

Decision for dispute CAC-UDRP-105410

Case number	CAC-UDRP-105410
Time of filing	2023-05-26 09:08:41
Domain names	www.krupp-materials.com

Case administrator

Name	Olga Dvořáková (Case admin)
------	-----------------------------

Complainant

Organization	Dr. Claudia Pappas (thyssenkrupp AG)
--------------	---------------------------------------

Respondent

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

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 the owner of the well-known trademark KRUPP by means of several international and national trademark registrations, *inter alia*, international trademark registration (Reg. No. IDM000109081 registered on February 9, 2007); German national trademark registration (Reg. No. 123949 registered on December 3, 1909); and Chinese national trademark registration (Reg. No. 26725193 registered on March 7, 2019). The Complainant also maintains a strong online presence and operates its main webpage at "www.thyssenkrupp.com," which was registered on December 5, 1996.

FACTUAL BACKGROUND

The Complainant "Thyssenkrupp AG" is the result of a merger of two well-known German steel companies, Thyssen AG and Krupp both founded in the 19th century. In 1997, the two companies combined their flat steel activities, with a full merger completed in March 1999. The Krupp company once was the largest company in Europe. The Complainant is a diverse industrial group with more than 100, 000 employees and a revenue of more than 34 billion EUR in fiscal 2010/2021. It is one of the world's largest steel producers and was ranked tenth-largest worldwide by revenue in 2015. The Complainant's business operations are organized in five business areas: Steel Europe, Bearings and Forged Technologies, Automotive Technology, Marine Systems and Materials Services and Multi Tracks. In 56 countries, 335 subsidiaries and 22 investments accounted for by the equity method are included in the consolidated financial statements.

The disputed domain name was registered on March 29, 2023.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

COMPLAINANT:

(i) The Complainant has rights in KRUPP mark by means of several international and national trademark registrations, *inter alia*, international trademark registration (Reg. No. IDM000109081 registered on February 9, 2007); German national trademark registration (Reg. No. 123949 registered on December 3, 1909); and Chinese national trademark registration (Reg. No. 26725193 registered on March 7, 2019). The disputed domain name is confusingly similar to the Complainant's KRUPP mark.

(ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name: There are no indications that the Respondent has been commonly known by the domain name. Further, the Respondent does not use the domain name for non-commercial purposes. The Respondent has never been authorized by the Complainant to register or use any of its trademarks, nor has it been authorized to register or use any domain name incorporating the Complainant's trademark and company name. Rather, the Respondent has no connection at all with the Complainant or any of its affiliates. The Respondent thus registered the disputed domain name containing the Complainant's well-known trademarks at least in order to benefit from the Complainant's reputation. Such use is neither a *bona fide* use of the disputed domain name pursuant to paragraph 4(c)(i) of the Policy nor a legitimate noncommercial or fair use pursuant to paragraph 4(c)(iii) of the Policy.

(iii) The Respondent has registered and is using the disputed domain name in bad faith: (i) the Respondent has registered and used the disputed domain name with actual knowledge of the Complainant's rights in the KRUPP mark; (ii) the Complainant's company name as well as its trademarks "thyssenkrupp" have a strong reputation and are widely known not only in Germany but also in many other countries in the world; and (iii) neither Thyssen nor Krupp nor the combination of both has a specific meaning in any language. Considering all these circumstances it has to be inferred passive holding of the disputed domain name in bad faith.

RESPONDENT:

Respondent did not submit a response in this proceeding.

