Decision for dispute CAC-UDRP-106290

Case number	CAC-UDRP-106290
Time of filing	2024-03-12 09:42:07
Domain names	ss-tks.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	thyssenkrupp AG- thyssenkrupp Intellectual Property GmbH

Respondent

Name	zhuo yang gang tie shang hai you xian gong si

OTHER LEGAL PROCEEDINGS

The Complainant has disclosed these proceedings related to the domain names:

CAC-UDRP-105574 against domain name <krupp-alloy.com>

CAC-UDRP-105410 against domain name <krupp-materials.com>

WIPO UDRP D2023-0881 against domain names <kruppss.com> and <krupp-steel.com>.

CAC-UDRP-105669 against domain name <k-alloy.com> was rejected.

The proceeding CAC-UDRP-106233 is pending of resolution.

The Respondent "zhuo yang gang tie shang hai you xian gong si" was the owner of all disputed domain names in these proceedings.

IDENTIFICATION OF RIGHTS

The Complainant enjoys trademark protection for the word mark “tk” and “tks” by means of several international and national trademark registrations. The Complainant is also the registrant of numerous additional domain names containing its trademarks “tk” and “tks”.

The Respondent has not submitted any materials related to its rights.

FACTUAL BACKGROUND

The Complainant, ThyssenKrupp AG, is a German industrial engineering and steel production company. The Complainant enjoys protection for the word mark “tk” by means of several international trademark registrations. It has registered word mark “tks” in at least one jurisdiction before the disputed domain name was registered, and is applying to have “tks” protected as a trademark in many other jurisdictions.

The disputed domain name "www.ss-tks.com" was registered on September 26, 2023.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

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

PROCEDURAL FACTORS

The Complainant requests that the language of this administrative proceeding should be English pursuant to UDRP Rule 10(b): “In all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case.”

Paragraph 10 of the UDRP Rules vests a Panel with authority to conduct the proceedings in a manner it considers 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. UDRP panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios were summarized into WIPO Jurisprudential Overview 3.0, 4.5.1. In this particular instance, the Complainant tried to request change of languages of proceedings in light of Chinese language Registration Agreement by showing that 1) the disputed domain name is in English; 2) Phishing emails and the quotations sent by the Respondent are all in Englisch; and 3) the translation of the Complaint would unfairly disadvantage and burden the Complainant and delay the proceedings and adjudication of this matter.

In light of the scenarios and equity, the Panel is of the view that conducting the proceeding in English is unlikely to heavily burden the Respondent, and it is likely that the Respondent can understand the English language based on a preponderance of evidence test. Without further objection from the Respondent on the issue, the Panel will proceed to issue the decision in English.

PRINCIPAL REASONS FOR THE DECISION

- The disputed domain name is confusingly similar to Complainant's trademark.

The Complainant is the owner of various trademarks containing the term “tk”, “tk steel”, “tk+logo” and DE trademark “tks”. The Complainant enjoys protection for the word mark “tk” by means of several international trademark registrations. It has registered word mark “tks” in at least one jurisdiction before the disputed domain name was registered, and is applying to have “tks” protected as a trademark in many other jurisdictions.

The disputed domain name “ss-tks.com” wholly incorporates the registered mark “tks”. In addition to fully incorporating the term "tks", which is not a common term in the English language, the addition of the prefix “ss” and “-“ does not negate the connection between the disputed domain name and the Complainant’s brand. As argued by the Complainant, “ss” could be interpreted as the abbreviation of “stainless steel” – an important line of product in the Complainant’s business, reinforcing the connection with the

Complainant. Previous UDRP panels have consistently stated in this regard that “minor alterations cannot prevent a finding of confusing similarity between the trademark and the domain name” (See LinkedIn Corporation v. Daphne Reynolds, WIPO Case No. D2015-1679). gTLDs such as “.com” are commonly viewed as a standard registration requirement, and as such they are disregarded under the first element confusing similarity test (WIPO Overview 3.0, section 1.11).

The Panel therefore concludes that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

- The Respondent does not have rights or legitimate interests in the disputed domain name.

Although the Respondent did not file an administratively compliant (or any) response, the Complainant is still required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant in the present case has not licensed or authorized the Respondent to register or use its trademark or the disputed domain name. There is no evidence that the Respondent is known by the disputed domain name or owns any corresponding registered trademarks. The organization of the Respondent, or its address, also has no connection with “tks” or “ss-tks”. The Complainant did not grant any license or authorization to the Respondent to register or use the disputed domain name, nor the use of the Complainants’ trademark on pages of the disputed websites.

On the basis of preponderance of evidence, and in the absence of any evidence to the contrary or any administratively compliant response being put forward by the Respondent, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy.

- The disputed domain name was registered and is being used in bad faith.

The use and registration of the disputed domain name by the Respondent has been done in bad faith.

First of all, the registration of the disputed domain name by the Respondent was done in bad faith. UDRP panels have consistently held that the mere registration of a domain name that is confusingly similar to a famous trademark by an unaffiliated entity can by itself create a presumption of bad faith. Like the Complainant puts forward, “tks” is not merely a dictionary word or generic phrase. The brand and its registered mark enjoy a high level of distinctiveness and has develop a wide reputation. With the reputation of the “tks” trademark, the presumption arises that the disputed domain name was registered with the intention to attract Internet users by creating a likelihood of confusion with the well-known “tks” trademark.

Secondly, the use of the disputed domain name was in bad faith. The Complainant bases its argument mainly on paragraph 4(b)(iii) and (iv) of the Policy. “(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.” If found by the panel, shall be evidence of the registration and use of a domain name in bad faith. In this case, it does not seem that Respondent has legitimate uses of the disputed domain name in addition to creating a likelihood of confusion with the Complainant’s trademark. Phishing emails and quotations were sent out from the email contact linked to the disputed domain name. This use is intentional. It is more likely than not that the website operates for the commercial gain of the Respondent or the operators of the linked websites, or both. Therefore, the facts satisfy the requirements of paragraph 4(b)(iii) and 4b(iv) of the Policy.’

Therefore, in the absence of any evidence to the contrary (or any administratively compliant response) being put forward by the Respondent, the Panel determines that the disputed domain name was registered and is being used in bad faith within the meaning of 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. **ss-tks.com**: Transferred

PANELLISTS

Name	**Carrie Shang**

DATE OF PANEL DECISION 2024-04-17

Publish the Decision