Decision for dispute CAC-UDRP-102050

Case number	CAC-UDRP-102050
Time of filing	2018-07-23 10:16:16
Domain names	rwechina.com

Case administrator

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

Complainant

Organization	RWE Aktiengesellschaft

Complainant representative

Organization	BEST Rechtsanwälte PartmbB

Respondent

Organization	RWE (UK) Heat Energy Technology Co. Ltd.

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 claims to be the owner of several trademarks and domain names including the term “RWE”.

The Complainant submitted evidence that it is the owner of the following registered trademarks:

- German word mark "RWE" (registration number: 30000336; registration date: 4 September 2000; various classes);

- International word mark "RWE" (registration number: 764922; registration date: 4 September 2000; various classes; various designated territories including China);

- EU word mark "RWE" (registration number: 001235704; registration date: 21 March 2001; various classes);

- EU word mark "RWE" (registration number: 009681149; registration date: 23 September 2011; various classes);

- US word mark "RWE" (registration number: 4208644; registration date: 18 September 2012; various classes);

- EU figurative mark "RWE The energy to lead" (registration number: 0980548; registration date: 9 August 2008; various classes);

Furthermore, the Complainant submitted evidence that it is the registrant of the following domain names, <RWE.com> (created on 20 March 1996) and <RWE.info> (created on 16 August 2001).

FACTUAL BACKGROUND

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

The Complainant

The Complainant was founded in 1898 as Rheinisch-Westfälisches Elektrizitätswerk Aktiengesellschaft (RWE). The Complainant is a German electric utilities company. Through its various subsidiaries, the Complainant supplies electricity and gas to more than 20 million electricity customers and 10 million gas customers, principally in Europe. The Complainant is the second largest electricity producer in Germany. The Complainant owns a number of trademarks and domain names “RWE” (including an international trademark "RWE" with validity in China) that predate the registration of the disputed domain name.

The Respondent

The Respondent is RWE (UK) Heat Energy Technology Co. Ltd.

The website available via the disputed domain name shows an identical copy of the company logo of the Complainant which consists of the letters RWE in the same font and in the same color (blue), with a reflection of these letters downwards.

The disputed domain name was registered on 2 September 2014.

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 disputed domain name Registration Agreement being in Chinese, pursuant to paragraph 11 of the UDRP Rules, the language of the proceedings should be Chinese, unless otherwise agreed upon by the Parties or otherwise specified in the Registration Agreement. The Panel has the authority to determine otherwise, having regard to the circumstances of the administrative proceeding.

The Panel notes that the Complainant filed a request that the language of the proceeding should be changed to English.

The Panel accepts the language of proceeding request based on a combination of the following factors:

a) The disputed domain name consists of words in Latin script only (namely the words "rwe", and "china");
b) The disputed domain name resolves to a website with content mainly in Chinese, but also in English. It can thus be assumed that the Respondent conducts its business at least partly in the English language;
c) The Respondent registered the disputed domain name using an English-language organisation name and contact details: organisation: "RWE (UK) Heat Energy Technology Co. Ltd.", and e-mail address: "info@rwechina.com". The Respondent's organisation name includes the abbreviation "UK" which commonly stands for "United Kingdom";
d) The Respondent has registered the disputed domain name under the top Level domain name ".com" which is a commercial TLD, and applies to a broader audience than merely China.

Based on these factors, the Panel determines that the Respondent can reasonably be expected to have sufficient knowledge of the English language. 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, but has not filed any objection. Finally, the Panel determines that the Complainant, a German company, 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

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

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

(1) the domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
(2) the Respondent has no rights or legitimate interests in respect of the domain name; and
(3) the domain name has been registered and is being used in bad faith.

(1) Identical and/or confusingly similar

The Complainant claims to be the owner of several trademarks and domain names including the term "RWE".

The Complainant submitted evidence that it is the owner of the following registered trademarks:

- German word mark "RWE" (registration number: 30000336; registration date: 4 September 2000; various classes);
- International word mark "RWE" (registration number: 764922; registration date: 4 September 2000; various classes; various designated territories including China);

- EU word mark "RWE" (registration number: 001235704; registration date: 21 March 2001; various classes);
- EU word mark "RWE" (registration number: 009681149; registration date: 23 September 2011; various classes);
- US word mark "RWE" (registration number: 4208644; registration date: 18 September 2012; various classes);
- EU figurative mark "RWE The energy to lead" (registration number: 0980548; registration date: 9 August 2008; various classes);

Furthermore, the Complainant submitted evidence that it is the registrant of the following domain names, <RWE.com> (created on 20 March 1996) and <RWE.info> (created on 16 August 2001).

