Decision for dispute CAC-UDRP-106905

Case number	CAC-UDRP-106905
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Domain names	FasterCoupler.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Faster S.r.l.

Complainant representative

Organization	Notarbartolo & Gervasi S.p.A:

Respondent

Organization	(Xiamen Ou Bai Bo Network Technology Co., Ltd.)

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 owner of the following trademarks:

- European Union trademark FASTER (word and device) no. 015071161 filed on February 03, 2016 registered on June 03, 2016 in classes 6 and 7;
- European Union trademark FASTER (word and device) no. 004869111 filed on January 24, 2006 registered on April 03, 2007 in class 6;
- International Registration FASTER (word and device) no. 1356000 registered since April 14, 2016 in classes 6 and 7, and designating Australia, Belarus, Switzerland, China, India, Japan, South Korea, Mexico, Norway, New Zealand, Russian Federation, Singapore, Turkey, Ukraine, United States of America.

The Complainant also owns multiple domain names comprising the word “FASTER”, such as <fastercouplings.com> registered since June 05, 2016.

FACTUAL BACKGROUND

The Complainant asserts the following facts:

- It is a global leader in the design and manufacturing of quick-release hydraulic couplings. Established in Italy, the Complainant offers innovative coupling solutions for a wide range of industries, including agriculture, construction, and industrial machinery. Known for their high-performance products, Faster focuses on safety, efficiency, and reducing connection time. Their advanced solutions, such as the MultiFaster system, allow simultaneous connections under pressure. Faster is part of Helios Technologies Inc. and continually invests in research and development to meet specific customer needs.
- It represents its business online through the website <fastercouplings.com> since 2015. This website serves as the official digital presence of the Complainant and offers detailed information about the company's history, products, and industries it serves, with sections dedicated to quick-release hydraulic couplings, advanced multi-connection systems, and product innovations.
- Due to its extensive efforts, it is a globally recognised company known for its expertise in quick-release hydraulic couplings, with a strong presence in numerous countries worldwide. Its brand, Faster, is highly renowned for delivering reliable, innovative solutions across industries such as agriculture, construction, and industrial machinery. Its extensive reach and esteemed reputation are built on decades of experience, technical innovation, and a commitment to quality, making the Faster brand synonymous with excellence in hydraulic connection technologies across international markets.

The disputed domain name <fastercoupler.com> was registered on July 19, 2024.

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 contends that the identity or confusing similarity of the disputed domain name to the "FASTER" trademark is likely to lead to confusion and/or association for the Internet users seeking the Complainant.

The Complainant clearly has rights to the trademark "FASTER" and its domain name <fastercouplings.com>.

The disputed domain name contains the descriptive and textual term "coupler" and it is therefore not identical to the Complainant's trademark "FASTER". 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 name 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 recognisable within the disputed domain name.

It is uncontroversial that the trademark "FASTER" is incorporated in its entirety in the disputed domain name. The question is whether the addition of the descriptive and textual term "coupler" 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 Vasiliy Terkin, WIPO Case No D2003-003-0888.

However, 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.

The UDRP provider Czech Arbitration Court 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.

Factors to consider are 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's 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.

Here, the contents of the website under the disputed domain name appear in the English language. It also appears to be an active commercial website operated by the entity "Yancheng Jindong Hydraulic Machine Co., Ltd", displaying the logo with the terms "FREE FIT ®".

The Complainant asserts that this entity is its Chinese competitor, and that the content of the website of the disputed domain name is "highly similar" to the website of the Complainant.

The Panel undertook a Google search of the entity, which shows that it operates under the website <fastcoupling.com>. A WHOIS search show that the website <fastcoupling.com> was registered on May 22, 2020.

A comparison of both the websites of <fastcoupling.com> and the disputed domain name shows similar contact details.

Based on the available information, the Panel reasonably infers that there is some kind of association between the Respondent and the entity "Yancheng Jindong Hydraulic Machine Co., Ltd" but this remains unclear.

The Panel viewed the contents of the respective website of the Complainant and the disputed domain name. It is not immediately apparent to the Panel that these websites are 'highly similar', as asserted by the Complainant, other than they are both selling "hydraulic connectors".

