

ADMINISTRATIVE PANEL DECISION

Sullair, LLC v. 张伟
Case No. D2022-1635

1. The Parties

The Complainant is Sullair, LLC, United States of America (“United States”), represented by Fieldfisher LLP, United Kingdom.

The Respondent is 张伟, China.

2. The Domain Name and Registrar

The disputed domain name <sz-sullair.com> is registered with Domain International Services Limited (China) (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on May 5, 2022. On the following day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 7, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name that differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on May 9, 2022, 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 amendment to the Complaint in English on May 11, 2022.

On May 9, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On May 11, 2022, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

The Center verified that the Complaint together with the amendment to 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 English

and Chinese of the Complaint, and the proceedings commenced on May 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 6, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 7, 2022.

The Center appointed Matthew Kennedy as the sole panelist in this matter on June 16, 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, paragraph 7.

On June 27, 2022, the Complainant sent an email communication to the Center in which it requested that the disputed domain name be transferred to itself, rather than cancelled as it had requested in the Complaint. On June 29, 2022, the Panel issued Administrative Panel Procedural Order No. 1 in which it invited the Respondent to comment by July 3, 2022 on the Complainant's request to change the remedy in this matter. The Respondent did not submit any comments.

4. Factual Background

The Complainant manufactures air compressors. It has manufacturing plants in the United States and China. Its manufacturing plant in China is located in the city of Suzhou. The Complainant holds multiple trademark registrations in multiple jurisdictions, including Chinese trademark registrations numbers 759366 and 6544837, both for SULLAIR, registered on August 7, 1995 and March 28, 2010, respectively, specifying goods in classes 7 and 1, respectively. These trademark registrations remain current. The Complainant has also registered the domain name <sullair.com> that it uses in connection with a website where it provides information about itself and its products.

The Respondent is an individual resident in China. Due to the fact that his contact address in the Registrar's Whois database is incomplete, the Written Notice of the Complaint could not be delivered by courier.

The disputed domain name was registered on November 14, 2021. The disputed domain name does not resolve to any active website; rather, it is passively held.

5. Parties' Contentions

A. Complainant

The disputed domain name is confusingly similar to the Complainant's SULLAIR mark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. Any use by the Respondent of the disputed domain name would not relate to a *bona fide* offering of goods or services.

The disputed domain name was registered and is being used in bad faith. Any use of the disputed domain name by the Respondent would be to attempt to attract, for commercial gain, Internet users to his website by creating a likelihood of confusion with the Complainant's mark as to the source, affiliation, or endorsement of the Respondent's website or of a product or a service on that website.

The Complainant initially requested that the disputed domain name be cancelled but later requested that the disputed domain name be transferred to itself.

B. Respondent

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

6. Discussion and Findings

6.1. Language of the Proceeding

Paragraph 11(a) of the Rules provides that “unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding”. The Registrar confirmed that the Registration Agreement for the disputed domain name is in Chinese.

The Complainant requests that the language of the proceeding be English. Its main arguments are that translation of the Complaint would create an unreasonable burden and disproportionate expense for it.

Paragraph 10(b) and (c) of the Rules require the Panel to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding take place with due expedition. Prior UDRP panels have decided that the choice of language of the proceeding should not create an undue burden for the parties. See, for example, *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#); *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. Ltd.*, WIPO Case No. [D2008-0293](#).

The Panel observes that the Complaint and amendment to the Complaint in this proceeding were filed in English. Despite the Center having sent an email regarding the language of the proceeding, and the Written Notice, in both Chinese and English, the Respondent did not comment on the language of the proceeding or express any interest in otherwise participating in this proceeding. Therefore, the Panel considers that requiring the Complainant to translate the Complaint into Chinese would create an undue burden and delay whereas accepting the Complaint in English does not cause prejudice to either Party.

Having considered all the circumstances above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English. The Panel would have accepted a Response in Chinese, but none was filed.

6.2 Substantive Issues

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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

Based on the evidence submitted, the Panel finds that the Complainant has rights in the SULLAIR mark.

The disputed domain name wholly incorporates the SULLAIR mark, which is separated by a hyphen from the letters “sz”, which can be understood as a reference to the city of Suzhou. Given that the mark remains clearly recognizable within the mark, the addition of the letters does not prevent a finding of confusing similarity between the disputed domain name and the mark. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.8.

The only additional element in the disputed domain name is a generic Top-Level Domain (“gTLD”) suffix “.com”. As a mere standard requirement of domain name registration, this element may be disregarded in the comparison between the disputed domain name and the SULLAIR mark. See [WIPO Overview 3.0](#), section 1.11.

Therefore, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the panel, shall demonstrate that the respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- (i) before any notice to [the respondent] of the dispute, [the respondent’s] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [the respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the respondent has] acquired no trademark or service mark rights; or
- (iii) [the respondent is] making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

As regards the first and third circumstances set out above, the disputed domain name is passively held. That is not a use in connection with a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use of the disputed domain name that would generate rights or legitimate interests in respect of the disputed domain name.

As regards the second circumstance set out above, the Respondent’s name is listed in the Registrar’s Whois database as “张伟” (which may be transliterated as “Zhang Wei”), not the disputed domain name. There is no evidence on the record that the Respondent is 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. The Respondent failed to rebut that case because he did not respond to the Complaint.

Therefore, based on the record of this proceeding, the Panel finds that the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that certain circumstances, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith, but these are not an exhaustive list.

The disputed domain name was registered in 2021, years after the Complainant obtained its trademark registrations for SULLAIR, including in China, where the Respondent is resident. The trademark SULLAIR is a coined term with no other apparent meaning than as a reference to the Complainant and its products. The disputed domain name incorporates the SULLAIR mark exactly. The mark is separated by a hyphen from the letters “sz”, which can be understood as a reference to the city of Suzhou, where the Complainant has its manufacturing plant in China. In view of these circumstances, the Panel finds it more likely than not that the Respondent had the Complainant and its SULLAIR trademark in mind at the time that he registered the disputed domain name.

The disputed domain name is passively held but that circumstance does not preclude a finding of use in bad faith. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). In the present dispute, the Complainant has acquired a strong reputation in the SULLAIR mark in connection with its air compressors through longstanding and widespread use, including in China, where it has a manufacturing plant. The disputed domain name wholly incorporates the SULLAIR mark separated by a hyphen from two letters that may be understood as a reference to the city of Suzhou, where the Complainant has its manufacturing plant in China. In the Panel's view, the most likely intended use of this disputed domain name is to suggest a false affiliation with the Complainant. The Respondent provides no explanation of any other potential use of the disputed domain name. Further, the Respondent has provided an incomplete contact street address to the Registrar, implying that he does not wish to be located. In these circumstances, the Panel considers that the Respondent is using the disputed domain name in bad faith.

Therefore, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant has satisfied the third element in paragraph 4(a) of the Policy.

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 <sz-sullair.com> be transferred to the Complainant.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: June 28, 2022