

Decision for dispute CAC-UDRP-105012

Case number	CAC-UDRP-105012
Time of filing	2022-11-30 13:37:18
Domain names	DymAnTruck.com, dymanka.com

Case administrator

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

Organization	MAN Truck & Bus SE
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Complainant representative

Organization	Grünecker Patent und Rechtsanwälte PartG mbB
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Respondents

Organization	danyang manka qiche bujian youxian qonqsi
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Organization	: Danyang Manka Auto Parts Co., Ltd
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OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is using the "MAN" trademarks under licence from its subsidiary, MAN Marken GmbH, and has been authorized by MAN Marken GmbH to conduct this proceeding.

Given the clear authorization from MAN Marken GmbH to the Complainant, the Panel finds the Complainant has standing to file the UDRP Complaint.

The following trademarks are registered by MAN Marken GmbH:

German trademark registration no. 297302 "MAN" with priority of September 13, 1922 for classes 7, 6, 9, 11, 12, 19 German trademark registration no. 641584 "MAN" with priority of November 13, 1951 for classes 6, 7, 9, 11, 12, 17, 19 International Registration No. 542762B "MAN" with priority of August, 1989 for classes 07,12, 37 and protected for GE, TM, UZ., AM, AZ, CH, DE, DZ, EG, FR, KG, KZ, LI, LV, MA, MD, ME, PT, RS, RU, TJ, UA.

International Registrations No. 914360 "MAN" with priority of March 28, 2006 for classes 07, 09, 12,16, 25, 28, 35, 36,37,39,41,42 with protection for AF, AU, BW, GH, IL, IS, JP, LA, MW, NO, OA, RW, SG, SY, TN, US, ZM, AL, BA, BY, CH, CN, DZ, IR, KE, KZ, LI, LR, MA, MC, MD, ME, MK, MZ, RS, RU, SD, UA, VN.

International Registration No. 1019087 “MAN” (&device) with priority of June 5, 2009 for classes 07,12,16,25,28,35, 37,39 and protection for AU, BH, BW, GE, KR, NO, OM, SG, SY, TM, TR, UZ,AL, AM, AZ, BA, BY, CH, CN, DZ, EG, IR, KE, KG, KP, KZ, LI, MA, MD, MK, NA, RS, RU, TJ, UA, VN Chinese trademark registration no 526146 “MAN” with priority of August 24, 1989 for class 12.

The Complainant owns the domain name <www.mantruckandbus.com>.

FACTUAL BACKGROUND

The Complainant asserts that it is a leading manufacturer of trucks and busses. The “MAN” trademark has been used for more than 100 years by the MAN Group; it is well known for trucks and busses in numerous jurisdictions worldwide; and has been comprehensively protected in over 110 jurisdictions worldwide.

The Complainant also refers to a previous UDRP panel finding that the MAN mark is very well known. See MAN Marken GmbH v Gavinji, WIPO Case No D2022-0973, and decisions by the European Union Intellectual Property Office in trademark opposition proceedings. See EUIPO, Opposition No. B 3 136 623; and EUIPO, Opposition No B 3 049 701.

The Respondent is known in the Chinese Pinyin as “dānyáng shì màn kǎ qìchē bùjiàn yǒuxiàn gōngsī”.

The Complainant also alleges and relies on the following facts regarding the Respondent:

The Respondent acting under “Danyang Manka Auto Parts Co., Ltd.” is operating under the disputed domain names’ websites selling spare parts, in particular for the Complainant’s trucks and busses, but also for third party vehicles.

