

Decision for dispute CAC-UDRP-105574

Case number **CAC-UDRP-105574**

Time of filing **2023-07-12 09:36:33**

Domain names **krupp-alloy.com**

Case administrator

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

Complainant

Organization **thyssenkrupp AG**

Respondent

Name **zhuo yang gang tie shang hai you xian gong si**

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 name.

IDENTIFICATION OF RIGHTS

The Complainant is the registered proprietor of numerous international and national trademark registrations for the word mark "krupp" and "KRUPP" and of national trademark registrations consisting of or including the mark "krupp" or "KRUPP" in many other countries.

These trademarks include, inter alia:

- EUTM 016785982 krupp, registered on October 30, 2017 in classes 01, 06, 07, 09, 11, 12, 17, 19, 28, 37 and 42;
- WO 1407236 krupp, registered on September 20, 2017 in classes 01, 06, 07, 09, 11, 12, 17, 19, 28, 37 and 42;
- CN 26725193 krupp, registered on March 7, 2019 in class 01;
- CN 32418536 krupp, registered on August 14, 2019 in class 06.

FACTUAL BACKGROUND

The Complainant is a diversified industrial group with more than 100.000 employees and revenue of more than 34 billion EUR in fiscal 2010/2021. It is one of the world's largest producers of steel and was ranked tenth-largest worldwide by revenue in 2015.

The Complainant's business operations are organized in five business areas: Steel Europe, Bearings and Forged Technologies, Automotive Technology, Marine Systems and Materials Services and Multi Tracks. These areas are divided into business units and operating units. In 56 countries, 335 subsidiaries and 22 investments accounted for by the equity method are included in the consolidated financial statements.

The Complainant's product portfolio includes "steel", "metals", "alloys", "rolled steel", "stainless steel", "nonferrous metals", "hot strip", "heavy plate", "sheet and coated products", "organic coated strip and sheet", "composite material", "electrical steel", "packaging steel", "precision steel strip", "submarines", "naval surface vessels", "naval services", "steering", "dampers", "springs and stabilizers", "axle assembly", "camshafts", "crankshafts and conrods", "bearings", "undercarriages", "chemical plants", "coke plant technologies", "industrial plant services", "cement plants", "mining and mineral solutions", "automotive plants", "materials handling", "planning and

technical assessments”, “system integration”, “automation solutions”, “handling and transport”, “jigs and tools”, “assembly lines”, “plastics”, “materials services (processing)”, “logistics services”, and “infrastructure projects and services”.

Apart from maintaining a significant trademark portfolio, the Complainant also maintains a strong online presence and operates its main webpage at “www.thyssenkrupp.com”, which it registered on December 5, 1996. The Complainant is also the registrant of numerous additional domain names containing its trademark and company name “krupp” and “thyssenkrupp”, including <krupp.com>; <krupp.de> and <krupp.cn>.

The KRUPP trademarks significantly pre-date the registration of the disputed domain name in 2022.

PARTIES CONTENTIONS

The Complainant submits that the requirements of the Policy have been met and that the disputed domain name should be transferred to it. The Complainant makes a number of legal arguments (referenced below) and also supplies a set of annexes providing evidence of its activities and of the Respondent's use of the disputed domain name.

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

Language of the Proceedings:

Under 11 of the UDRP Rules, the default language of the proceedings is the language of the registration agreement, subject to the authority of the panel to determine otherwise. The language of the registration agreement is Chinese, but Complainant requests the Panel to accept Amended Complaint in English. The Complainant asserts that:

English is a neutral language and the disputed domain name and all its content are in English. This is a clear indication that the Respondent has sufficient knowledge of that language to conduct not only business but also these proceedings in English. Since English is the world trade language and therefore the most important language for international communication it is obvious that the Respondent uses this language with the intention of attracting consumers worldwide, beyond the Chinese market.

It has been found sufficient if persuasive evidence has been adduced by the Complainant to suggest the likely possibility that the Respondent is conversant and proficient in the English language. In this case there is ample evidence as the phishing emails sent by the Respondent are all in English. This fact is a clear indication that the Respondent has sufficient knowledge of the English language to conduct these proceedings in English.

