Decision for dispute CAC-UDRP-101940

Case number	**CAC-UDRP-101940**
Time of filing	**2018-07-10 09:46:27**
Domain names	**jimdo.top**

Case administrator

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

Complainant

Organization	**Jimdo GmbH**

Complainant representative

Organization	**SKW Schwarz Rechtsanwälte**

Respondent

Name	**Dong Da Yang**

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

Jimdo GmbH (the 'Complainant') is the owner of a number of registered trade marks for JIMDO or which include JIMDO, including European Trade Marks registered in classes 35, 38, 42 and 45 under number 008164998 on 7 October 2009, and under number 014487243 on 23 December 2015 ('the JIMDO marks').

FACTUAL BACKGROUND

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

The Complainant is a German company, founded in 2007.

The Complainant trades under the JIMDO brand providing web hosting services and web page creation services to an international community. The Complainant supplies a 'tool kit' for the easy creation of web pages, which are hosted by the Complainant. By 2015, over 15 million web pages had been created via the Jimdo service.

The Complainant offers its services in English, French, German, Italian, Japanese, Russian, Dutch and Spanish via its website

hosted at the domain name <jimdo.com>. In addition, the Complainant owns a large number of other 'jimdo' domain names including, inter alia: <jimdo.de>, <jimdo.co.uk>, <jimdo.net>, <jimdo.fr>, <jimdo.org>, <jimdo.jp>, <jimdo.ru>, <jimdo.nl>, <jimdo.es>, <jimdo.xyz>. These domain names are all linked to the Complainant's main website at www.jimdo.com.

The disputed domain name was registered by 'Dong Da Yang' (the 'Respondent') on 4 November 2017, and who at first used a privacy shield service offered by his registrar. At the time of filing there had never been a website hosted at the Domain Name.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

Paragraph 11 of the Rules for Uniform Domain Name Dispute Resolution Policy provides "[U]nless 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".

On 9 July 2018, the Complainant filed its Complaint in English and indicated that the language of the administrative proceeding is to be in English. However, following a registrar verification request by the CAC it was informed on 16 July 2018 by the relevant registrar that the registration agreement is in fact in Chinese.

On 16 July 2018 the CAC issued a Notification of Deficiencies in the Complaint to the Complainant. The CAC pointed out that the language of the registration agreement was Chinese, and that the CAC does not work in Chinese. The CAC gave the Complainant the option to either ask the Panel to proceed in English with supporting reasons, or to terminate the proceedings and receive a refund (as the CAC does not offer this service in Chinese).

On 20 July 2018 the Complainant filed an amended Complaint, which stated that they wished to proceed in English, and in support of this it provided the following reasons:

1. The Complainant is located in Germany and has no knowledge of Chinese. The cost of translation would cause an undue burden and also cause it undue delay.

2. The disputed domain name contains Latin characters which suggests the Respondent has knowledge of languages other than Chinese.

3. English is the primary language for international relations.

4. The Respondent would not be prejudiced if English is adopted in these proceedings.

The CAC formally commenced proceedings on 20 July 2018 and notified the Respondent accordingly.

The Respondent failed to submit a response within the time frame required in this complaint, or at all, and a Notification of Respondent's Default was therefore issued by the CAC on 10 August 2018.

Having received a Statement of Acceptance and Declaration of Impartiality, the Czech Arbitration Court appointed Steve Palmer, of Palmer Biggs Intellectual Property Solicitors, as the Panel in these UDRP proceedings.

Having reviewed the case file, the Panel found that there was nothing to indicate that the Respondent has understood or is likely to understand any of the procedural aspects or submissions written in English in these proceedings. The Panel therefore issued the following Nonstandard Communication to the Respondent in Chinese (which was issued on 29 August 2018).

"ADR Jimdo GmbH "

The Panel understands the English translation of this to read as follows:

"The appropriate language for these ADR proceedings is the Chinese language as used in the registration agreement. The Complainant requested that the language of the proceeding be changed to English. The Complainant argues that the proceedings are not highly controversial because the Complainant can fully demonstrate that Jimdo GmbH has intellectual property rights in the jurisdictions worldwide and that you have registered and used the disputed domain name in bad faith. Please respond to the Complainant's request within one week. If no response is received before the deadline, the panel will make a decision based on the current known facts."

No response was received by the Respondent.

The Panel finds that there is nothing in the case file to indicate that the Respondent has any understanding of the English language, and importantly nothing to show it has understood or is likely to understand any of the procedural aspects or submissions written in English in these proceedings. The Panel rejects the Complainant's arguments in support of the case proceeding in English. The mere fact that the disputed domain name contains Latin characters 'JIMDO.TOP' does not demonstrate a knowledge of the English language. The Latin script is not exclusive to those writing in English, there are many other languages that use Latin script. Further, not only has the Complainant failed to show any circumstances which would show the Respondent understands the English language, this decision has also been taken in view of the fact that the Respondent registered the disputed domain name through a Chinese registrar, with a registration agreement in Chinese, and that the Respondent appears to be a Chinese individual called 'Dong Da Yang' with an address in China.

There needs to be a fair balance between the interests of both parties in any UDRP proceedings. Whilst the Panel has some sympathy with the contention that the Complainant should not be subject to an undue burden of translation costs and delay, this in the Panel's view is outweighed by the requirement for the Respondent to have a fair opportunity to review the Complaint in a language it understands and to reply. As the Complainant has failed to prove the Respondent can understand English, the language in which the Complaint was filed, the Panel finds it is not possible to allow these administrative proceedings to continue any further.

In light of the above, the Panel hereby orders these proceedings to be terminated.

RIGHTS

The Panel did not consider whether 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 Panel did not consider whether the Respondent has 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 Panel did not consider whether 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 not satisfied that all procedural requirements under UDRP were met.

PRINCIPAL REASONS FOR THE DECISION

As the Complainant has failed to prove the Respondent can understand English, the language in which the Complaint was filed, the Panel finds it is not possible to allow these administrative proceedings to continue any further and hereby orders these proceedings to be terminated.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

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Rejected

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

1. **JIMDO.TOP**: Remaining with the Respondent

PANELLISTS

Name	**Steve Palmer**

DATE OF PANEL DECISION 2018-09-28

Publish the Decision