Decision for dispute CAC-UDRP-102641

Case number	**CAC-UDRP-102641**
Time of filing	**2020-06-05 09:01:11**
Domain names	**burkert-cn.com, burkert-sh.com**

Case administrator

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

Complainant

Organization	**Bürkert Werke GmbH & Co. KG**

Complainant representative

Organization	**Convey srl**

Respondent

Name	**Hou Xiao Yi**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other proceedings, pending or decided, which relate to the disputed domain names.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the trademark BURKERT, with several international and national trademark registrations worldwide, including the following:

- INT. Trademark BÜRKERT no. 933922 – Nice Classification: 6, 7, 9, 20, designating also China;
- German Trademark BÜRKERT no. 302014003452 – Nice Classification: 6, 7, 9;
- U.S. Trademark BÜRKERT no. 3407829 – Nice Classification: 6, 7, 9, 20;
- INT. Trademark BÜRKERT TwinPower no. 1080319 – Nice Classification: 7, 9, designating also China);
- EU Trademark BÜRKERT no. 000380089 – Nice Classification: 6, 7, 9, 20;
- EU Trademark BÜRKERT no. 009056003 – Nice Classification: 37, 4; and
- EU Trademark BÜRKERT no. 017912399 – Nice Classification: 11.

The Complainant also owns domain names consisting of the word 'BURKERT' under several different TLDs, including, inter alia, <burkert.com>, <burkert.com.cn>, <burkert.de>, <burkert.it>, <burkert.fr>, <burkert.net>, <burkert.biz>.

FACTUAL BACKGROUND

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

The Complainant is Bürkert Werke GmbH & Co. KG., a German limited partnership company, 100% family-owned, and active in the sector of industrial measurement and control technology of fluid and gas.

Supplying with its products a wide range of industries (as automotive, biotechnology, chemical industry, electronics, energy, genetic engineering, semiconductor industry, cosmetic, food & beverage and pharma industry, engineering, medical, sanitary engineering, textile industry, packaging and water treatment industry) in 2017 its product sales amounted to 489.9 million euros with an export rate of about 70% with 36 branch offices and over 2.500 employees worldwide.

The Complainant was founded in Germany in 1946 by Christian Bürkert, who began by developing and manufacturing innovative products such as foot warmers, oven controls and thermal control systems for incubators. While these products met the needs of the time, over the years the company increasingly focused on valve technology and soon became an international benchmark for industrial solenoid valves.

The process organization is based on research & development, production, engineering & consulting, delivery, commissioning, training, after-sales service. The Complainant has 36 branch offices worldwide including 10 in China, where the Respondent is based.

In order to protect and promote its trademark BURKERT on the Internet, the Complainant registered various domain names consisting of or comprising the word “BURKERT” as set out in the Identification of Rights section.

The Complainant's official websites <www.burkert.com> and <https://www.burkert.com.cn>, generate a significant number of visits by Internet users. The Complainant is also active on the main Social Media, like Facebook, Instagram, Twitter, Youtube and Linkedin.

As soon as the Complainant became aware of the Respondent’s registrations and use of the disputed domain names confusingly similar to its registered trademark BURKERT, it instructed its representative to address to the owner of the domain name a cease and desist letter in order to notify it of the infringement of the Complainant’s trademark rights, requesting the immediate cease of any use of the disputed domain names and the transfer of the same to the Complainant.

The domain name <burkert-cn.com> was redirected to a website promoting and offering for sale products of the Complainant and of Complainant’s competitors and indicating also the website <www.burkert-sh.com>. The domain name <burkert-sh.com>, now redirected to <http://www.burkretsh.cn>, offered for sale the Complainant’s products passing off as the Complainant’s website.

A cease and desist letter was sent on February 05, 2020, by email to the domain name burkert-cn.com registrant’s known email address indicated in the website. A reminder was sent on May 6, 2020, when the Complainant became aware of the registration and use of the domain name <burkert-sh.com>.

The Respondent did not reply but he deactivated the website of the disputed domain name <burkert-cn.com> and redirected the disputed domain name <burkert-sh.com> to <http://www.burkretsh.cn>.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

The Complainant's contentions are set out fully in its Amended Complaint.

RIGHTS

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

PROCEDURAL FACTORS

1. Administrative Deficiencies

By notification dated June 8, 2020 and in accordance with Paragraph 4(d) of the Rules, the CAC notified the Complainant that it was administratively deficient in that it had not sufficiently identified the Respondent.