On the contrary, the Panel considers that the Complainant's website is accentuated using the colour 'yellow' with its trademark "FASTER" in fancy characters. The disputed domain name's website has a different "look and feel". It does not have any reference to the Complainant's trademark "FASTER" or use of the term "faster" in any of its content.

In any event, there is no evidence to show that the Complainant's competitor "Yancheng Jindong Hydraulic Machine Co., Ltd" is offering for sale the Complainant's goods and/or using its trademark "FASTER".

From a side-by-side comparison of the Complainant's trademark and the textual parts of the disputed domain name, the terms used can be viewed as descriptive:

- The term "faster" can be used in several ways: as a comparative adjective to mean "moving or capable of moving at high speed"; as a comparative adverb, the term "faster" can be used to mean "quickly" or "tightly", or when used as a noun to mean "a person who abstains from eating all or certain foods or meals".
- The term "coupler" is used as a noun to mean "a link or rod transmitting power between two rotating mechanisms or a rotating part and a reciprocating part'".

The Complainant contends that the textual term "coupler" does not differentiate the disputed domain name from its trademark.

While the Panel accepts that the Complainant's trademark "FASTER" affords it rights under the Policy, the Panel considers its trademark as not inherently distinctive as it is also a descriptive term.

The Panel considers that the addition of the descriptive term 'coupler' differentiates the domain name by altering its overall impression, especially given its common use within the relevant industry.

No evidence has been adduced to support or negate this. The Panel is, therefore, prepared to infer that, by definition, a hydraulic coupler facilitates the connection and disconnection of fluid lines in a convenient way. In other words, the word "coupler" is likely to be a commonly used word.

There is also no evidence that the use of the words "faster coupler" is likely to lead to confusion and/or association for the internet users seeking the Complainant.

The contents of the disputed domain name's website appear to promote the sale of "flat hydraulic quick connectors" or "pneumatic quick connectors'" or "threaded quick connectors".

The Panel infers that the use of the term 'faster' in the disputed domain name together with 'coupler' suggests the products being offered for sale are "quick connectors".

It is open to infer that the added term is descriptive of a product category, i.e., "coupler" referring to a type of mechanical component, and by reference to the adverb "faster" is not a reference to the Complainant's trademark "FASTER". It is, therefore, open for the Panel to infer that the likelihood of confusion is significantly reduced or mitigated, particularly when a trademark is not inherently distinctive.

The Complainant also contends that the disputed domain name is confusingly similar to its official website <fastercouplings.com>. While the Complainant asserts that its domain <fastercouplings.com> has had long standing use, there is no evidence adduced to establish that its domain name has acquired distinctiveness or a secondary meaning in the market place that would elevate it beyond a descriptive use.

Accordingly, the Panel is not satisfied that the Complainant's official website has achieved a secondary meaning in the marketplace, which would be necessary to support a claim of confusing similarity under the Policy. There is also no evidence to show that the

term “FASTER COUPLINGS” is being used an unregistered mark such as to acquire its own distinctiveness.

The word “coupling”, in this context, means “a device for connecting parts of machinery”. It is not part of the Complainant’s trademark but is likely to be used to describe the type of products being offered for sale by the Complainant. The Panel reasonably infers that such descriptive words are likely to be used by other legitimate businesses to describe their products in this marketplace either as "quick release" or "multi faster couplings" or "fast couplers".

As already mentioned above with descriptive terms, the Panel considers that the difference between “coupler” (singular) and “couplings” (plural) indicates a distinction, especially if there is no evidence that the Respondent is trying to pass off as the Complainant or misdirected traffic away from the Complainant.

This case is borderline as the disputed domain name uses a common or descriptive term that is combined with a trademark that, in the Panel’s view, is not inherently distinctive as it is also a term that is commonly used or likely to be used by legitimate businesses offering similar products.

When comparing it with the Complainant’s official domain name, there is a low threshold of similarity. However, the term “couplings” is not a registered trademark or even an unregistered mark that may just satisfy the Policy.

