

ADMINISTRATIVE PANEL DECISION

Läderach (Schweiz) AG v. 蒋莹

Case No. DCN2024-0034

1. The Parties

The Complainant is Läderach (Schweiz) AG, Switzerland, represented by Cosmovici Intellectual Property Sarl, Switzerland.

The Respondent is 蒋莹, China.

2. The Domain Name and Registrar

The disputed domain name <laederach.cn> is registered with 茂名市群英网络有限公司 (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on July 24, 2024. On July 24, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 13, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the complete contact details. The Center sent an email communication to the Complainant on August 14, 2024 providing the complete contact details for the registrant disclosed by the Registrar.

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 and 6, and Articles 14 to 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 August 15, 2024. In accordance with the Rules, Articles 17 and 49, the due date for Response was September 4, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 9, 2024.

The Center appointed Rachel Tan as the sole panelist in this matter on September 17, 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, Article 29.

4. Factual Background

The Complainant is a leading company based in Switzerland which has been manufacturing fresh premium chocolate since 1962. Its products are now sold in more than 100 Läderach stores with sales locations in 15 countries, including in Europe, the United States of America, and Canada as well as via franchise partners in the Middle East and Asia.

The Complainant owns a range of trade mark registrations for its LÄDERACH mark or marks that incorporate LÄDERACH worldwide (collectively the “LÄDERACH mark”). For example, European Union Trade Mark Registration No. 005032371 for LÄDERACH registered on April 18, 2007 in Class 30, International Trade Mark Registration No. 983800 for LÄDERACH CHOCOLATIER SUISSE registered on October 10, 2008 which, inter alia, designates China in Class 30 and Swiss Trade Mark Registration No. 567864 for LÄDERACH CHOCOLATIER SUISSE registered on February 11, 2008 in Class 30.

The Complainant is also the owner of a range of domain names incorporating the LÄDERACH mark, including <laderach.com>, <laderach.com.cn>, <laderach.swiss> and <laederach.swiss>.

The Respondent is 蒋莹, China.

The disputed domain name was registered on March 25, 2024. At the time of the Complaint and this Decision, the disputed domain name resolves to a login page in Chinese and English, displaying an online form requiring users' credentials to access. The website also indicates that the disputed domain name is currently used by “My Private Website” and offering it for sale with the following message, “If you want this domain name, please contact WeChat: [...], or Email: [...] (# Replace with @).”

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical with or confusingly similar to its LÄDERACH mark. The disputed domain name fully incorporates the LÄDERACH mark. The literal translation of the umlaut letter “ä” is “ae”. Hence the missing umlaut accent cannot differentiate the LÄDERACH mark from the disputed domain name.

The Complainant further alleges that the Respondent has no rights nor legitimate interests in the disputed domain name. The Respondent has not been licensed or otherwise permitted by the Complainant to use its LÄDERACH mark or to register the disputed domain name. There is no and has never been any association between the Respondent and the Complainant. The Complainant claims that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. Instead, the Respondent aims at commercial gain by misleadingly diverting consumers to his or her website by riding on the fame of the LÄDERACH mark.

The Complainant finally argues that the disputed domain name was registered in bad faith. The message displayed on the website is an indication that the Respondent intends to sell or transfer the disputed domain name. The incorporation of the Complainant's well-known LÄDERACH mark in the disputed domain name, combined with the offer to sell it, suggests an attempt to obtain unjustified benefits by leveraging the Complainant's trade mark and brand recognition.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

According to Article 6 of the Policy and Article 8 of the Rules, unless otherwise agreed by the Parties, or determined in exceptional cases by the Panel, the language of the domain name dispute resolution proceedings shall be Chinese.

The Complainant has filed its Complaint in English and has requested that English be the language for the proceeding under the following main grounds:

- (a) the Complainant is not able to communicate in Chinese;
- (b) if the Complainant should submit all documents in Chinese, the proceedings will be unduly delayed, and the Complainant would have to incur substantial expenses for translation; and
- (c) the disputed domain name is registered in Latin script, rather than Chinese characters.