The CAC directed the Complainant to have regard to the Registrar's verification available in the online case file in the form of a Nonstandard Communication regarding the appropriate identification of the domain name holder.

The CAC requested the Complainant correct the administrative deficiency and submit an Amended Complainant.

On June 9, 2020 the Complainant filed an Amended Complaint and on June 10, 2020 the CAC determined that the Complaint could proceed by way of Administrative Proceeding.

The Panel considers that the administrative deficiency has now been corrected with the identification of the domain name holder as the proper Respondent.

2. Consolidation of the disputed domain names and the named Respondent into a single UDRP proceeding

The Complainant has sought that the disputed domain names and the named Respondent are consolidated in a single UDRP proceeding, and relies on paragraphs 3(c) and 10(e) of the Rules.

Under paragraph 10(e) of the Rules, the Panel has the power to consolidate multiple domain name disputes in accordance with the Policy and the Rules. Under paragraph3(c), the Complaint may relate to more than one domain name, as in this case, provided that the domain names are registered by the same domain name holder.

In support of the Complainant's request for consolidation, the Complainant contends, in the Panel's view correctly, that it has to demonstrate that:

(a) the disputed domain names or the web sites to whom they resolve are subject to common control;

(b) consolidation would be procedurally efficient, fair, and equitable to all parties, having regard to all of the relevant circumstances.

The WIPO Case No. D20100281 Speedo Holdings B.V. v. Programmer, Miss Kathy Beckerson, John Smitt, Matthew Simmons ('the Speedo Holdings case') was cited by the Complainant in support of its contention.

The panel in the Speedo Holdings case helpfully collated a number of panel decisions that considered the question of consolidation of multiple domain names and respondents under the Policy and Rules, which the Panel considers and accepts as correctly stating the body of principles that could be applied on this issue.

Although the Policy and Rules appear to be silent about their application to multiple respondents, it seems generally accepted by various panel decisions including that of the panel in the Speedo Holdings case that both paragraphs 3(c) and 10 (e) of the Rules give effect to the presumed common goal of furthering the fundamental objectives of the Policy.

The Panel accepts that multiple domain names registrants controlled or owned by a single person or entity may be treated as a single respondent for the purpose of the Policy and Rules. See generally Archipelago Holdings LLC, v. Creative Genius Domain Sales and Robert Aragon d/b/a/ Creative Genius Domain Name Sales, supra. Common control has been found where the respondents were related businesses. Asset Marketing Systems, LLC v. SmartBuy Corporation, Chan Organization, Mitchell de la Cruz, Gongju Jung et. al., WIPO Case No. D2004-0492.

The principles to be applied in determining whether there was common control or ownership can be summarised as follows (as set out by the Complainant):

(a) Circumstances indicating that different registrants were alter egos of the same beneficial holder. See Backstreet Productions, Inc. v. John Zuccarini, CupcakeParty, Cupcake Real Video, Cupcake-Show and Cupcakes-First Patrol, WIPO Case No. D2001-0654.

Factors relevant to be taken into account would include:

(i) whether respondents had common administrative contact or technical contact, or other instances of commonality in the registration information, such as the same postal address or e-mail address. See ISL Marketing AG, and The Federation Internationale de Football Association v. J.Y. Chung, Worldcup2002.com, W Co., and Worldcup 2002, WIPO Case No. D2000-0034; Caesars World, Inc. v. Starnet Communications and Atlantic West Gaming Entertainment, Ltd., WIPO Case No. D2002-0066; Adobe Systems Incorporated v. Domain OZ, WIPO Case No. D2000-0057.

(ii) circumstances indicating that a single person or entity had registered multiple domain names using fictitious names. See Guccio Gucci S.p.A. v. Huangwensheng, Shirley, wangliang, xiaomeng xiexun, jiangxiuchun, WIPO Case No. D2012-0342; Yahoo!, Inc v. Somsak Sooksripanich and Others, WIPO Case No. D2000-1461; Yahoo! Inc. v. Yahoosexy.com, Yahoo-sexy.com, Yahoosexy.net, Yahousexy.com and Benjamin Benhamou, WIPO Case No. D2001-1188; Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite, WIPO Case No. D2001-1070; General Electric Company v. Marketing Total S.A, WIPO Case No. D2007-1834.