- The website under the disputed domain name <dymantruck.com> is operated by the entity “Danyang Manka Auto Parts Co., Ltd.”, displaying the logo “MANKART ®”. Also prominently displayed on the entry page are pictures of the Complainant’s trucks furnished with the famous MAN trademark. The MAN trademark is actually even “part” of the Respondent’s product range, offering the item “MARK” for sale under MK NO. MK-M02-004, whereby the characters “AN” as well as the famous MAN lion are flipped upside down.
- Screenshots of the Respondent’s website displayed under <dymantruck.com> including the sales offer “MARK” were adduced in evidence.
- The website under the disputed domain name <dymanka.com> is operated by the entity “Danyang Manka Auto Parts Co., Ltd.”, displaying the logo “MANKART ®”. On the entry page pictures of the Complainant’s MAN trucks furnished with the MAN mark are prominently displayed. Again, the MAN trademark is actually even “part” of the Respondent’s product range, offering the item “MARK” for sale, whereby again the characters “AN” as well as the famous MAN lion are flipped upside down. Also, spare parts furnished with the MAN trademark, e.g. grilles for the MAN TG-X truck (actually TGX) truck are offered, whereby it is noticeable that the Respondent tries to distort the reproduction of the MAN mark or the famous MAN lion logo.
- Screenshots of the Respondent’s website displayed under <dymantruck.com > including sales offers displaying counterfeit products furnished with MAN mark are adduced in evidence.

The Complainant did not adduce evidence from the WHOIS database of the date each of the disputed domain names <dymantruck.com> and <dymanka.com> was registered.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

RIGHTS

Burden of proof

A complainant bears the burden of proving that a disputed domain names are identical or confusingly similar to a trademark or service mark in which the complainant has rights. The applicable standard of proof in UDRP proceedings is the “balance of probabilities” or “preponderance of the evidence”.

Many UDRP proceedings are undefended. This proceeding is also in the undefended category as the CAC has not received any administratively compliant response from the Respondent.

Any failure by a respondent to provide a response does not automatically result in a successful outcome for a complainant. It is important for a complainant to prove its case by submitting relevant evidence that would assist the Panel in its decision-making process, and not rely on making conclusory assertions or statements unsupported by the evidence.

Panel’s own investigation

There are two disputed domain names in this proceeding that the Complainant contends are confusingly similar to its rights to the

trademark “MAN”.

The Panel notes that the Complainant refers to excerpts from archive.org for the disputed domain name <dymantruck.com> which was adduced in evidence to show that since at least April 1, 2016 the disputed domain name was being operated by the Respondent or its previous entity. The Complaint also asserts in its Amended Complaint that the disputed domain name <dymanka.com> was created on July 1, 2021 (sic).

The Complainant did not adduce evidence from the WHOIS database to show relevant information relating to the disputed domain names <dymantruck.com> and <dymanka.com>.

While the UDRP Policy and Rules do not provide a direct statement that the Panel may conduct its own investigations, under Rule 10 the Panel is vested with power to conduct the administrative proceeding in such manner as it considers appropriate in accordance with the Policy and these Rules.

Further, section 4.8 of the WIPO Jurisprudential Overview 3.0 accepts that “a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reach a decision”.

Here, the Panel considers it necessary to conduct its own investigation of the disputed domain names <dymantruck.com> and <dymanka.com> by conducting a search of the WHOIS database at <<https://lookup.icann.org/en>>, which is a free public registry. The Panel also viewed the website contents of each of the disputed domain names in addition to the evidence adduced by the Complainant of the Respondent’s website contents.

From this simple investigation of the WHOIS database, it appears that the disputed domain name <dymantruck.com> was registered on April 10, 2014; and the disputed domain name <dymanka.com> was registered on January 7, 2021 (which differs from the Complainant’s asserted date).

The Panel is unable, however, to determine, from its own investigation, the identities of the owner of each of the disputed domain names. The Panel notes that the Complainant has adduced in evidence the result of archive.org regarding the disputed domain name <dymantruck.com> as being originally operated by an entity “DAN YANG MAN TRUCK PARTS CO. LTD”.

The Complainant clearly has rights to the trademark “MAN”. The Complainant also seeks to rely on its company name commonly known as MAN Truck & Bus in relation to the use of the term ‘truck’.

The Panel will now deal with each of the disputed domain names in turn.

1. <dymantruck.com>

The disputed domain name <dymantruck.com> contains other textual parts and is therefore not identical to the Complainant’s trademark “MAN”. The question is whether there is confusing similarity.

It is now a well-established principle in the domain name space that generic top-level domains such as “.com”, “.org” or “.net” do not affect the domain name for the purpose of determining whether it is identical or confusingly similar. See, for example, WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A. See also Gruner + Jahr Printing & Publishing Co. v. Global Media Consulting

WIPO Case No. D 2000-1395.

