

ADMINISTRATIVE PANEL DECISION

Aveo v. 金崇孟 (jin chong meng), 深圳华誉文旅集团有限公司 (shen zhen hua yu wen lv ji tuan you xian gong si)

Case No. D2022-3095

1. The Parties

Complainant is Aveo, France, represented by Nameshield, France.

Respondent is 金崇孟 (jin chong meng), 深圳华誉文旅集团有限公司 (shen zhen hua yu wen lv ji tuan you xian gong si), China.

2. The Domain Name and Registrar

The disputed domain name <avemcb.top> is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on August 22, 2022. On August 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 24, 2022, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing more contact details. The Center sent an email communication to Complainant on August 24, 2022, providing the registrant and detailed contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint in English on August 25, 2022.

On August 24, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On August 25, 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 amended 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 Respondent in English and Chinese of the Complaint, and the proceedings commenced on September 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 21, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on September 22, 2022.

The Center appointed Yijun Tian as the sole panelist in this matter on September 30, 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.

4. Factual Background

A. Complainant

Complainant, Aveo, is a company incorporated in France. Found in 2013, Complainant is a leading company providing solutions for points of sale, cashless card systems and banking OT services, with 1,500 employees.

Complainant is the exclusive owner of several AVEM trademarks worldwide, including the European Union ("EU") Trademark registered on September 25, 2015 (the EU registration number 014098271), and the French Trademark registered on December 19, 2014 (the French registration number 4143498).

B. Respondent

Respondent is 金崇孟 (jin chong meng), 深圳华誉文旅集团有限公司 (shen zhen hua yu wen lv ji tuan you xian gong si), China.

C. The Disputed Domain Name

The disputed domain name <avemcb.top> was registered on March 17, 2022. The disputed domain name resolves to a website which is inactive.

5. Parties' Contentions

A. Complainant

Complainant contends that the disputed domain name is confusingly similar to Complainant's AVEM trademarks. The disputed domain name incorporates the AVEM mark in its entirety with the addition of the letters "cb" (for "carte bancaire" meaning "credit card" in French), and the generic Top-Level Domain ("gTLD") ".top". The addition of the letters "cb" is not sufficient to eliminate the confusing similarity. On the contrary, it worsens the likelihood of confusion, as it refers to Complainant's activities of providing payment solutions. The gTLD ".top" is irrelevant when assessing whether a domain name is identical or confusingly similar to a mark as it is a functional element.

Complainant contends that Respondent has no rights or legitimate interests in the disputed domain name.

Complainant contends that the disputed domain name was registered and is being used in bad faith.

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

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

6.1 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 specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement. From the evidence presented on the record, no agreement appears to have been entered into between Complainant and Respondent to the effect that the language of the proceeding should be English. Complainant filed initially its Complaint in English, and has requested that English be the language of the proceeding for the following main reasons:

- a) The choice of language is related to the combined fact that the English language is the language most widely used in international relations and is one of the working languages of the Center;
- b) The disputed domain name is formed by words in Roman characters (ASCII) and not in Chinese script;
- c) In order to proceed in Chinese, Complainant would have had to retain specialized translation services at a cost very likely to be higher than the overall cost of these proceedings. The use of Chinese in this case would therefore impose a burden on Complainant which must be deemed significant in view of the low cost of these proceedings;
- d) The Complaint was written in English but the Center informed Respondent in Chinese and afforded "Respondent the opportunity to do all of the Chinese".

Respondent, 金崇孟 (jin chong meng), 深圳华誉文旅集团有限公司 (shen zhen hua yu wen lv ji tuan you xian gong si), did not make any submissions with respect to the language of the proceeding and did not object to the use of English as the language of the proceeding.

Paragraph 11(a) of the Rules allows the panel to determine the language of the proceeding having regard to all the circumstances. In particular, it is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding. In other words, it is important to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes (*Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. ltd.*, WIPO Case No. [D2008-0293](#); *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#)). The language finally decided by the panel for the proceeding should not be prejudicial to either one of the parties in its abilities to articulate the arguments for the case (*Groupe Auchan v. xmxzl*, WIPO Case No. [DCC2006-0004](#)). Section 4.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") further states:

"Noting the aim of conducting the proceedings with due expedition, paragraph 10 of the UDRP Rules vests a panel with authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case.