(iii) Substantial commonalities in the web sites to whom the disputed domain names resolved and the use of the same domain name servers. See Nintendo of America Inc. v. Administrator Lunarpages, Alan Smith, Neoconsoles Inc., Liu Hai, Linda Wong, and Wong, supra, Apple Inc. v. Fred Bergstrom, LottaCarlsson, Georges Chaloux and Marina Bianchi, WIPO Case No. D2011-1388, Sharman License Holdings, Limited v. Dustin Dorrance/Dave Shullick/Euclid Investments, WIPO Case No. D2004-0659; and Balenciaga v. Ni Hao, Shen Dan, Wu Dan, Zhu Qin, Yan Wei, WIPO Case No. D2011-1541.

(iv) The incorporation of the complainants' trademark in its entirety together with a descriptive or geographical term. See Ecco Sko A/S v. tian yu, Karei, Wuxiaoman, xiao tian, WIPO Case No. D2011-1606.

Having reviewed the Complainant's evidence in support of their contention of consolidation, and applying the principles stated above, the Panel is satisfied of the following relevant circumstances of similarities:

- They share the same date of hour of registration, namely August 17, 2015;
- They share the same registrar, namely Alibaba Cloud Computing (Beijing) Co. Ltd;
- They share the same extension .com;

- The Registrant State/Province are the same, namely described as ‘Shang Hai’ which is presumed to refer to Shanghai in the People’s Republic of China;
- The Name Servers are similar: DNS10.HICHINA.COM/DNS9.HICHINA.COM; and
- The same mobile number 18221776247 was indicated on both websites <http://www.burkert-cn.com> and <http://www.burkert-sh.com>, being the disputed domain names.

3. Notification of proceedings to the Respondent

When forwarding a Complaint, including any annexes, electronically to the Respondent, paragraph 2 of the Rules states that CAC shall employ reasonably available means calculated to achieved actual notice to the Respondents.

Paragraphs 2(a)(i) to (iii) set out the sort of measures to be employed to discharge CAC’s responsibility to achieve actual notice to the Respondent.

On July 1, 2020 the CAC by its Nonstandard Communication stated as follows (omitting irrelevant parts):

‘Dear Parties

Please be aware that neither the written notice of the Complaint nor the advice of delivery thereof was returned to the Czech Arbitration Court. The CAC is therefore unaware whether the written notice was received by the Respondent or not.

As far as the e-mail notice is concerned, we received a confirmation that the e-mail sent to 337838056@qq.com was successfully relayed (please find the confirmation enclosed). The e-mail notice sent to postmaster@burkert-cn.com and to postmaster@burkert-sh.com were returned back undelivered as the e-mail addresses had permanent fatal errors.

No further e-mail addresses could be found on the disputed sites.

The Respondent never accessed the online platform.

Kind regards,

Iveta Špiclová
Case Administrator
CAC’

Given the reasonable measures employed by CAC as set out in the above Nonstandard Communication, the Panel is satisfied that CAC has discharged this responsibility.

4. Language of the proceedings request

Paragraph 11(a) of the Rules provides that the language of the proceeding shall be the language of the Registration Agreement unless otherwise specified in that agreement or agreed by the parties.

According to the Registrar Verification the Registration Agreement is in Chinese but the Registrar has also a registration agreement in English.

The Complainant requests that the English language should be the language of the proceeding, and contends that the Respondent has familiarity with English in light of the following circumstances:

(i) some parts of the website corresponding to the disputed domain name <burkert-sh.com>, now redirected to

<http://www.burkretsh.cn>, are in English. The descriptions of the products and the datasheets of the products are partially in English and therefore the website http://www.burkretsh.cn is dedicated to English speaker internet users;

(ii) the Respondent's company name indicated on the website of the disputed domain name <burkert-cn.com> was translated in English for the English speaker internet users;

(iii) the disputed domain names contain Latin characters and the English abbreviation "cn" for China and "sh" for Shangai;

(iv) following the English cease and desist letters sent by the Complainant to the Respondent, the Respondent deactivated the disputed domain name website corresponding to the domain name <burkert-cn.com> and redirected the domain name <burkert-sh.com> to <http://www.burkretsh.cn>;

(v) the Respondent, active in the sector of import and export of industrial automation products and control components, could not ignore English that actually is the primary language for international relations and business; and

(vi) the translation of the Complaint into the Chinese language would cause additional expense and delay, making unfair to proceed in the Chinese language.

There is no demurrer to this contention by the Respondent.

The Panel accepts the Complainant's contentions and will proceed to determine the proceeding in the English language.

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 and accordingly, this matter can proceed to be considered by the Panel in accordance with the Policy and the Rules.

