

ADMINISTRATIVE PANEL DECISION

Telefonaktiebolaget LM Ericsson v. 杜佳杰 (du jia jie)
Case No. D2023-3122

1. The Parties

The Complainant is Telefonaktiebolaget LM Ericsson, Sweden, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is 杜佳杰 (DU JIA JIE), China.

2. The Domain Name and Registrar

The disputed domain name <ericssonvip.com> 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 July 20, 2023. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 21, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on July 27, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On the same day, the Center sent an email in English and Chinese to the Parties regarding language of proceeding. The Complainant filed an amended Complaint in English on July 31, 2023. 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 the Respondent of the Complaint, and the proceedings commenced on August 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 4, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 14, 2023.

The Center appointed Joseph Simone as the sole panelist in this matter on October 9, 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, paragraph 7.

4. Factual Background

The Complainant, Telefonaktiebolaget LM Ericsson, is a leading provider of communication technology and services around the world. The Complainant offers services, software and infrastructure in information and communications technology (ICT) for telecommunications operators, traditional telecommunications and Internet Protocol (IP) networking equipment, mobile and fixed broadband, operations and business support services, cable television, IPTV, video systems, etc.

The Complainant has an extensive global portfolio of ERICSSON trade marks, including the following:

- European Union Trade Mark Registration No. 000107003 for ERICSSON in Classes 9, 11, 16, 35, 36, 37, 38, 39, 41, 42, registered on March 23, 1999;
- United States of America Trade Mark Registration No. 1313196 for ERICSSON in Class 9 and 16, registered on January 8, 1985;
- China Trade Mark Registration No. 777245 for ERICSSON in Class 38, registered on February 7, 1995;
- China Trade Mark Registration No. 3124284 for ERICSSON in Class 38, registered on June 28, 2003;
- China Trade Mark Registration No. 3152775 for ERICSSON in Class 11, registered on August 21, 2003.

The disputed domain name was registered on May 31, 2023.

According to evidence provided by the Complainant, at the time of filing of the Complaint, the disputed domain name resolved to a website featuring the Complainant's own ERICSSON corporate logo. At the time of this decision, the disputed domain name no longer resolves to an active website.

5. Parties' Contentions

A. Complainant

The Complainant asserts that it has prior rights in the ERICSSON trade marks and that it has acquired a strong reputation in its field of business.

The Complainant further notes that the disputed domain name registered by the Respondent is confusingly similar to the Complainant's ERICSSON trade marks.

Furthermore, the Complainant argues that the mere addition of the generic term "vip" does not negate the confusing similarity between the disputed domain name from the Complainant's ERICSSON trade marks.

The Complainant asserts that it has not authorized the Respondent to use any of its ERICSSON marks, and there is no evidence to suggest that the Respondent has used, or undertaken any demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services.

The Complainant presents evidence suggesting that the disputed domain name was used to operate a website that seems to have been created with the purpose of a phishing scam, and claims that it is implausible that the Respondent registered the disputed domain name in good faith, and as such, any use of the disputed domain name must be in bad faith.

B. Respondent

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

6. Discussion and Findings

A. Language of the Proceeding

In accordance with paragraph 11(a) of the Rules:

"[...] 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."

In this case, the language of the Registration Agreement for the disputed domain name is Chinese. Hence, the default language of the proceeding should be Chinese.

However, the Complainant filed the Complaint in English, and requested that English be the language of the proceeding, asserting *inter alia* that:

- the Complainant is unable to communicate in Chinese and translation of the Complaint would unfairly disadvantage and burden the Complainant and delay the proceedings and adjudication of this matter;
- the disputed domain name includes only Latin characters and the website at the disputed domain name features various phrases, in English including "Phone number", "login" and "your name";
- the website is connected to a phishing scam and the distribution of malware; and
- a prior UDRP proceeding involving the Respondent was held in English.

The Respondent was notified in both Chinese and English of the language of the proceeding and the Complaint and did not comment on the language of the proceeding or submit any response.