Against this background, panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios include (i) evidence showing that the respondent can understand the language of the complaint, (ii) the language/script of the domain name particularly where the same as that of the complainant's mark, (iii) any content on the webpage under the disputed domain name, (iv) prior cases involving the respondent in a particular language, (v) prior correspondence between the parties, (vi) potential unfairness or unwarranted delay in ordering the complainant to translate the complaint, (vii) evidence of other respondent-controlled domain names registered, used, or corresponding to a particular language, (viii) in cases involving multiple domain names, the use of a particular language agreement for some (but not all) of the disputed domain names, (ix) currencies accepted on the webpage under the disputed domain name,

or (x) other indicia tending to show that it would not be unfair to proceed in a language other than that of the registration agreement.” See also *L’Oreal S.A. v. MUNHYUNJA*, WIPO Case No. [D2003-0585](#).

On the record, Respondent appears to be located in China and is thus presumably not a native English speaker. However, considering the following, the Panel has decided that English should be the language of the proceeding: (a) the disputed domain name includes Latin characters rather than Chinese scripts; (b) the gTLD of the disputed domain name is the English word “top”. So the disputed domain name seems to be prepared for users worldwide, including English-speaking countries; (c) the Center has notified Respondent in both Chinese and English of the proceeding, and Respondent has indicated no objection to Complainant’s request that English be the language of the proceeding; and (d) the Center informed the Parties, in English and Chinese, that it would accept a Response in either English or Chinese. The Panel would have accepted a response in either English or Chinese but none was filed.

Accordingly, the Panel finds the choice of English as the language of the present proceeding is fair to both Parties and is not prejudicial to either one of the Parties in its ability to articulate the arguments for this case. Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that English shall be the language of the proceeding, and the decision will be rendered in English.

6.2 Substantive Issues

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that the disputed domain name should be cancelled or transferred:

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

On the basis of the evidence introduced by Complainant and in particular with regard to the content of the relevant provisions of the Policy (paragraphs 4(a)-(c)), the Panel concludes as follows:

A. Identical or Confusingly Similar

The Panel finds that Complainant has rights in the AVEM marks acquired through registration. The AVEM marks have been registered in France since 2014 and registered in the EU since 2015. The disputed domain name comprises the AVEM mark in its entirety. The disputed domain name only differs from Complainant’s trademark by the letters “cb”, and the gTLD “.top”. This does not prevent a finding of confusing similarity between Complainant’s registered trademark and the disputed domain name.

Previous UDRP panels have consistently held that a domain name is identical or confusingly similar to a trademark for purposes of the Policy “when the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name” (*Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale*, WIPO Case No. [D2000-0662](#)).

Further, in relation to the gTLD, section 1.11.1 of the [WIPO Overview 3.0](#) states: “The applicable Top Level Domain (‘TLD’) in a domain name (e.g., ‘.com’, ‘.club’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.”

The Panel therefore holds that the Complaint fulfils the first condition of paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that

Respondent has rights or legitimate interests in the disputed domain name:

(i) before any notice to Respondent of the dispute, the use by Respondent 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) Respondent has been commonly known by the disputed domain name, even if Respondent has acquired no trademark or service mark rights; or

(iii) 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 Complainant's trademarks.

The overall burden of proof on this element rests with Complainant. However, it is well established by previous UDRP panel decisions that once a complainant establishes a *prima facie* case that a respondent lacks rights or legitimate interests in a domain name, the burden of production shifts to the respondent to rebut the complainant's contentions. If the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. (*Danzas Holding AG, DHL Operations B.V. v. Ma Shikai*, WIPO Case No. [D2008-0441](#); [WIPO Overview 3.0](#), section 2.1, and cases cited therein).

Complainant has rights in the AVEM marks in France since 2014 and in the EU since 2015, which precede Respondent's registration of the disputed domain name in 2022. According to the Complaint, Complainant is a leading company providing solutions for points of sale, cashless card systems and banking OT services.