As such, the Panel will ignore the gTLD “.com” in the disputed domain names in this proceeding.

The test for confusing similarity typically involves a side-by-side comparison of the disputed domain name and the textual parts of a complainant’s trademark to assess whether the mark is recognizable within the disputed domain name.

The Complainant makes the following contentions:

- The disputed domain name <dymantruck.com> contains as its sole distinctive element the Complainant’s “MAN” mark in its entirety.
- The element “dy” will be considered by the relevant public as meaningless or as descriptive for DanYang City, where the Respondent is located.
- The Complainant is also commonly known as MAN Truck & Bus. The disputed domain name’s further element “truck” is part of the Complainant’s company name and also descriptive for the Complainant’s field of business, i.e. the further element truck will even significantly increase the risk that the relevant public will confuse the disputed domain name with the Complainant’s famous “MAN” trademark.

Confusing Similarity

It is uncontroversial that the trademark “MAN” is incorporated in its entirety in the disputed domain name <dymantruck.com>. The question is whether the addition of the terms “DY” and “TRUCK” would prevent a finding of confusing similarity under the first element.

When part of a domain name is identical to a well-known trademark, it increases the likelihood of confusion or association between the disputed domain name holder and the trademark owner. It is, therefore, 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 Vasilij Terkin*, WIPO Case No D2003-003-0888.

The term “MAN”, however, is also a term that is commonly used either as a standalone noun or verb, or in combination with other words.

When a trademark is also descriptive of a word that is commonly used by the public, the Panel considers that it is not as straight forward to merely pick out the textual parts that is identical to the trademark and ignore the broader case context such as the other textual parts of the disputed domain name, the identity of the respondent vis-à-vis to the disputed domain name, the disputed domain name website content in the language they appear, the respondent’s intent to provide its own legitimate offering of goods, which will also be relevant for the second and third elements. This is not an exhaustive list of factors to be considered by the Panel. Each case will be decided on its merits.

The contents of the website under the disputed domain name <dymantruck.com> appears in both the Chinese language and English language. It appears to be an active commercial website operated by the entity “Danyang Manka Auto Parts Co. Ltd”, displaying the logo “MANKART®”. Above the logo are the Chinese characters “ ” or in the Chinese Pinyin “Màn kǎ qìchē bùjiàn”, which is translated into the English language as “Manka Auto Parts”. At the bottom of the logo are the English language words “AUTO PARTS”.

The Respondent’s logo appears to be associated with its goods or services in “auto parts”. While the symbol ® is displayed after the term “MANKART”, there is no evidence available before the Panel to indicate that the logo is a registered trademark or otherwise.

The Panel accepts the Complainant’s evidence and from viewing the contents of the website of the disputed domain name <dymantruck.com> that the Respondent is known as “Danyang Manka Auto Parts Co. Ltd” in the English language translation of the Chinese characters “ ” or in the Chinese Pinyin “Dānyáng shì màn kǎ qìchē bùjiàn yǒuxiàn gōngsī”.

The Complainant contends that the letters “D” and “Y” will be considered by the relevant public as meaningless or as descriptive for “DanYang City”. The Complainant did not adduce evidence of confusion nor has the Respondent filed any administrative compliant response. In the absence of any direct evidence, the Panel is unable to postulate what the relevant public might or might not consider.

While it is open to infer that the letters “D” and “Y” can refer to “DanYang City”, the Panel considers that it can also refer to “DanYang” being an abbreviation of part of the Respondent’s company name.

The Panel further considers that it is open to infer that the contextual part “DYMAN” of the disputed domain name <dymantruck.com> is linked to a part of the Respondent’s company name “DanYangMAN”.

While the addition of the descriptive word “TRUCK” does not appear to be a direct translation of the Chinese characters “ ” or in the Chinese Pinyin “Màn kǎ qìchē bùjiàn”, which is translated in English to mean “Manka Auto Parts”, the Chinese characters in itself “ ” or in the Chinese Pinyin “Kǎ qìchē” can be translated into the English language as “TRUCK”.