In accordance with Article 31 of the Rules, the Panel shall ensure that each Party be treated with equality and given a fair opportunity to present its case. The Panel shall also ensure that the proceedings take place with due expedition. In accordance with Article 6 of the Policy and Article 8 of the Rules, the Panel hereby determines that the language of the proceeding shall be in English after considering the following circumstances:

- (a) the Center has notified the Respondent in both English and Chinese of the proceeding;
- (b) the Respondent has not commented on the language of the proceeding; and
- (c) an order for the translation of the Complaint will result in significant expenses for the Complainant and a delay in the proceedings.

6.2 Substantive Issues

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

The Panel is satisfied that the Complainant has adduced evidence to demonstrate its established rights in its LÄDERACH mark.

The Panel notes that the LÄDERACH mark is almost wholly encompassed within the disputed domain name. Moreover, the umlaut letter "ä" is commonly used and written as "ae" in German. The LÄDERACH mark is therefore instantly recognizable in the disputed domain name. It is sufficient to establish a confusing similarity between the Complainant's mark and the disputed domain name.

Lastly, it is permissible for the Panel to disregard the country code Top-Level Domain in the disputed domain name, *i.e.*, ".cn" when assessing the confusing similarity between the disputed domain name and the Complainant's mark. See *OLT and Olympia Le-Tan IP S.à r.l. v. 何荣财 (herong cai)*, WIPO Case No. [DCN2021-0044](#).

The Complainant has therefore satisfied the first element under Article 8(a) of the Policy.

B. Rights or Legitimate Interests

The Complainant states that the Respondent does not have the trade mark rights or legitimate interests to the disputed domain name. The Complainant has not licensed the Respondent in any form to use its trade mark or to register and use a domain name containing its LÄDERACH mark, and there is no evidence that the Respondent is commonly known under the disputed domain name.

Based on the evidence and reasons submitted by the Complainant, the Panel finds that the Complainant has provided prima facie evidence that the Respondent has no rights or legitimate interests to the disputed domain name, thus the burden of production on this element shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. However, the Respondent has not put forth evidence to demonstrate that he or she enjoys rights or legitimate interests in the disputed domain name. As such, the Respondent has failed to rebut the Complainant's prima facie showing of the Respondent's lack of rights or legitimate interests in the disputed domain name, and none of the circumstances of Article 10 of the Policy is applicable in this case.

Moreover, the disputed domain name is almost identical to both the Complainant's trade mark for LÄDERACH and to its domain name <laderach.com.cn>, and there is a risk that Internet users will not notice the subtle difference. Therefore, the Panel finds that the nature of the disputed domain name carries a risk of implied affiliation and cannot constitute fair use, as it may mistakenly be seen as effectively impersonates or suggests endorsement by the Complainant.

Accordingly, the second element of Article 8(b) of the Policy is therefore satisfied.

C. Registered or Used in Bad Faith

The Complainant's LÄDERACH mark has been widely registered around the world, including in China. The disputed domain name was registered well after the registration of the Complainant's LÄDERACH mark. Through extensive use and advertising, the Complainant's LÄDERACH mark is known throughout the world. Moreover, search results using the terms "läderach" and "laederach" on the Internet direct Internet users to the Complainant and its business, which indicates that an exclusive connection between the LÄDERACH mark and the Complainant has been established. As such, the Respondent either knew or should have known of the Complainant's LÄDERACH mark when registering the disputed domain name.

As to use of the disputed domain name in bad faith by the Respondent, the disputed domain name currently links to a website displaying an invitation in English to submit offers for the sale of the disputed domain name. This leads the Panel to conclude that the Respondent is using the disputed domain name to try to sell it, to the Complainant, who is the owner of the LÄDERACH mark or to a competitor of the Complainant, and to obtain unjustified benefits through such sale. This constitutes direct evidence of bad faith of the Respondent under Article 9(a) of the Policy.

The Respondent has kept silent in the face of the Complainant's allegations of bad faith. Taking into account these circumstances, the Panel finds that the Respondent should have known of the Complainant before registering the disputed domain name and, considering the Respondent's lack of rights or legitimate interests, and by continuing to hold the disputed domain name, the Panel is led to conclude that the disputed domain name was registered and is being used in bad faith.

The Complainant has therefore satisfied the third element under Article 8(c) 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 <laederach.cn> be transferred to the Complainant.

/Rachel Tan/

Rachel Tan

Sole Panelist

Date: October 1, 2024