

## Decision for dispute CAC-UDRP-105669

Case number **CAC-UDRP-105669**

Time of filing **2023-08-02 10:24:26**

Domain names **k-alloy.com**

### Case administrator

Name **Olga Dvořáková (Case admin)**

### Complainant

Organization **thyssenkrupp AG**

### Respondent

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

#### OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the domain name <k-alloy.com> ('the disputed domain name').

#### IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade marks, amongst others:

- German trade mark registration no. 123949, registered on 3 December 1909, for the word mark KRUPP, in classes 6, 7, 8, 12, and 19 of the Nice Classification;
- EU trade mark registration no. 016785982, registered on 30 October 2017, for the word mark krupp, in classes 1, 6, 7, 9, 11, 12, 17, 19, 28, 37, and 42 of the Nice Classification; and

Various Chinese trade mark registration for the word mark krupp, in several classes, among which the Panel notes the following:

- Chinese trade mark registration no. 32418536, registered on 14 August 2020, for the word mark krupp, in class 6 of the Nice Classification.

The Complainant further relies on numerous national trade marks worldwide held by the Complainant for 'krupp' and 'KRUPP'.

(Hereinafter, collectively or individually, 'the Complainant's trade mark' or 'the (trade) mark KRUPP' interchangeably).

The disputed domain name was registered on 5 July 2023, and, at present, it resolves to an active website ('the Respondent's website'), the particulars of which are set out under section B.2 below.

#### FACTUAL BACKGROUND

The Complainant's contentions can be summarised as follows:

##### A. Background history

The Complainant is the result of a merger in 1999 of two well-known German steel companies, Thyssen AG and Krupp, both of which

founded in the 19<sup>th</sup> century.

The Complainant is a diverse business group with more than 100,000 employees and a revenue of more than EUR 34bn in the fiscal year 2021/2022. It is one of the world's largest steel producer and ranked 10<sup>th</sup> by revenue in 2015. The Complainant's product portfolio includes steel, metals, alloys, plastics, composite materials, amongst many others.

In addition to the trade marks mentioned above, the Complainant is the owner of numerous domain names bearing the terms 'krupp' and 'thyssenkrupp', most notably the domain name <thyssenkrupp.com> (registered in 1996) ('the Complainant's domain name'). The Complainant operates its activities through the website www.thyssenkrupp.com.

The Complainant seeks to obtain the transfer of the disputed domain name <k-alloy.com> on the grounds set out in section B.2 below.

### **B.1 Preliminary Matter: Language of the Proceeding**

On the matter of the language of the proceedings, the Panel notes the following:

- The Complaint is written in English and the Complainant has made a pre-emptive request that English be the language of this UDRP administrative proceeding;
- The registrar's verification response provided that the language of the registration agreement for the disputed domain name is Chinese; and
- The Complainant's grounds for English to be the language of this UDRP administrative proceeding can be summarised as follows: (i) English is a neutral language, being the world's trade language; (ii) the Respondent's website displays content in English only; (iii) the Respondent has corresponded with the Complainant's customers in English, which indicates that the Respondent has sufficient knowledge of the English language; and (iv) the Panel's determination of Chinese as the language of this UDRP administrative proceeding would be inequitable and burdensome owing to the delay and costs associated with translations. It would therefore be both procedurally and economically efficient to proceed in English.

### **B.2 Substantive grounds**

#### **I. The disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights**

The Complainant submits that the disputed domain name <k-alloy.com> is confusingly similar to the Complainant's trade mark, owing to the following reasons:

- The first element of the disputed domain name string is the letter 'k' which is used as an abbreviation for the Complainant's trade mark KRUPP and the second portion of the Complainant's company name Thyssenkrupp. The letter 'k' has distinctive character;
- The second element of the disputed domain name string is 'alloy', which is clearly descriptive and refers to the goods offered under the disputed domain name, namely alloy products; and
- The Complainant claims that the word 'alloy' does not play a prominent role in the disputed domain name string, the letter 'k' being the only distinctive element.

#### **II. The Respondent has no rights or legitimate interests in respect of the disputed domain name**

The Claimant asserts that the Respondent lacks rights or legitimate interests in respect of the disputed domain name, owing to the following indicia:

- There is no indication that the Respondent has been commonly known by the disputed domain name;
- The Respondent has never been authorised by the Complainant to use any of the Complainant's trade marks, nor has it been authorised to register or use any domain name incorporating the Complainant's trade mark and corporate name. Rather, the Respondent has not connection at all with the Complainant or any of its affiliates; and
- The Respondent does not use the disputed domain name for non-commercial purposes.

In view of the above, the Complainant concludes that the Respondent has no rights or legitimate interests in the dispute domain name.

#### **III. The Respondent registered and is using the disputed domain name in bad faith**

##### **Registration**

The Complainant avers that there can be no doubt that the Respondent had knowledge of the Complainant's well known trade mark and corporate name when registering the disputed domain name.

The Complainant alludes to a UDRP administrative proceeding initiated by the Complainant before CAC, in respect of the domain name <krupp-alloy.com> whose ownership also belongs to the Respondent. This would reinforce the Respondent's registration of the disputed domain name in bad faith.

##### **Use**

The Complainant notes that the term 'KRUPP' is prominently located on the Respondent's website and mimics the Complainant's corporate identity with the light blue colour being used. The term 'KRUPP' is referenced on other sections of the Respondent's website.

The Complainant further submits that the Respondent's website contains pictures of the Complainant's steel plant in Duisburg as well as various articles about the Complainant.

The Complainant claims that the above is compelling evidence that the Respondent has attempted to impersonate the Complainant through the use of the Respondent's website, with the intention to deliberately mislead and confuse the public (paragraph 4(b)(iv) of the UDRP Policy).