It is when the Chinese characters (“qìchē”) are combined with the Chinese characters (“bùjiàn”) to form the Chinese characters “ ” that the translation into the English language is “Auto Parts”.

The English language meaning of the Chinese characters is strictly not relevant to a side-by-side comparison but may explain contextually the intent conveyed by the Chinese language into the English language.

The Panel considers that from a side-by-side comparison of the disputed domain name <dymantruck.com> with the trademark “MAN”, the term “DYMANTRUCK” appears quite different and is not confusingly similar to the trademark “MAN” if the emphasis is placed on “DYMAN”.

However, if the emphasis is placed on “MANTRUCK” then this has similarity to the Complainant’s company name MAN Truck & Bus SE, which raises the question whether the Complainant has rights to the name “MAN Truck & Bus” for the purposes of satisfying the first element.

Use of the Complainant’s company name

The Panel accepts that the Complainant is commonly known as “MAN Truck & Bus”. While a trade name, company name, or business name is not a trademark, it can achieve recognition in the marketplace as a common law trademark, albeit unregistered, and come within the jurisdiction of the Policy.

Here, the Complainant does not appear to contend that its company name “MAN Truck & Bus” has become so well known as a common law trademark. There is also no evidence or information that indicates its consumers identify its company name as an unregistered trademark. In any event, the Panel considers that the words “Truck” and “Bus” are nouns and descriptive words, and not part of the Complainant’s trademark.

While the Panel accepts that the “MAN” trademark is associated with its trucks and busses, that alone cannot give it monopoly rights over the use of the word TRUCK with its “MAN” trademark as there is no evidence to show that Complainant’s company name function as a common law trademark.

Taking into consideration the identity of the Respondent, the active commercial use of the website under the disputed domain name <dymantruck.com>, the contextual use of the Chinese language of the Respondent’s company name translated into the English

language, and weighing the Complainant's evidence in support of its contention, on balance the Panel considers that it is open to infer that the disputed domain name <dymantruck.com> refers to the Respondent's company name and/or its business and accordingly the risk of confusion is unlikely or less likely. This is particularly so having regard to the date of registration of the disputed domain name <dymantruck.com>.

Date of registration of the disputed domain names

The Panel has already referred to its own investigation that shows the disputed domain name <dymantruck.com> was registered on April 10, 2014. The Panel has no information about when the Respondent company was first registered nor when the disputed domain name <dymantruck.com> was first used by the Respondent for its goods or services.

The Complainant filed its Complaint in this proceeding on November 23, 2022. It adduces evidence from archive.org that shows that the disputed domain name <dymantruck.com> was being used since at least April 1, 2016. This information alone should have been obvious to the Complainant that such evidence will be relevant for the Panel's deliberation. The Panel is prepared to accept that this omission is likely to be inadvertent.

Prima facie, the information that the Panel obtained from its own investigation shows that the disputed domain name <dymantruck.com> has been registered for over 8 years and has been an active commercial website, since at least April 1, 2016.

The Panel accepts the prevailing views expressed by Panels elsewhere that mere delay between the registration of a domain name and the filing of a complaint neither bars a complainant from filing such case, nor from potentially prevailing on the merits. See for example, *The E.W. Scripps Company v. Sinologic Industries*, WIPO Case No. D2003-0447.

As the Respondent has not filed any administratively compliant response, any defence based on delay is also not raised and therefore not considered by the Panel on its merits.

The Panel considers, however, that the considerable delay in bringing this proceeding and the inadvertence or otherwise of the Complainant not adducing the WHOIS information at the time of filing the Complaint colour the merits of this proceeding which reflects on the strength, or lack thereof, of the Complainant's case.

It "may sometimes be relevant in considering whether the requirements of the Policy have been satisfied". See *Board of Trustees of the University of Arkansas v. FanMail.com, LLC* WIPO Case No. D2009-1139; *AIB-Vincotte Belgium ASBL, AIB-Vincotte USA Inc./Corporation Texas v. Guillermo Lozada, Jr.*, WIPO Case No. D2005-0485.