PRINCIPAL REASONS FOR THE DECISION

A. Introduction

This is a Mandatory Administrative Proceeding under paragraph 4 of the Uniform Domain Name Dispute Policy (Policy or UDRP) of the Internet Corporation for Assigned Names and Numbers (ICANN), and the Procedural Rules for Uniform Domain Dispute Resolution (Rules) including the Czech Arbitration Centre (CAC) UDRP Supplementary Rules.

B. Substantive Matters

The Complainant has filed a complaint with supporting evidence disputing the registration of the domain names <burkert-cn.com> and <burkert-sh.com> (the disputed domain names) by the Respondent.

The disputed domain names were both registered on August 17, 2015.

The Respondent has not filed any administratively compliant response or any materials in response to the Complaint by the deadline set out under the Rules.

Paragraph 15(a) of the Rules provides:

A Panel shall decide a complaint based on the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

Accordingly, the Complainant carries the onus to prove its case.

Paragraph 4(a) of the Policy lists three elements that the Complainant must prove to merit a finding that the disputed domain name registered by the Respondent be transferred to the Complainant:

(i) The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(ii) The Respondent has no right 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.

The Panel is satisfied the Complainant has satisfied all three elements for the principal reasons set out below.

Taking each of these elements in turn:

PARAGRAPH 4(a)(i) - RIGHTS IN AN IDENTICAL OR CONFUSINGLY SIMILAR TRADEMARK

To prove this element, the Complainant must have trademark rights and the disputed domain name must be identical or confusingly similar to the Complainant's trademarks.

The Complainant has adduced evidence that it is the owner of the relevant trademarks and domain names set out in the Identification of Rights section above.

The Panel notes that the Complainant's trademarks and domain names predate the registration of the disputed domain names.

The Complainant contends that the disputed domain names are identical or confusingly similar to the Complainant's trademark BURKERT.

The term 'burket' contained in the disputed domain names is, in the Panel's view, identical to the Complainant's BURKERT.

The question is what is the legal effect of the relevant additions of the hyphen, 'sh' or 'cn' to the term 'burkert' in the disputed domain names?

The Complainant contends the addition of a non-distinctive element such as geographical indicator or generic term to a trademark in domain names is insufficient in itself to negate confusing similarity between a trademark and a domain name. See Red Bull GmbH v. PREGIO Co., Ltd., WIPO Case No. D2006-0909.

The Panel considers that when a domain name wholly incorporates a complainant's registered trademark, it is sufficient to establish identity or confusing similarity for the purposes of the Policy. See Oki Data Americas, Inc. v. ASD, Inc, WIPO Case No. D2001-0902; Dr. Ing. h.c. F. Porsche AG v Vasiliy Terkin, WIPO Case No D2003-003-0888.

The Complainant contends that the addition to the geographical terms 'cn', in the case of burkert-cn.com, and "sh", in the case of burkert-sh.com, to the trademark BURKERT as depicted in the disputed domain names is particularly problematic insofar as it could refer to a country where the complainant has 10 branches, for example in China, and sells its product in that market.

The Panel considers that the combination of the trademark BURKERT with the terms 'cn' or 'sh' in the disputed domain names is likely to improperly suggest to consumers that the disputed domain names and corresponding websites are operated by the Complainant or with the Complainant's authorization in China, and specifically in Shanghai. See Kabushiki Kaisha Toshiba dba Toshiba Corporation v. WUFACAI, WIPO Case No. D2006-0768.

The Panel also considers that the addition of the geographic terms ‘cn’ or ‘sh’ to the trademark BURKERT does not distinguish that domain name from the Complainant’s trademark. When a domain name is identical to the trademark, it increases the likelihood of confusion or association between the domain name holder and the trademark owner.

The addition of a hyphen to separate the Complainant’s trademark and the geographical term is, in the Panel's view, also insufficient to render the disputed domain names dissimilar to the Complainant’s trademark. See France Telecom SA v. France Telecom Users Group, WIPO Case No. D2002-0144.

Additionally, the Panel considers the suffix ‘.COM’ to be irrelevant when assessing whether a domain name is identical or confusingly similar to a trademark. This is because gTLDs are only required for the functionality of a website.

On the evidence adduced by the Complainant as to the extensive use of its trademarks, including in China, the Complainant enjoys a high degree of reputation and notoriety worldwide.

Although no evidence of actual confusion has been provided by the Complainant, the Panel, having reviewed the evidence of reputation in support of the Complainant’s case, is satisfied that the disputed domain names are likely to cause confusion amongst Internet users given the nature and wide use of the Complainant’s trademarks in the classes of goods or services in which they are registered.