While the Complainant’s official domain name was registered prior to the disputed domain name and as such affords it with certain rights but without more, e.g. evidence of extensive use and reputation so as to achieve a secondary meaning in the marketplace and thereby supporting the assertion of confusion or likelihood of confusion; or a trademark registration that includes the term "couplings"; the Panel considers that merely asserting priority of use or consumer recognition is insufficient to satisfy the jurisdiction element.

The Panel accepts that the Respondent has not filed any administratively compliant response, but as the contents of the disputed domain name prima facie shows that there may be a legitimate interest that the disputed domain name was registered, e.g. selling quick connecting hydraulic couplers, this factor may negate any claims of confusing similarity.

But even if the level of similarity is likely to create confusion, the Panel emphasises that there is a need to adduce evidence to satisfy the elements of the Policy, particularly where the evidence presented of legitimate interest and bad faith on the part of the Respondent are inconclusive.

On balance, the Panel having carefully considered the available information; the evidence including its weight; the Complainant’s contentions, noting that no compelling evidence of confusion or likelihood of confusion has been adduced, the Panel considers that it is open to infer that the disputed domain name is referrable to Respondent and/or its associated entity's business of providing its goods or services for sale.

Accordingly, the Panel finds that the disputed domain name is 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 of the Policy.

However, if the Panel is wrong in its view, under the second element of the Policy, the Complainant must establish that the Respondent has no rights or legitimate interests in the disputed domain name as per paragraph 4(a)(ii) of the Policy.

While the Respondent has not filed any administrative compliant response, the Complainant still bears the initial burden of establishing a prima facie case that the Respondent lacks rights or legitimate interests.

The Complainant contends that the Respondent lacks rights or legitimate interests in the disputed domain name because:

- The Respondent’s website redirects to a competitor's site selling similar hydraulic couplings, indicating no bona fide use.
- The Respondent is not commonly known by the domain name and does not use the terms “Faster” or “coupler” on its site.
- The disputed domain name is designed to mislead consumers by mimicking the Complainant’s trademark and official domain <fastercouplings.com> for commercial gain.
- The Respondent has no authorisation or license from the Complainant to use its trademark.
- The Respondent’s website promotes competing products, suggesting an intent to exploit the Complainant’s goodwill.

The Panel has already stated that it is unclear whether the Respondent is associated in any way with the entity “Yancheng Jindong Hydraulic Machine Co., Ltd” which is said to be a competitor of the Complainant selling similar goods.

Regardless of whether or not an association exists, this does not, however, show that there is “no bona fide use” as the Complainant does not assert that the goods sold by the entity "Yancheng Jindong Hydraulic Machine Co., Ltd” are goods that bear the Complainant’s trademark, only that the Respondent or its entity is a competitor.

The Panel notes that despite the Complainant having trademark rights in China, no evidence was adduced of any “cease or desist” letter sent to the Respondent seeking to enforce its trademark rights. Further, from the Panel's own searches the entity “Yancheng Jindong Hydraulic Machine Co., Ltd” appears also to operate under the domain name <fastcoupling.com> which has been registered

more than four years ago. Similarly, no evidence was adduced to show any legal or UDRP disputes between the Complainant and the entity “Yancheng Jindong Hydraulic Machine Co., Ltd” in relation to the <fastcoupling.com> domain name.

However, even if the Respondent is associated with a competing entity, this alone does not establish a lack of legitimate interest. On the contrary, it is reasonably open for the Panel to infer that Respondent and/or the entity "Yancheng Jindong Hydraulic Machine Co., Ltd” are legitimately competing with the Complainant in the same marketplace.

The Panel considers that the Complainant has not shown that the Respondent's use of the disputed domain name is, therefore, misleading or intended to divert customers unlawfully. Mere assertions of bad faith and misleading intent is insufficient.

The Panel also considers the fact that the Respondent is not commonly known by the domain name is not conclusive of a lack of rights or legitimate interests in the disputed domain name, which the Panel has already found to be descriptive terms.