Here, the information and evidence show the Respondent manufactures and sells spare parts and other products for the Complainant's trucks and busses, and for other auto brands or third-party vehicles under a disputed domain name that has been registered for a considerable amount of time. It is, therefore, open for the Panel to infer that any risk of confusion is unlikely or less likely in these circumstances.

There is also no allegation that the Respondent is selling trucks bearing the Complainant's trademark "MAN" despite pictures of the Complainant's trucks bearing its trademark "MAN" being displayed on the website under the disputed domain name <dymantruck.com>. The information there also shows that the Respondent sells auto parts for a range of other auto brands.

The Panel, having carefully considered the available information, the evidence including its weight, and the Complainant's contentions, the Panel considers that it is open to infer that the disputed domain name <dymantruck.com> is referable to the Respondent's company and its business of providing its goods or services (being auto parts) for sale for use by a range of trucks including that of the Complainant.

Accordingly, the Panel is not satisfied that the disputed domain name <dymantruck.com> is confusingly similar to the Complainant's trademark "MAN".

2. <dymanka.com>

The Complainant makes the following contentions:

- The disputed domain name <dymanka.com> also contains as its sole distinctive element the Complainant's mark in its entirety. Again, the element "dy" will be considered by the relevant public as meaningless or descriptive for DanYang, where the Respondent is based. The further element "ka" is also descriptive for the goods at issue. The Chinese term for truck is "Ka Che" or also abbreviated as "Ka", whereby "Che" is the Chinese term for vehicles in general.
- The element "ka", will be understood at least by the Chinese speaking part of the relevant public as a reference to a heavy vehicle, which again is descriptive for the goods at issue. The non-Chinese speaking part of the relevant public, will perceive "KA" as phonetically equivalent to car and therefore descriptive for the goods at issue.
- The addition of other descriptive terms or meaningless strings does not mitigate the likelihood of confusion between the disputed domain names and the Complainant's MAN trademark. See *Deutz v Liushuliang*, WIPO Case No. 2013-1807; *Choo Limited v. Weng Huangteng*, WIPO Case No. D20100126; *J. Choo Limited v. Hui Wang aka Wang Hui*, WIPO Case No. D2010-0534; *Aktiebolaget Electrolux v. Li Yong*, WIPO Case No. D2013-0193.11

The Panel accepts the disputed domain name <dymanka.com> is operated by the Respondent.

The Panel also accepts the trademark "MAN" is incorporated in its entirety in the disputed domain name. The question is whether the addition of the terms "DY" and "KA" would prevent a finding of confusing similarity under the first element.

Confusing Similarity

The Panel has already observed that no evidence of confusion has been adduced nor has the Respondent filed any administrative compliant response.

In section 1 above, the Panel discusses the use of the letters “D” and “Y” and its reasoning, which are equally applicable here. The Panel also adopts, where relevant to this section, its discussion on the use of the term “MAN” either as a trademark or as a descriptive noun or verb, or in combination with other words.

The contents of the website under the disputed domain name <dymanka.com> appears to be translatable into several languages, including Chinese, Japanese, and English. On its face, it also appears to be a commercial website operated by the entity “Danyang Manka Auto Parts Co. Ltd”, displaying the logo “MANKART ®”.

The Panel observes that the Respondent’s main products include auto parts for MAN, BENZ, SCANIA, VOLVO, DAF, and other auto brands.

The disputed domain name uses the letters “D” and “Y” together with “MANKA” to form “DYMANKA”. While the Complainant’s rights to the trademark “MAN” is incorporated in its entirety to the disputed domain name <dymanka.com>, it is open for the Panel to infer that the disputed domain name <dymanka.com> refers to the Respondent’s company name which includes the term “Manka”.

The Panel notes the Complainant’s contentions regarding the meaning of the terms “ka” and “ka che”. The Complainant contends that the Chinese terms “ka che” will be understood at least by the Chinese speaking part of the relevant public as a reference to heavy vehicle and descriptive of the goods at issue. No information or evidence has been adduced in support.

The Panel considers that in the context of the use of the English language for the purposes of applying the test of confusing similarity, it is not material whether the Chinese language terms “ka che” or any other language has a translatable meaning or not in order to determine whether a disputed domain name is confusingly similar to a registered trademark.