This is bolstered by the Complainant’s evidence of redirection of internet traffic from the disputed domains names to <http://www.burkretsh.cn> promoting and offering for sale products of the Complainant and/or its competitors without its approval or consent.

Accordingly, the Panel finds that the disputed domain names are confusingly similar to the Complainant’s trademarks and that paragraph 4(a)(i) of the Policy is satisfied.

PARAGRAPH 4(a)(ii) - NO RIGHTS OR LEGITIMATE INTERESTS

The burden of proof is on the Complainant to establish that the Respondent lacks rights or legitimate interests in the disputed domain names.

Under the Policy, if a prima facie case is established by a complainant, then the burden of production of evidence shifts to a respondent to demonstrate that it has rights or legitimate interests in the domain name. See Document Technologies, Inc. v. International Electronic Communications Inc., WIPO Case No. D2000-0270; Belupo d.d. v. WACHEM d.o.o., WIPO Case No. D2004-0110; Croatia Airlines d. d. v. Modern Empire Internet Ltd, WIPO Case No. D2003-0455; Audi AG v. Dr. Alireza Fahimipour, WIPO Case No. DIR2006-0003.

The Complainant advances several contentions in support of this ground:

(a) There is no evidence that the Complainant is aware of demonstrating that the Respondent, whose name is prima facie ‘Shanghai Xiangze Mechanical Equipment C. Ltd’ or ‘Shangai Xiangze’, might be commonly known by the disputed domain names or a name corresponding to the disputed domain names as an individual, business, or other organization.

(b) The Complainant has not granted the Respondent any authorization nor licence to make use of the Complainant’s trademark BURKERT nor the use of the disputed domain names that incorporate its trademark BURKERT.

(c) The Respondent is not making a legitimate non-commercial or fair use of the disputed domain names as they are redirected by the Respondent to websites where the Complainant’s trademark BURKERT is published and BURKERT branded products are offered for sale, along with the products of Complainant’s competitors.

The Complainant asserts that the Respondent has not provided to the Complainant with any evidence of its use of, or

demonstrable preparations to use, the disputed domain names in connection with a bona fide offering of goods or services before any notice of the dispute.

The Complainant contends that the Respondent's use can therefore be considered neither a bona fide offering of goods or services nor a legitimate non-commercial or fair use of the disputed domain names. Such wilful conduct, the Complainant contends, clearly demonstrates, to the contrary, that Respondent did not intend to use the disputed domain names in connection with any legitimate purpose.

There are also no evident disclaimers appearing on the disputed domain names' websites as to the Respondent's lack of relationship with the Complainant, including in the current redirection of the domain name <burkert-sh.com>.

As the Respondent has failed to submit any administratively compliant response or attempt to demonstrate any rights or legitimate interests in the disputed domain names, the Panel accepts the Complainant's contentions.

The Panel accepts the uncontroverted evidence that that the use of the disputed domain names suggests that the Respondents intended to trade upon the Complainant's trademarks by intentionally attempting to attract to its websites users looking for the Complainant, its products and services, and the products of the Complainant's competitors, by misleading them as to the source or affiliation of its websites.

The Panel is also persuaded by the controverted assertion that after the Complainant caused a cease and desist letter to be sent to the Respondent, the Respondent not only did not provide a response or seek to take issue with the Complainant's claims but it appears that the Respondent deactivated the website of the disputed domain name <burkert-cn.com> and redirected the disputed domain name <burkert-sh.com> to <http://www.burkretsh.cn>.

Accordingly, the Panel draws an adverse inference from the Respondent's failure to respond, in accordance with paragraph 14(b) of the Rules.

The Panel finds that:

- In respect to (a) above, the Panel accepts the Complainant's contention that the Respondent is not commonly known by the disputed domain names. The WHOIS database evidence provided by the Complainant does not identify the Respondent as the disputed domain names;

- In respect to (b) above, the Panel accepts that the Complainant did not grant the Respondent any authorization nor licence to use the Complainant's trademarks in the disputed domain names; and

- In respect to (c) above, the Panel accepts, on its face, the Respondent is not making a legitimate non-commercial or fair use of the disputed domain names.

By the lack of any administratively compliant response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain names and that paragraph 4(a)(ii) of the Policy is satisfied.

Accordingly, any use by the Respondent of the disputed domain names that incorporate the Complainant's trademark BURKERT is not authorized and therefore likely to be an infringement of the Complainant's legal rights.