Moreover, Respondent is not an authorized dealer of AVEM branded products or services, and Respondent has not used the disputed domain name in connection with an active website. Complainant has therefore established a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name and thereby shifted the burden to Respondent to produce evidence to rebut this presumption (*The Argento Wine Company Limited v. Argento Beijing Trading Company*, WIPO Case No. [D2009-0610](#); *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

Based on the following reasons the Panel finds that Respondent has no rights or legitimate interests in the disputed domain name:

(a) There has been no evidence adduced to show that Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services. Respondent has not provided evidence of legitimate use of the disputed domain name. There has been no evidence to show that Complainant has licensed or otherwise permitted Respondent to use the AVEM marks or to apply for or use any domain name incorporating the AVEM marks;

(b) There has been no evidence adduced to show that Respondent has been commonly known by the disputed domain name. There has been no evidence adduced to show that Respondent has any registered trademark rights with respect to the disputed domain name. Respondent registered the disputed domain name in 2022, long after the AVEM marks became widely known. The disputed domain name is confusingly similar to Complainant's AVEM marks;

(c) There has been no evidence adduced to show that Respondent is making a legitimate noncommercial or fair use of the disputed domain name. The website resolved by the disputed domain name is currently inactive.

The Panel finds that Respondent has failed to rebut Complainant's *prima facie* showing that Respondent lacks rights or legitimate interests in the disputed domain name. The Panel therefore holds that the Complaint fulfils the second condition of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out four circumstances which, without limitation, shall be evidence of the registration and use of the disputed domain name in bad faith, namely:

(i) circumstances indicating that Respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to Complainant who is the owner of the trademark or service mark or to a competitor of Complainant, for valuable consideration in excess of Respondent's documented out-of-pocket costs directly related to the disputed domain name; or

(ii) Respondent has registered the disputed domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or

(iii) Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on the website or location.

The Panel concludes that upon the evidence of these circumstances and other relevant circumstances, it is adequate to conclude that Respondent has registered and used the disputed domain name in bad faith.

(a) Registration in Bad Faith

The Panel finds that Complainant has a widespread reputation in the AVEM marks with regard to its products or services. Complainant has registered its AVEM marks in France since 2014, and in the EU since 2015. As introduced above, it is a leading company specializing in providing payment solutions and has 1,500 employees. The dates of Complainant's trademark registrations precede Respondent's registration of the disputed domain name in 2022. In addition, the additional letters "cb" (which could be abbreviations for "carte bancaire" in French, meaning "credit card") may refer to Complainant's area of business. Therefore, it is not conceivable that Respondent would not have had actual notice of Complainant's trademark rights at the time of the registration of the disputed domain name.

Moreover, Respondent has chosen not to respond to Complainant's allegations. According to the UDRP decision in *The Argento Wine Company Limited v. Argento Beijing Trading Company*, *supra*, "the failure of the Respondent to respond to the Complaint further supports an inference of bad faith". See also *Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. [D2002-0787](#).

Thus, the Panel concludes that the disputed domain name was registered in bad faith.

(b) Use in Bad Faith

The disputed domain name is currently inactive. In terms of inactive domain names, section 3.3 of the [WIPO Overview 3.0](#) provides: "From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or 'coming soon' page) would not prevent a finding of bad faith under the doctrine of passive holding."

Section 3.3 of the [WIPO Overview 3.0](#) further states:

“While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.”

As discussed above, Complainant’s AVEM marks are widely known. Taking into account all the circumstances of this case, the Panel concludes that the current inactive use of the disputed domain name by Respondent is in bad faith also.

In the absence of convincing evidence and rebuttal to the contrary from Respondent, the Panel finds that the choice of the disputed domain name which is confusingly similar to Complainant’s prior registered trademark AVEM and the conduct of Respondent are indicative of registration and use of the disputed domain name in bad faith.

The Panel therefore holds that the Complaint fulfils the third condition of paragraph 4(a) of the Policy.

7. Decision

For all 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 <avemcb.top> be transferred to Complainant.

/Yijun Tian/

Yijun Tian

Sole Panelist

Date: November 4, 2022