The Panel notes that the Complainant’s trademark consists of the wording “FASTER” in fancy characters is registered in China under the Madrid Protocol. The Panel accepts, as asserted by the Complainant, that the words “faster” and “coupler” are not used in the disputed domain name website, nor is the Complainant’s trademark “FASTER” in fancy characters used anywhere in the disputed domain name website.

The Panel also accepts the assertion that the Respondent is not authorised or licensed to use the Complainant’s trademark.

The Panel considers there are indications, however, that the Respondent and/or the entity “Yancheng Jindong Hydraulic Machine Co., Ltd” may have a legitimate interest in the disputed domain name. The disputed domain name appears to be used in connection with an active commercial website that promotes the sale of hydraulic connectors and related products under the “FREE FIT ®” logo.

It appears that the products offered are distinct from those associated with the Complainant’s “FASTER” trademark.

The terms 'faster' and 'coupler' are descriptive in the context of hydraulic connectors, implying speed and efficiency. This descriptive use suggests that the Respondent and/or the entity “Yancheng Jindong Hydraulic Machine Co., Ltd” may be employing the disputed domain name to refer to the nature of its own products, which constitutes a bona fide offering of goods within the same marketplace.

Such descriptive use may align with recognised legitimate interests under the Policy, particularly when there is no evidence adduced that the Respondent and/or the entity “Yancheng Jindong Hydraulic Machine Co., Ltd” is using the disputed domain name to misleadingly divert consumers.

The Panel is also not satisfied there is compelling evidence that the Respondent is attempting to impersonate the Complainant or create confusion for commercial gain. Instead, the disputed domain name appears to be used in a manner consistent with the Respondent and/or the entity “Yancheng Jindong Hydraulic Machine Co., Ltd” own business activities, which suggests a legitimate purpose.

Accordingly, the Panel finds that the Complainant has not discharged the burden of proof required, and has not satisfied the requirement under paragraph 4(a)(ii) of the Policy.

BAD FAITH

The Panel has determined that the Complainant has not satisfied the first element and second elements under the Policy. In view of the Panel’s decision on the first and second element, it is not necessary to address the issue of the third element.

PROCEDURAL FACTORS

Consolidation and language of proceedings

The Complainant requests the proceedings be in English despite the language of the Registration Agreement for the disputed domain name is in Chinese

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 is in the English language.

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 October 10, 2024 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 October 31, 2024 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 confirmation that the e-mail notice sent to <postmaster@fastercoupler.com> was returned back undelivered as the e-mail address had permanent fatal errors. The e-mail notice was also sent to <312379093@qq.com>, but we never received any proof of delivery or notification of undelivery. Further e-mail address <cjd@jsjdyy.com> could be found on the disputed site. The Respondent never accessed the online platform.

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 owns the trademark "FASTER" and the domain name <fastercouplings.com>, which are used in connection with its hydraulic coupling products.

The Respondent registered the disputed domain name <fastercoupler.com> on July 19, 2024. The disputed domain name resolves to an active commercial website offering hydraulic connectors under the brand "FREE FIT ®".

The Complainant challenges the registration of the disputed domain name under paragraph 4(a)(i) of the Uniform Dispute Resolution Policy ("Policy") and seeks its transfer.

The Respondent failed to file an administratively compliant response.

For the reasons detailed in the Panel's analysis, the Complainant has not satisfied the requirements of the Policy. Specifically:

(a) The disputed domain name is not confusingly similar to the Complainant's trademark "FASTER." The addition of the descriptive term "coupler" differentiates the domain name, particularly in the context of the industry.

(b) The Complainant has not demonstrated that the Respondent lacks rights or legitimate interests in the disputed domain name. The disputed domain name appears to be used in connection with a legitimate business offering related products, under a different brand, without any evidence of misleading or unfair use.

(c) In light of the findings on the first and second elements, the issue of bad faith registration and use was not addressed, as it was deemed unnecessary.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **FasterCoupler.com**: Remaining with the Respondent

PANELLISTS

Name	**William Lye OAM KC**

DATE OF PANEL DECISION 2024-11-11

Publish the Decision