Numerous previous panels have accepted that the incorporation of a trademark in its entirety into a domain name is sufficient to establish that the disputed domain name is identical or confusingly similar to a registered trademark. Indeed, in most cases where a domain name incorporates the entirety of a trademark, the domain name is, for the purposes of the Policy, considered as confusingly similar to the trademark (see for example, the detailed discussion of this topic in Research in Motion Limited v. One Star Global LLC WIPO Case No. D2009-0227).

In this case, the Panel notes that the disputed domain name incorporates the entirety of the Complainant's "RWE" trademark(s). The Panel finds that the addition of the descriptive term "CHINA" does not prevent a finding of confusing similarity under the first element of paragraph 4(a) of the Policy.

The ".com" suffix may be disregarded when it comes to considering whether a domain name is confusingly similar to a trademark in which the Complainant has rights.

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.

(2) Rights or Legitimate Interests

As regards paragraph 4(a)(ii) of the Policy, while the overall burden of proof rests with the Complainant, it is commonly accepted that this should not result in an often-impossible task of proving a negative. Therefore, numerous previous Panels have found that the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, the complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy. If the respondent does come forward with some allegations or evidence of relevant rights or legitimate interests, the panel then has to weigh all the evidence, with the burden of proof always remaining on the complainant.

The Panel notes that the Complainant contends that the Respondent is not authorised or licensed by the Complainant to use the trademark "RWE" or register the disputed domain name. This is not refuted by the Respondent.

The Respondent has not submitted any Response to the Complaint. The Respondent did not provide evidence that it has rights or legitimate interests in the disputed domain name (the Respondent could, inter alia, have provided evidence of the factors mentioned in paragraph 4(c) of the Policy, but failed to do so).

The Panel finds that the Complainant did make a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Panel further finds that the Respondent failed to provide appropriate allegations or evidence demonstrating rights or legitimate interests in the disputed domain name. Therefore, the Panel concludes that the Respondent has no has rights or legitimate interests in the disputed domain name under paragraph 4(c) of the Policy.

(3) Registration and Use in Bad Faith

The logo displayed on the header of the website available via the disputed domain name is identical or at least very similar to the Complainant's logo and registered figurative mark (EU figurative mark "RWE The energy to lead" with registration number: 0980548). The Respondent is using the same letters "RWE", the same color (blue), the same font, and the same reflection-effect of the letters "RWE".

Moreover, the website available via the disputed domain name seems to have been developed for a similar public as the activities of the Complainant, i.e. heating technology, or energy supply. The screenshot of the website of the Respondent mentions, inter alia, the slogan "warm the world with love" (in English). In other words, the Respondent seems to present itself as a competitor of the Complainant. The Panel emphasises that the Complainant stated that it is active in China through a subsidiary (which has not been refuted by the Respondent) and that the Complainant has trademark rights to the word "RWE" in China (International word mark "RWE" with registration number 764922, registered since 4 September 2000). This trademark is valid for various classes of goods and services, including class 7 "machines and equipment relating to energy (...)" and class 39 "provision of electricity, natural gas, heat and water", etc.

The Panel further notes that the Complainant's 'RWE" trademarks (including the international trademark which is valid in China) predate the registration of the disputed domain name.

The disputed domain name reflects the Complainant's registered trademark "RWE" in its entirety, with the addition of the word "CHINA".

On the balance of probabilities, it may be expected that the Respondent had knowledge of the existence of the Complainant and its activities, and of the existence of the Complainant's trademarks and the scope of these trademarks (i.e. coverage of goods and services relating to heating and energy supply). In the light of this, it seems 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.

Given the combination of the Complainant's trademark "RWE" and the geographical term "CHINA" in the disputed domain name, given the scope of the activities of the Complainant and the activities of the Respondent (which seem to be competing or at least similar), given the well-known or at least highly specific character of the Complainant's trademark in the sector of heating and energy supply, given the fact that the Respondent is using the same logo (graphical representation of the letters "RWE" with the same font, the same color, and the same reflection-effect), given the lack of evidence of actual or contemplated good-faith use, and given the lack of evidence of any circumstances refuting the claim of bad faith, the Panel finds it likely that the Respondent was aware or should have been aware of the Complainant's trademark rights when registering and using the disputed domain name.

From the elements of facts listed above, the Panel is of the opinion that the Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor (the Complainant) and that the Respondent, by using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to its own website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or products/services on its website.

In conclusion, the Panel finds that the Respondent has registered and used the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **RWECHINA.COM**: Transferred

PANELLISTS

Name	**Bart Van Besien**

2018-11-05

DATE OF PANEL DECISION 2018-11-05

Publish the Decision