It would be erroneous to do so. For example, by using the English letters it is easy to ignore the use of the Chinese characters or the Chinese Pinyin to describes the words. Here, the word “ka” is different from the Chinese Pinyin “Kǎ” (noting the Pinyin Tone Marks).

Similarly, the Panel cannot accept the contention that the non-Chinese speaking part of the relevant public will perceive “KA” as phonetically equivalent to car and therefore descriptive for the goods at issue.

From a side-to-side comparison of the disputed domain name <dymanka.com> and the trademark “MAN”, the Panel is not satisfied that they are confusingly similar.

While the Panel observes that the Complainant filed this proceeding approximately 22½ months after the disputed domain name <dymanka.com> was registered on January 7, 2021, it is unnecessary for the Panel to make any further comment given the Panel’s view stated in Section 1 above.

Conclusion

The UDRP forum is not a trademark court. The question under UDRP proceedings is whether an objective observer directly comparing a trademark and the disputed domain name would find the disputed domain name identical or confusingly similar to the trademark, not whether the domain name causes confusion as to source.

The first element typically serves as a threshold question to determine a trademark owner’s standing to file a UDRP complaint, but on occasion, such as this proceeding, the overall facts and circumstances of the case requires greater scrutiny of the information and evidence adduced to satisfy the first element.

The Panel, having carefully considered the available information, the evidence including its weight, and the Complainant’s contentions, the Panel considers that the disputed domain names <dymatrucks.com> and <dymanka.com> are not confusingly similar to the Complainant’s trademark “MAN”, but they are referable to the Respondent’s company name and its business of providing its goods or services (being auto parts) for sale for use by a range of trucks including that of the Complainant.

The Panel notes from the evidence that the trademark “MAN” is registered by MAN Marken GmbH in China since August 10, 1990. The Complainant’s subsidiary company MAN Marken GmbH is not precluded from enforcing its registered trademark rights in a court of competent jurisdiction for any alleged infringement of its trademark rights.

Accordingly, the Panel finds that the disputed domain names are not confusingly similar to the trademark in which the Complainant has rights and that paragraph 4(a)(i) of the Policy is not satisfied.

NO RIGHTS OR LEGITIMATE INTERESTS

The Panel has determined that the Complainant has not satisfied the first element for the disputed domain names <dymatruck.com> and <dymanka.com>. In view of the Panel’s decision on the first element, it is not necessary to address the issue of the second element.

BAD FAITH

The Panel has determined that the Complainant has not satisfied the first element for the disputed domain names <dymantruck.com> and <dymanka.com>. In view of the Panel's decision on the first element, it is not necessary to address the issue of the third element.

PROCEDURAL FACTORS

Consolidation and language of proceedings

By its Amended Complaint, the Complainant requests consolidation of the proceedings involving the disputed domain names <dymantruck.com> and <dymanka.com> on the ground that the disputed domain names are under common control.

Under Rule 10(e), the Panel shall decide a request by a party to consolidate multiple domain name disputes in accordance with the Policy and Rules.

The Complainant contends that the disputed domain name <dymantruck.com> was registered by "Danyang Manka Qiche Bujian Youxian Gongsi" whereby "Qiche Bujian" is the Chinese language term for auto parts. The Complainant contends that the disputed domain name <dymanka.com> is registered by Danyang Manka Auto Parts Co. Ltd.

The Complainant contends that despite the slight variation of the names it must be assumed that they refer to the same entity. The Complainant further contends that the websites available under the disputed domain names offer identical goods and are both operated by Danyang Manka Auto Parts Co. Ltd.

The Complainant did not submit any WHOIS information about the true owner of the each of the disputed domain names and when they were respectively first registered, although such WHOIS information can be easily determined by undertaking a WHOIS Domain Name and IP lookup search.

No administrative compliant response was received from the Respondent by January 12, 2023.

The Panel accepts the Complainant's contention and is prepared to accede to the Complainant's requests to consolidate both disputed domain names into one proceeding as it appears on the websites available under the disputed domain names that they are both operated by Danyang Manka Auto Parts Co. Ltd.

