the third element under 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, <landis-gyr.com.cn>, be transferred to the Complainant.

*/Deanna Wong Wai Man/*

**Deanna Wong Wai Man**

Sole Panelist

Date: July 24, 2023