Considering the circumstances in this case, the Panel has determined that the language of the proceeding shall be English, and the Panel has issued this decision in English. The Panel further finds that such determination would not cause any prejudice to either Party and would ensure that the proceeding takes place with due expedition.

B. Identical or Confusingly Similar

The Panel acknowledges that the Complainant has established rights in the ERICSSON trade marks.

Disregarding the generic Top-Level Domain ("gTLD") ".com", the disputed domain name incorporates the Complainant's trade mark ERICSSON in its entirety.

According to the Cambridge Dictionary, the word "vip" means "a very important person" — a person who is treated better than ordinary people because they are famous or influential, meaning they have a lot of influence in some way". Regardless of the nature, the addition of the word "vip" does not prevent a finding of confusing similarity pursuant to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8.

The Panel therefore finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in establishing its rights in the ERICSSON trade marks and in showing that the disputed domain name is confusingly similar to its mark.

C. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a complainant is required to establish a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such a *prima facie* case has been made out, the respondent bears the burden of producing evidence in support of its rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant may be deemed to have satisfied paragraph 4(a)(ii) of the Policy. See [WIPO Overview 3.0](#), section 2.1.

The Complainant asserts that it has not authorized the Respondent to use its trade marks and there is no evidence to suggest that the Respondent has used, or undertaken any demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services.

Thus, the Complainant has established its *prima facie* case with satisfactory evidence.

The Respondent did not file a response and has therefore failed to assert factors or put forth evidence to establish that it 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 paragraph 4(c) of the Policy is applicable in this case.

Therefore, the Respondent has not shown that prior to the notice of the dispute, he or she has used or has demonstrated his or her preparation to use the disputed domain name in connection with a *bona fide* offering of goods or services. There is also no evidence showing that the Respondent has been commonly known by the disputed domain name or that the Respondent is making legitimate noncommercial or fair use of the disputed domain name.

Furthermore, given the composition of the disputed domain name, which combines the Complainant's trade mark with the term "vip", the disputed domain name carries a risk of implied affiliation, contrary to the fact, which cannot constitute fair use. [WIPO Overview 3.0](#), section 2.5.1.

Accordingly, and based on the Panel's findings below, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name pursuant to paragraph 4(a)(ii) of the Policy.

D. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that any of the following circumstances in particular but without limitation, shall be considered as evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant (the owner of the trade mark or service mark) or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the respondent registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) circumstances indicating that the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on its website or location.

For reasons discussed under this and the preceding heading, the Panel believes that the Respondent's conduct in this case constitutes bad faith registration and use of the disputed domain name.

When the Respondent registered the disputed domain name, the ERICSSON trade marks were already widely-known and directly associated with the Complainant's activities. UDRP panels have consistently found that the mere registration of a domain name that is confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trade mark by an unaffiliated entity can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

Given the extensive prior use and fame of the Complainant's marks, in the Panel's view, the Respondent should have been aware of the Complainant's marks when registering the disputed domain name and ultimately, given the use of the disputed domain name, it is clear the Respondent was aware of the Complainant and intentionally targeted the Complainant when registering the disputed domain name.

In light of the foregoing facts, there are no plausible good faith reasons for the Respondent to have registered the disputed domain name, especially considering the relevant circumstances. The Panel considers that the prior use of the disputed domain name for a website displaying the Complainant's trade marks, possibly with the purpose of obtaining contact information from unsuspecting Internet users constitutes the bad faith under paragraph 4(b)(iv) of the Policy. But while the disputed domain name no longer resolves to an active website, the doctrine of passive holding provides that the non-use of a domain name does not prevent a finding of bad faith under the doctrine of passive holding. Accordingly, given the prior bad faith use of the disputed domain name and the implausibility of any good faith use that the disputed domain name may be put, the current passive holding of the disputed domain name does not prevent a finding of bad faith.

The Panel therefore finds that the Respondent registered and is using the disputed domain name in bad faith.

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 <ericssonvip.com> be transferred to the Complainant.

/Joseph Simone/

Joseph Simone

Sole Panelist

Date: October 23, 2023