The Complainant also requests the proceedings be in English despite the language of the Registration Agreement for the disputed domain name <dymantruck.com> is in Chinese. The Registration Agreement for the disputed domain name <dymanka.com> is in English as it appears to be concluded in English.

Rule 11 provides that unless otherwise agreed to by the Parties or specified otherwise in the Registration Agreement, the language of the administrative proceedings 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 proceedings.

The Complainant asserts that the website available under the disputed domain name <dymantruck.com> is also available in the English language. It further asserts that the domain registration agreement for the disputed domain name <dymanka.com> was concluded in the English language.

The Complainant contends then the structure of the disputed domain names together with the goods offered by the Respondent confirms that the Respondent is familiar with the vehicle spare part or transportation sector and the business activities in this field, which are largely conducted in English.

The Panel accepts the Complainant's contention which is supported by the evidence that the websites can also be accessed in the English language, and as such the Panel is prepared to draw the inference that the Respondent has apparent familiarity with the English language.

Further, the CAC has also notified the Respondent on December 23, 2022 of the administrative proceedings in the Chinese language, to which there has been no administrative compliant response received from the Respondent.

Accordingly, the Panel will proceed to determine this proceeding in the English language.

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 Respondent.

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 January 13, 2023 the CAC by its non-standard communication stated as follows (omitting irrelevant parts):

As far as the e-mail notice is concerned, we received a notification that the e-mail sent (in both English and Chinese) to postmaster@dymanka.com was returned back as undelivered - (please find the notification enclosed). The e-mail notice was also sent to ly@dymantruck.com, but we never received any proof of delivery or notification of undelivery.

Given the reasonable measures employed by CAC as set out in the above non-standard communication, 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

The Complainant is the licensee from its subsidiary MAN Marken GmbH of the registered trademark "MAN" in numerous countries including the country where the Respondent is located. The Complainant owns the domain name <mantruckandbus.com>.

The Respondent is known in the Chinese Pinyin as "dānyáng shì màn kǎ qìchē bùjiàn yǒuxiàn gōngsī" or acting under "Danyang Manka Auto Parts Co., Ltd." and operating under the disputed domain names' websites selling spare parts, in particular for the Complainant's trucks and busses, but also for third party vehicles.

The disputed domain name <dymantruck.com> was registered on April 10, 2014; and the disputed domain name <dymanka.com> was registered on January 7, 2021. Each of the disputed domain name's website appears to be an active commercial website displaying the Respondent's logo "MANKART ®".

It is uncontroversial that the Complainant's trademark "MAN" is incorporated in its entirety in each of the disputed domain name. The term "MAN", however, is also a term that is commonly used either as a standalone noun or verb, or in combination with other words.

The Complainant filed its Complaint on November 23, 2022, about 8 years after the disputed domain name <dymantruck.com> was registered, and 22½ months after the disputed domain name <dymanka.com> was registered.

The Complainant challenges the Respondent's registration of the disputed domain names under paragraph 4(a)(i) of Policy and seeks relief that the disputed domain name be transferred to the Complainant.

The Respondent has failed to file any administratively compliant response.

The question under UDRP proceedings is whether an objective observer directly comparing a trademark and the disputed domain name would find the disputed domain name identical or confusingly similar to the trademark, not whether the domain name causes confusion as to source.

For the reasons articulated in the Panel's reasons above, the Complainant has not satisfied the Panel that each of the disputed domain names <dymantrucks.com> and <dymanka.com> is confusingly similar to Complainant's rights to the trademark "MAN".

The Complainant's subsidiary company MAN Marken GmbH may very well have rights that it can enforce in a court of competent jurisdiction for any alleged infringement of its trademark rights. The UDRP is not such a forum.

As the Panel is not satisfied that the first element is satisfied, it is not necessary to address the issues of the second and third elements.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **DymAnTruck.com**: Remaining with the Respondent
2. **dymanka.com**: Remaining with the Respondent

PANELLISTS

Name	William Lye OAM KC
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DATE OF PANEL DECISION 2023-02-03

Publish the Decision
