

Decision for dispute CAC-UDRP-104168

Case number	CAC-UDRP-104168
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Time of filing	2022-01-17 09:24:37
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Domain names	bitzerr.com
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Case administrator

Name	Iveta Špiclová (Case admin)
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Complainant

Organization	BITZER Kühlmaschinenbau GmbH
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Complainant representative

Organization	Coöperatieve Vereniging SNB-REACT U.A.
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Respondent

Name	Wu Huihui
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OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade marks:

- US trade mark registration no. 4017827, registered 30 August 2011, for the figurative mark BITZER, in classes 7, 11 and 37 of the Nice Classification;
- US trade mark registration no. 2912051, registered 21 December 2004, for the mark BITZER, in classes 7 and 11 of the Nice Classification;
- EU trade mark registration no. 0320898, registered 19 September 1966, for the figurative mark BITZER, in class 11 of the Nice Classification;
- EU trade mark registration no. 008226672, registered 22 November 2009, for the figurative mark BITZER, in classes 7, 11 and 37 of the Nice Classification;
- International registration no. 1050852, designating China, registered 5 July 2010, for the figurative mark BITZER, in classes 7,

11 and 37 of the Nice Classification.

(hereinafter, collectively or individually, the Complainant's trade mark; the Complainant's trade mark BITZER; or the BITZER trade mark).

The Complainant also relies on Chinese trade mark registration no. G806686, registered 11 September 2003, for the mark BITZER, in class 7 of the Nice Classification. The Panel was unable to verify details of this mark, but notes that the Complainant is the owner of a number of earlier BITZER marks in China, including Chinese trademark registration no. 818711, for the figurative mark BITZER, in class 7 of the Nice Classification, registered on 28 February 1996.

FACTUAL BACKGROUND

The Complainant's contentions can be summarised as follows:

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

The Complainant is a German based enterprise that principally produces high-quality compressors and has acquired high reputation in the relevant market. The Complainant has been the exclusive right holder of the BITZER trade mark since at least 1966, whereas the disputed domain name <bitzerr.com> was registered on 14 March 2017.

The Complainant claims that the disputed domain name wholly incorporates its trade mark BITZER, and that UDRP decisions have held domain names to be confusingly similar if the entirety of a trade mark, or at least a dominant part of it, is recognisable in the domain name. The Complainant further claims that the Respondent in the present matter has only added the letter "r" at the end of the word "Bitzer" in the disputed domain name string. The Complainant concludes that the disputed domain name is evidently a typosquatting case, such that it must be considered confusingly similar to the Complainant's trade mark BITZER.

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

The Complainant states that the Respondent is not affiliated with, nor authorised by, the Complainant in any way, nor is Respondent known by the disputed domain name.

In addition, the Respondent is not making a bona fide offering of goods or services by means of the disputed domain name, nor is the Respondent using the disputed domain name for legitimate non-commercial or fair use. The Complainant argues, instead, that the disputed domain name serves the sole purpose of redirecting Internet users to the Claimant's own website <bitzer.de>. In order to support this Policy ground, the Complainant alludes to the WIPO Panel Views on Selected UDRP Questions, Third Edition, paragraph 2.5.3 ("WIPO Jurisprudential Overview 3.0"), according to which a respondent's use of a complainant's mark to redirect users (e.g., to a competing site) would not support a claim to rights or legitimate interests.

The Complainant further informs that it has sent a cease-and-desist letter to the Respondent which remains unanswered, the consequence of which being that the Panel is entitled to draw adverse inferences therefrom.

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 states that the disputed domain name was registered in bad faith with the sole purpose of targeting the Complainant's trade mark BITZER.

Use

The Complainant avers that the Respondent has intentionally used the disputed domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant as to the source, sponsorship, affiliation, or endorsement of that website.

In order to support the bad faith ground, the Complainant alludes to paragraph 3.14 of the WIPO Jurisprudential Overview 3.0, according to which: “[...] Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith...”.

The Complainant further argues that the Respondent appears to have used false identity in the Whois information, which would give rise to a presumption of bad faith.

In view of the above, the Complainant therefore concludes that the Respondent has registered and is using the disputed domain name in bad faith.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, 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 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

Preliminary matter – Language of Proceeding

A. The Complainant's request

On the matter of the language of the proceedings, the Panel notes as follows:

- The Complainant submitted its Complaint in English;
- The registrar's verification response provided that the language of the registration agreement for the disputed domain name is Chinese; and
- Following the registrar's confirmation as to the language of the registration agreement, and at the request of CAC, the Complainant submitted that English should be the language of the proceedings for the following reasons: (i) the disputed domain name is formed by words in the Latin script and not in Chinese characters; (iii) the Respondent has used English language to add embed/redirect codes to the disputed domain name; and (iv) the Respondent chose to redirect the disputed domain name to the English language website of the Complainant.