PARAGRAPH 4(a)(iii) - BAD FAITH

For the purposes of paragraph 4(a)(iii), paragraph 4(b) of the Policy states that any of the following circumstances shall be considered evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that the respondent has registered or has acquired the 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 trademark or service mark 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) the respondent has registered the 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 the respondent has engaged in a pattern of such conduct; or

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

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's web site or other on-line location, by creating a likelihood of confusion with the complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of the respondent's web site or location or of a product or service on the respondent's web site or location.

The Complainant advances several contentions in support of this ground:

(a) The disputed domain names were registered in bad faith with full knowledge of the Complainant's trademarks, which have been used extensively and exclusively by the Complainant since 1946 and through long established and widespread use in several countries of the world;

(b) The disputed domain name is being used in bad faith as it creates confusion with the Complainant's domain name, particularly <burkert.com.cn> used by the Complainant in China; and

(c) The Respondent's current 'passive use' of the domain name <burkert-cn.com> may be deemed as bad faith behaviour under the Policy, if the circumstances set out in Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003 are satisfied.

The Panel accepts, on the evidence adduced by the Complainant, that its trademark BURKERT have gained worldwide reputation in the sectors of industrial measurement and control technology for fluid, including having offices in China where the Respondent resides.

On the other hand, the disputed domain names were registered on August 17, 2015, years after the Complainant obtained its trademark registrations, and the Respondent appears to be using the disputed domain names as a redirection to other websites controlled or owned by the Respondent where the Complainant's or its competitors' products are being offered for sale.

In the Panel's view, by the Respondent using the disputed domain names this way he creates or is likely to create confusion with the Complainant's domain name <burkert.com.cn> and its operation in China.

The Panel is also prepared to draw the following adverse inferences from the Respondent's failure to respond, in accordance with paragraph 14(b) of the Rules:

- the registration by the Respondent of the disputed domain names was done in circumstances that he had knowledge of the Complainant's well known and distinctive trademark BURKERT worldwide and in China, and this constitutes evidence of bad faith; and

- the Respondent is seeking to attract, for commercial gain, internet users to the Respondent's web sites or other on-line

locations, by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of the Respondent's web sites or locations or of a product or service on the Respondent's web sites or locations.

The Complainant's contention of 'passive use' by the Respondent of the domain name <burkert-cn.com> following the Complainant's cease and desist letter is also highly persuasive of the registration and use of the disputed domain names in bad faith in light of the following:

- The trademark BURKERT is a well-known trademark in the sector of industrial measurement and control technology of fluid and gas, worldwide and in China where the Respondent seems to be active;

- The Respondent's failure to respond to the cease and desist letter of the Complainant's Legal Representative. By the Respondent's silence or lack of response, it is open for the Panel to infer that the Respondent acted in bad faith within any of the circumstances set out in paragraph 4(b) of the Policy when registering the disputed domain names. The failure to respond to the letter suggests to the Panel that the Respondent was aware that it has no rights or legitimate interests in the domain names, and that the disputed domain names have been registered and are being used in bad faith. See HSBC Finance Corporation v. Clear Blue Sky Inc. and Domain Manager, WIPO Case No. D2007-0062; News Group Newspapers Limited and News Network Limited v. Momm Amed Ia, WIPO Case No. D2000- 1623; Nike, Inc. v. Azumano Travel, WIPO Case No. D2000-1598; and America Online, Inc. v. Antonio R. Diaz, WIPO Case No. D2000-1460;

- No evidence of actual or intended use in good faith of the disputed domain names by the Respondent but on the contrary, there is evidence adduced by the Complainant that the Respondent is using the disputed domain names in bad faith by piggy-backing on the Complainant's reputation for its own commercial gain; and

- The Respondent has concealed his identity. See Oculus VR, LLC v. PrivacyGuardian.org / Vildan Erdogan, WIPO Case No. D2018-0464.

Accordingly and in all the circumstances by reference to the evidence submitted by the Complainant and the inferences to be drawn from the Respondent's failure to submit an administratively compliant response, the Panel considers that the registration and use of the disputed domain names were in bad faith, and paragraph 4(a)(iii) of the Policy is satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BURKERT-CN.COM**: Transferred
2. **BURKERT-SH.COM**: Transferred

PANELLISTS

Name	**Adjunct Prof William Lye, OAM QC**

DATE OF PANEL DECISION 2020-07-10

Publish the Decision