Additionally, the Complainant argues that determining Chinese as the language of the proceedings would lead to considerable disadvantages for the Complainant. It has to be pointed out that the Complainant has no knowledge at all of the Chinese language. Accordingly, it would be necessary to use an external translation agency to do the translations. Considering the fact that not only the Complaint as such but also the Annexes would have to be translated, the translation would take some time and would therefore lead to a significant delay of the proceedings.

Moreover, determining Chinese as the language of the proceedings would give the Respondents a clear advantage although it is obvious that the disputed domain name was registered in bad faith.

It would be both procedurally and economically efficient to proceed in English.

Despite the above factors, the Respondent was notified of the proceedings in both English and Chinese. No response was filed.

Taking the above factors and in particular the fact that English language emails were sent from the English language website under the disputed domain name into consideration, the Panel accepts that the Respondent can be presumed to have sufficient knowledge of English and would not be unduly prejudiced by the proceedings being conducted in English. In keeping with the Policy aim of facilitating a relatively time and cost-efficient procedure for the resolution of domain name disputes, and in accordance with Rule 11 (a) of the UDRP Rules, the Panel determines that it would be appropriate for English to be the language of the proceedings.

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.

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

According to Paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to obtain an order that the disputed domain name should be transferred or cancelled:

- (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 rights 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 has examined the evidence available to it and has come to the following conclusion concerning the three elements of paragraph 4(a) of the Policy in these proceedings:

RIGHTS AND SIMILARITY

The Complainant has established rights in the name KRUPP. The disputed domain name <KRUPP-ALLOY.COM> is found to be confusingly similar to the Complainant's trademarks. This finding is based on the settled practice in evaluating the existence of a likelihood of confusion of:

- a) disregarding the top-level suffix in the domain names (i.e. ".com") in the comparison; and
- b) finding that the simple combination of a trademark and a nondistinctive generic term such as "alloy", which would be considered descriptive of many of the goods manufactured and marketed by the Complainant or the addition of a hyphen between the distinctive trademark and the nondistinctive generic element would by no means be sufficient to distinguish a domain name from a trademark.

The disputed domain name is therefore found to be confusingly similar to the earlier rights in the name KRUPP and the Panel concludes that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

The onus to make out a prima facie case that the Respondent lacks rights or legitimate interests is placed on the Complainant. However, once such a prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

In the absence of a statement from the Respondent, there are no arguments or facts which could support any rights or legitimate interests in the disputed domain name. The Complainant and the Respondent have never had a previous relationship, nor has the Complainant ever granted the Respondent with any rights or license to use the KRUPP trademark in any form, including in the disputed domain name.

The Respondent never appears to have been known or acted as "Krupp". The registration of the distinctive mark within the disputed domain name leads to the conclusion that the only reason for the registration of the disputed domain name was to take advantage of the Complainant's goodwill and valuable reputation. No other logical or reasonable conclusion can be gleaned. Nothing about the disputed domain name suggests a legitimate non-commercial or fair use of it.

The Panel therefore concludes that the Respondent did not refute the Complainant's prima facie case and has not established any rights or legitimate interest in the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy). The Complainant has therefore also satisfied the requirement under paragraph 4(a)(ii) of the Policy.

BAD FAITH

The Panel finds that the Complainant has established that the disputed domain name was registered by the Respondent and is being used by the Respondent in bad faith.

The Respondent is making use of the disputed domain names in bad faith for fraudulent purposes by using the email address linked to the disputed domain name to contact the Complainant's costumers. The Complainant has been contacted by different companies asking the Complainant to verify information based on e-mail correspondence with the e-mail address linked to the disputed account. Some of these companies paid for goods but have not received any products. The Complainant provided e-mail evidence with quotations and invoices.

Based on the use made of the disputed domain name, no other explanation for registering a combination of the trademark of the Complainant together with a generic term as a domain name than the Respondent's actual knowledge of the Complainant's brand before and at the time of the registration appears even remotely feasible. In view of the use made of the disputed domain name, there is no plausible reason that the Respondent could have had for registering the disputed domain name in good faith.

The disputed domain name was registered with the sole purpose of creating an association with the Complainant.

The Panel therefore concludes that the Respondent has registered and is using the disputed domain name in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy). The Complainant has therefore also satisfied the requirement under paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **krupp-alloy.com**: Transferred

PANELLISTS

Name	Udo Pflleghar
------	----------------------

DATE OF PANEL DECISION 2023-08-14

Publish the Decision