B. The Panel's determination

The Panel is given discretion under Rule 11 of the UDRP Rules to determine the appropriate language of the proceedings. 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 accepts that English is the only identifiable language in the disputed domain name string;
- (ii) the content of the Respondent's website: the Respondent's website is in English only, as asserted by the Complainant, which suggests to the Panel that the Respondent has ample knowledge of the English language;
- (iii) the language(s) of the parties: the Complainant is based in Germany and the Respondent appears to reside in China;
- (iv) the Respondent's behaviour in the course of the proceedings: the Panel notes that the Respondent has shown no inclination to participate in the proceedings; the Respondent did not object to the Complainant's language request, nor did it file a Response;
- (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 proceedings, 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 proceedings – a widely spoken language – is unlikely to cause the Respondent any inconvenience, not the least given the Respondent's default and overall disinterest throughout the proceedings. The determination of Chinese as the language of proceedings, 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.

PRINCIPAL REASONS FOR THE DECISION

I. The 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 provides the following threshold for the Complainant to meet in order to divest the Respondent of the disputed domain name:

- i. The disputed domain name is identical or confusingly similar to a trademark 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 therefore incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP proceedings is the balance of probabilities and, on that basis, the Panel will now proceed to determine each of the three Policy elements in turn.

II. Identical or Confusingly Similar

The Panel is satisfied that the Complainant owns trade mark rights in “BITZER” since 1966.

The disputed domain name is <bitzerr.com>, and the Complainant’s trade mark is BITZER.

The Panel has no difficulty in finding that the disputed domain name is practically identical, and confusingly similar, to the Complainant’s trade mark BITZER, in accordance with paragraph 4(a)(i) of the UDRP Policy, bearing in mind the only difference is the additional letter “r” contiguous to the Complainant’s trade mark.

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

III. Rights or Legitimate Interests

The Respondent has defaulted in these UDRP proceedings. Nevertheless, the Panel is empowered to draw adverse inferences from the Respondent’s silence (UDRP Rule 14 (b)).

The Panel notes that the Complainant firmly denies any affiliation and/or association with, or authorisation for, the Respondent of any nature. Moreover, the Complainant argues that the Respondent is not known by the disputed domain name; that the Respondent does not hold any trade mark rights in the term “Bitzer”; and that the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name.

The Respondent has submitted no evidence to refute any of the Complainant’s assertions. On balance, the Panel considers the available evidence to lend credence to the Complainant’s contentions.

The Panel therefore finds that the Complainant has succeeded under paragraph 4(a)(ii) of the UDRP Policy.

IV. Registered and Used in Bad Faith

Registration

The following facts are compelling evidence to this Panel that the disputed domain name was registered in bad faith:

- The Complainant has been in operation since at least 1966, including in China, where the Respondent appears to be based;
- The Complainant operates its activities through the domain name <bitzer.de>;
- The disputed domain name <bitzerr.com> was registered on 14 March 2017; and
- UDRP panels have consistently found that a typo of a widely-known trade mark can by itself create a presumption of bad faith (paragraph 3.1.4 of the WIPO Jurisprudential Overview 3.0), and the Panel accepts that the Complainant’s trade mark is widely known in its market field.

Use

The Complainant alleges that the Respondent has engaged in the conduct described in paragraph 4(b)(iv) of the UDRP Policy, which provides as follows:

“(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 the respondent’s website or location.”

At the time of writing, and rather disturbing to the Panel, the disputed domain name resolves to the Complainant’s own website <bitzer.de>.

The Panel refers once again to paragraph 3.1.4 of the WIPO Jurisprudential Overview 3.0, according to which panels have found the following types of evidence to support a finding under the above circumstance: “(i) actual confusion, (ii) seeking to cause confusion (including by technical means beyond the domain name itself) for the respondent’s commercial benefit, even if unsuccessful, (iii) the lack of a respondent’s own rights to or legitimate interests in a domain name, (iv) redirecting the domain name to a different respondent-owned website, even where such website contains a disclaimer, (v) redirecting the domain name to the complainant’s (or a competitor’s) website, and (vi) absence of any conceivable good faith use.”.

The Panel considers that all of the above factors (save for (iv)) are present in these UDRP proceedings.

The Panel therefore finds that the Complainant has succeeded under paragraph 4(a)(iii) of the UDRP Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BITZERR.COM**: Transferred

PANELLISTS

Name	Yana Zhou
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DATE OF PANEL DECISION	2022-03-09
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Publish the Decision