Decision for dispute CAC-UDRP-102076

Case number	CAC-UDRP-102076
Time of filing	2018-07-17 15:33:19
Domain names	PERSPIREX.XYZ

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	Riemann Trading ApS

Complainant representative

Organization	BrandIT GmbH

Respondent

Organization	Wang Xin Zhong

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several registered trademarks containing the term “Perspirex”, including the following international word trademark (WIPO) “PERSPIREX” with registration number 770743, registration date: 21 November 2001, valid for classes 03 and 05.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant is the owner and manufacturer of “Perspirex”, a specialised skin care product for people suffering from excessive sweating. This product is sold around the world.

The Complainant is the owner of several registered trademarks containing the term “Perspirex”, including the following international word trademark (WIPO) “PERSPIREX” with registration number 770743, registration date: 21 November 2001, valid for classes 03 and 05. This international trademark is valid in China and predates the registration of the disputed domain name.

Due to extensive use, advertising and revenue associated with its trademarks worldwide, the Complainant enjoys a high degree of renown around the world, particularly in the antiperspirant market.

The disputed domain name was registered on 27 November 2017.

The Complainant owns several other domain names containing its trademark “Perspirex”, such as:

– “perspirex.ch”, registered on 21 February 2013;
– “perspirex.dk”, registered on 11 March 1997;
– “perspirex.it”, registered on 24 September 2003; and
– “perspirex.us”, registered on 8 October 2013.

The disputed domain name is currently not in use.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

1. Language of the proceedings:

The Complainant filed a language of proceeding request that the language of the proceeding should be English instead of Chinese. The Panel accepts the language of proceeding request based on a combination of the following factors:

The Respondent has replied to the English-language Cease and Desist letter of the Complainant in English. Since the Respondent has understood the English-language letter of the Complainant, and since the Respondent has responded in the English language, it follows that the Respondent understands English.

The Respondent has chosen to register the domain name under the generic Top Level domain name “.xyz” which is a new TLD and is applicable to a broader audience than merely China where the Respondent is located.

The disputed domain name is in Latin script rather than Chinese script.

The Panel also determines that the Respondent has been given a fair chance to object to the use of the English language through the various notifications sent to him.

Finally, the Panel determines that the Complainant, a Danish company with English as its main business language, would be unfairly disadvantaged by being forced to translate the procedural documents in the Chinese language.

In conclusion, in conformity with the Panel's discretionary power under paragraph 11 (a) of the UDRP Rules, and for the combination of reasons mentioned above, the Panel accepts the language of proceeding request submitted by the Complainant and determines that the proceeding can be conducted in English rather than Chinese.

2. Substantive elements

A. Identical or confusingly similar

The Complainant contends that the disputed domain name is confusingly similar to its registered trademarks PERSPIREX and to its domain names.

The Complainant submitted evidence that it is the owner of several registered trademarks consisting of the term “Perspirex”, including the international word trademark “PERSPIREX” with registration number 770743 (registration date: 21 November 2001), valid for classes 03 and 05.

The Panel notes that the disputed domain name incorporates the Complainant’s registered trademark PERSPIREX in its entirety, with only the addition of the generic Top-Level Domains (gTLD “.xyz”). This addition is disregarded when considering whether the domain name is confusingly similar to a trade mark in which the Complainant has rights.

As a result, given the distinctiveness of the PERSPIREX trademarks of the Complainant, the Panel concludes that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

B. Rights or legitimate interests

The Respondent did not file an administratively compliant (or any) response. In the circumstances, the Panel concludes from the facts put forward that:

The Respondent does not appear to have any trademark rights or legitimate interests associated with the PERSPIREX trademarks or with the word "PERSPIREX".

There is no evidence that the Respondent is commonly known by the PERSPIREX trademarks or by the term "PERSPIREX". The WHOIS records of the disputed domain name does not contain any information or indication that the Respondent is known by the term "PERSPIREX".

The Respondent does not seem to have any consent to use the PERSPIREX trademarks.

There is no evidence to show the Respondent may have used the disputed domain name for any bona fide offering of goods or services of its own. Also, there is no evidence that the Respondent may have taken preparations for any such bona fide offering of goods or services.

On the balance of probabilities, and in the absence of any evidence to the contrary or any administratively compliant response being put forward by the Respondent, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy.

C. Bad faith registration and use

The Panel notes that the PERSPIREX trademarks in which the Complainant has rights predate the registration of the

disputed domain name.

The Panel further notes that the Complainant's international word trademark “PERSPIREX” with registration number 770743 is valid in China. The Panel notes that the Respondent is based in China.

The Complainant states that the Respondent was not authorised by the Complainant to register the disputed domain name. This is not contested by the Respondent.

The Complainant further offered evidence that the disputed domain name is listed for sale at the website www.SEDO.com, with a minimal offer of 90 USD.

Moreover, from the evidence submitted by the Complainant if follows that, on 23 March 2018, a representative of the Complainant sent a cease and desist letter per email to the Respondent requesting a voluntary transfer of the domain name. From the evidence submitted by the Complainant, it follows that the Respondent replied as follows:

“Dear Elen,

Your letter has been received. I agree to solve this problem amicably and pay me $1000. I transfer the domain name to your client. After payment, I will guarantee that I will not hold the type domain name later. Thank you

Best Regards

Mr WANG”

This email was sent from a separate email address (payify@outlook.com), but was sent by a Mr Wang in response to the previous email of the Complainant which was sent to the Respondent's known email address (emmanuelrose@outlook.com), i.e., the email address of the Respondent as listed in the WHOIS records of the disputed domain name.

The above facts prove that the Respondent has acquired and used the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the corresponding trademark, for valuable consideration in excess of the documented out-of-pocket costs directly related to the domain name (paragraph 4(b)(i) of the Policy).

Also, the Complainant provided evidence that the Respondent registered a multitude of other domain names using the gTLD ".xyz" corresponding to other famous registered trademarks, indicating a pattern of abusive conduct by the Respondent.

Finally, the website available through the disputed domain name is an inactive 'parking' site.

In the absence of any evidence to the contrary (or any administratively compliant response) being put forward by the Respondent, the Panel believes from the combination of facts in this case that the Respondent had the PERSPIREX trademarks in mind when registering and subsequently using the disputed domain name.

In light of the facts described above, combined with the international business presence of the Complainant, it is highly unlikely that the Respondent would not have been aware of the unlawful character of the disputed domain name at the time of its registration and use.

For all of the reasons set out above, the Panel determines that the disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **PERSPIREX.XYZ**: Transferred

PANELLISTS

Name	**Bart Van Besien**

DATE OF PANEL DECISION 2018-08-27

Publish the Decision