Decision for dispute CAC-UDRP-106357

Case number	CAC-UDRP-106357
Time of filing	2024-05-17 09:58:34
Domain names	thyssenmetal.com, thyssensteels.com, chinathyssen.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	thyssenkrupp AG- thyssenkrupp Intellectual Property GmbH

Respondent

Organization	Young Tisco

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 owns numerous registered THYSSEN trademarks around the world, including in China, where the Respondent is located (e.g. Reg. Nos. 26725173, 26725174, 26725176, 26725177 and 26725179, all registered on October 14, 2018).

FACTUAL BACKGROUND

The disputed domain names **<thyssenmetal.com>, <thyssensteels.com>** and **<chinathyssen.com>** were registered on May 3, 2024, April 3, 2024 and May 3, 2024 respectively.

The disputed domain names <thyssenmetal.com> and <chinathyssen.com> are inactive. The disputed domain name <thyssensteels.com> resolves to an English language website in the name of “Thyssen Steel Co., Ltd.”, an “integrated steel manufacturing company located in China”, offering steel products of the kind provided by Complainant.

PARTIES CONTENTIONS

The Complainant contends that the disputed domain names are confusingly similar to its well-known THYSSEN trademark, and that the Respondent has no rights or legitimate interests with respect to the disputed domain names, which were registered and are used in bad faith.

No administratively compliant Response was filed. The Respondent did file the Response form but in the Response he did not address the Factual and Legal Grounds on which the Complainant relies, as required by paragraph 5(c)(i) of the Rules. Instead, the Respondent's informal Response stated: “Not knowing the domain name is an infringement before. The domain names involved will not be used for commercial purposes.”

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

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

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that the Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

(1) the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(2) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(3) the disputed domain name has been registered and is being used in bad faith.

In view of the Respondent's failure to submit a formal response, the Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences as it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations set forth in a complaint; however, the Panel may deny relief where a complaint contains mere conclusory or unsubstantiated arguments. See WIPO Jurisprudential Overview 3.0 at paragraph 4.3; see also eGalaxy Multimedia Inc. v. ON HOLD By Owner Ready To Expire, FA 157287 (Forum June 26, 2003) (“Because Complainant did not produce clear evidence to support its subjective allegations [. . .] the Panel finds it appropriate to dismiss the Complaint”).

As to the first element, the Complainant has shown that it has rights in the THYSSEN mark and that the mark is very well-known. The Panel finds each of the disputed domain names **<thyssenmetal.com>, <thyssensteels.com>** and **<chinathyssen.com>** to be confusingly similar to the Complainant’s trademark THYSSEN because they each incorporate the mark in its entirety and add the descriptive words “metal”, “steels” or “China”, which do nothing to distinguish the disputed domain names from the mark. The inconsequential top-level domain “.com” may be ignored. The Complainant has established this element.

As to the second element, paragraph 4(c) of the Policy sets out three illustrative circumstances as examples which, if established by the Respondent, shall demonstrate rights to or legitimate interests in a domain name for the purposes of paragraph 4(a)(ii) of the Policy, i.e.

(i) before any notice to the Respondent of the dispute, the use by the Respondent of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) the Respondent (as an individual, business or other organization) has been commonly known by the domain name, even if the Respondent has acquired no trademark or service mark rights; or

(iii) the Respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert customers or to tarnish the trademark or service mark at issue.

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain names because there are no indications that the Respondent has been commonly known by the disputed domain names; the Respondent does not use the disputed domain names for non-commercial purposes and has never been authorized by the Complainant to register or use any of its trademarks, nor to register or use any domain name incorporating the Complainant's trademark and company name; the Respondent has no connection at all with the Complainant or any of its affiliates; there is no doubt that the Respondent was aware of the Complainant's well-known trademark and company name when it selected the disputed domain names and used the THYSSEN trademark in the disputed domain names; the disputed domain names **<thyssenmetal.com>** and **<thyssenchina.com>** [sic] do not resolve to active websites, indicating that the Respondent has made no demonstrable preparations to use them in a relevant business or offering; although the disputed domain name **<thyssensteels.com>** may have content, the use of the term "thyssen", which is a well-known trademark and part of the Complainant's company name "thyssenkrupp", strongly suggests that the domain name was registered with the intent to create a misleading association with the Complainant.

As noted above, the disputed domain names **<thyssenmetal.com>, <thyssensteels.com>** and **<chinathyssen.com>** were registered on May 3, 2024, April 3, 2024 and May 3, 2024 respectively, many years after the Complainant has shown that its THYSSEN mark had become very well-known worldwide in the steel industry. The domain names **<thyssenmetal.com>** and **<chinathyssen.com>** are inactive. The domain name **<thyssensteels.com>** resolves to an English language website in the name of "Thyssen Steel Co., Ltd.", an "integrated steel manufacturing company located in China", offering steel products of the kind provided by Complainant.

These circumstances, together with the Complainant's assertions, are sufficient to constitute a prima facie showing of absence of rights or legitimate interests in respect of the disputed domain names on the part of the Respondent. The evidentiary burden therefore shifts to the Respondent to show that it does have rights or legitimate interests in the disputed domain names. See JUUL Labs, Inc. v. Dryx Emerson / KMF Events LTD, FA1906001849706 (Forum July 17, 2019).

As noted above, in its informal response, the Respondent stated: "Not knowing the domain name is an infringement before. The domain names involved will not be used for commercial purposes."

The three elements set out in paragraph 4(a) of the Policy do not require a finding of trademark infringement. Accordingly, in the absence of any relevant Response, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain names. The Complainant has established this element.

As to the third element, paragraph 4(b) of the Policy sets out four illustrative circumstances, which, though not exclusive, shall be evidence of the registration and use of a domain name in bad faith for purposes of paragraph 4(a)(iii) of the Policy, i.e.

(i) Circumstances indicating that the Respondent has registered or 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 or to a competitor of the 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;

(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 its website 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 the Respondent's website or location or of a product or service on its website or location.

The circumstances set out above in relation to the second element, together with the Complainant's assertions, satisfy the Panel that the Respondent was fully aware of the Complainant's well-known THYSSEN mark when the Respondent registered the **<thyssenmetal.com>, <thyssensteels.com>** and **<chinathyssen.com>** domain names and that the Respondent did so in bad faith with intent to take advantage of the goodwill and reputation of that mark.

As to the **<thyssensteels.com>** disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and of the products on its website. This demonstrates registration and use in bad faith to attract users for commercial gain under paragraph 4(b)(iv) of the Policy.

As to the **<thyssenmetal.com>** and **<chinathyssen.com>** disputed domain names, the Respondent has not provided any evidence of actual or contemplated good faith use and, in light of the fame and distinctiveness of the Complainant's THYSSEN mark, there is no plausible good faith use to which those disputed domain names may be put.

Under these circumstances the Panel finds that the Respondent registered and is using the disputed domain names in bad faith. The Complainant has established this element.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **thyssenmetal.com**: Transferred
2. **thyssensteels.com**: Transferred
3. **chinathyssen.com**: Transferred

PANELLISTS

Name	**Alan Limbury**

DATE OF PANEL DECISION 2024-06-21

Publish the Decision