The Complainant therefore concludes that the Respondent has registered and is using the disputed domain name in bad faith.

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#### PARTIES CONTENTIONS

The Complainant's contentions are set out above.

The Respondent has failed to serve a Response within the deadline prescribed under Rule 5 of the UDRP Rules, or at all.

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#### RIGHTS

The Complainant has not, to the satisfaction of the Panel, shown that the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the UDRP Policy).

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#### NO RIGHTS OR LEGITIMATE INTERESTS

The Panel makes no ruling on this UDRP Policy ground for the reasons set forth in section 'Principal Reasons for the Decision' further below.

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#### BAD FAITH

The Panel makes no ruling on this UDRP Policy ground for the reasons set forth in section 'Principal Reasons for the Decision' further below.

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#### PROCEDURAL FACTORS

##### **A. Complainant's Language Request**

The Panel is given discretion under Rule 11 of the UDRP Rules to determine the appropriate language of the UDRP administrative proceeding. The Panel notes Rule 10 of the UDRP Rules, which vests the Panel with authority to conduct the proceedings in a manner it deems appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case.

On this particular matter, the Panel takes the liberty to adopt the language of proceeding test applied in CAC Case no. 104144, *Writera Limited v. alexander ershov*, which helpfully sets out the following six guiding factors:

- (i) the language of the disputed domain name string: the Panel considers that English is the only identifiable language in the disputed domain name string, particularly the noun 'alloy';
- (ii) the content of the Respondent's website: the Respondent's website hosts content in English only;
- (iii) the language(s) of the Parties: the Complainant is a company based in Germany and the Respondent appears to be a Chinese national residing in China. The English language would therefore be considered neutral for both Parties;
- (iv) the Respondent's behaviour: the Panel notes that the Respondent has shown no inclination to participate in this UDRP administrative proceeding;
- (v) the Panel's overall concern with due process: the Panel has discharged its duty under Rule 10 (c) of the UDRP Rules; and
- (vi) the balance of convenience: while determining the language of the UDRP administrative proceeding, the Panel has a duty to consider who would suffer the greatest inconvenience as a result of the Panel's determination. On the one hand, the determination

of English as the language of this UDRP administrative proceeding – a widely spoken language – is unlikely to cause the Respondent any inconvenience, not least given that the Respondent's website hosts content in English only. The determination of Chinese as the language of this UDRP administrative proceeding, on the other hand, is very likely to cause the Complainant inconvenience, and to interfere with the overall due expedition of the proceedings under the UDRP Rules.

In view of the above factors, the Panel has decided to accept the Complainant's language request, such that the decision in the present matter will be rendered in English.

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.

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## PRINCIPAL REASONS FOR THE DECISION

### A. UDRP Threshold

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy sets out the following threshold for the Complainant to meet for the granting of the relief sought (transfer of the disputed domain name):

- i. The disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- 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.

It is incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP administrative proceedings is the balance of probabilities and, on that basis, the Panel will now proceed to determine each of the three UDRP Policy grounds in turn.

### B. Identical or Confusingly Similar

The test under this UDRP Policy ground provides for a side-by-side comparison between the textual components of the disputed domain name and the Complainant's trade mark. The Panel is therefore tasked with determining whether the mark is recognisable within the disputed domain name. This task involves a relatively straightforward juxtaposing exercise.

Nonetheless, in order to succeed under the first ground of the UDRP Policy, the Complainant must firstly provide evidence that it has rights in a trade mark or service mark, following which the Panel shall assess whether or not the disputed domain name is identical or confusingly similar to the Complainant's trade mark.

The Complainant has established registered rights in the mark KRUPP for over a century.

The disputed domain name <k-alloy.com> was registered in 2023, and consists of the keyboard letter 'k' and the descriptive term 'alloy'.

The Complainant argues that the keyboard letter 'k' is to be interpreted as an abbreviation for the term 'krupp' over which the Complainant holds trade mark rights, and that 'k' is the dominant feature within the disputed domain name and has acquired a distinctive character.

The Panel is unpersuaded by the Complainant's arguments.

The Panel has difficulty in accepting that the keyboard letter 'k' stands for 'krupp' and that the Complainant's trade mark KRUPP is recognisable within the disputed domain name string, for the following reasons:

- 1) the adjacent noun 'alloy' has a dictionary meaning of a 'metal that is made by mixing two or more metals, or a metal and another substance' (source: Cambridge Dictionary);
- 2) 'k-alloy' is effectively a type of aluminium alloy traded in the metal industry (source: Rio Tinto Primary aluminium foundry alloys – report April 2019);
- 3) the Panel undertook an online search for the term 'k-alloy' on the Google search engine, which resulted in over 80,000 entries. The Panel reviewed the first ten pages of the search results and none of which feature or relate to the Complainant; and
- 4) as far as the Panel can see from the case file, the Complainant has never operated under, has never been known as, and does not own trade mark rights in, the letter 'k'.

Admittedly, the content of the website connected with the disputed domain name may support the Complainant's case regarding the Respondent's fraudulent activities. Nevertheless, the Panel considers that passing off and/or trade mark/copyright infringement claims would be far beyond the narrow remit of this UDRP administrative proceeding. Instead, these claims have an appropriate and separate

forum to be heard and adjudicated.

The Panel therefore finds that the Complainant has failed to meet the requirement under paragraph 4(a)(i) of the UDRP Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

- 1. **k-alloy.com**: Remaining with the Respondent

PANELLISTS

Name	Yana Zhou
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DATE OF PANEL DECISION 2023-09-08

Publish the Decision