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

Preliminary Issue: Language of the Proceedings

The Panel notes that the Registration Agreement is written in Chinese, thereby making the language of the proceedings in Chinese. The Complainant has requested that the proceeding should be conducted in English. The Panel has the discretion under UDRP Rule 11(a) to determine the appropriate language of the proceedings taking the particular circumstances of the administrative proceeding into consideration. See Section 4.5, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition; see also Lovehoney Group Limited v yan zhang, CAC 103917 (CAC August 17, 2021) (finding it appropriate to conduct the proceeding in English under Rule 11, despite Japanese being designated as the required language in the registration agreement). The Complainant contends that (i) English is a neutral language; (ii) the disputed domain name and all content of the domain name's resolving website are in English, which indicates that the Respondent has sufficient knowledge of the English language to conduct these proceedings in English; (iii) determining Chinese as the language of the proceedings would lead to considerable disadvantages for the Complainant. The Complainant has no knowledge at all of the Chinese language. The translation would take some time and would therefore lead to a significant delay of the proceedings; (iv) determining Chinese as the language of the proceedings would give the Respondents a clear advantage although it is obvious that the disputed domain name was registered in bad faith; and (v) it would be both procedurally and economically efficient to proceed in English.

Pursuant to UDRP Rule 11(a), the Panel finds that persuasive argument has been adduced by the Complainant. After considering the circumstance of the present case, in the absence of the Response and no objection to the Complainant's request for the language of proceeding, the Panel decides that the proceeding should be in English.

The Panel is satisfied that all other 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 for the UDRP ('the Policy') 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 Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

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

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

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

In view of the Respondent's failure to submit a 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 it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory. See *Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc.*, FA 95095 (FORUM July 31, 2000) (holding that the respondent's failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true); see also *Talk City, Inc. v. Robertson*, D2000-0009 (WIPO Feb. 29, 2000) ("In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.").

Rights

The Complainant contends that it is the owner of the registered trademark 'KRUPP' as identified in "Identification of rights" above. The Panel notes that an international trademark registration or a national trademark registration is sufficient to establish rights in that mark. As such, the Panel finds that the Complainant has established its rights in the mark 'KRUPP.'

The Complainant further contends that the disputed domain name <**krupp-materials.com**> is confusingly similar to its mark 'KRUPP' on the grounds that i) the disputed domain name incorporates entirely the Complainant's mark KRUPP with generic term "materials"; and ii) the addition of the gTLD ".com" does not add any distinctiveness to the disputed domain name. The Panel agrees with the Complainant and notes that the addition of '.com' gTLD and a descriptive term is generally disregarded in the assessment under paragraph 4(a)(i) of the Policy when comparing a disputed domain name and a trademark. Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark KRUPP.

No rights or legitimate interests

Complainant must first make a *prima facie* case that Respondent lacks rights and legitimate interests in the disputed domain name under Policy paragraph 4(a)(ii), then the burden shifts to Respondent to show it does have rights or legitimate interests. See *Croatia Airlines d. d. v. Modern Empire Internet Ltd.*, WIPO Case No. D2003-0455 (the Complainant is 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 UDRP). See also *Advanced International Marketing Corporation v. AA-1 Corp*, FA 780200 (FORUM Nov. 2, 2011) (finding that a complainant must offer some evidence to make its *prima facie* case and satisfy Policy paragraph 4(a)(ii).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name because: (i) there are no indications that the Respondent has been commonly known by the domain name; (ii) the Respondent does not use the domain name for non-commercial purposes; (iii) the Respondent has never been authorized by the Complainant to register or use any of its trademarks, nor has it been authorized to register or use any domain name incorporating the Complainant's trademark and company name; (iv) the Respondent has no connection at all with the Complainant or any of its affiliates; and (v) the Respondent thus registered the disputed domain name containing the Complainant's well-known trademarks at least in order to benefit from the Complainant's reputation, which is neither a *bona fide* use of the disputed domain name pursuant to paragraph 4(c)(i) of the Policy nor a legitimate noncommercial or fair use pursuant to paragraph 4(c)(iii) of the Policy.

The Panel finds that the Complainant has made out a *prima facie* case that arises from the considerations above. All of these matters go to make out the *prima facie* case against the Respondent. As the Respondent has not filed a Response or attempted by any other means to rebut the *prima facie* case against it, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

Bad faith

Paragraph 4(b) of the Policy provides a non-exclusive list of circumstances that evidence registration and use of a domain name in bad faith. Any one of the following is sufficient to support a finding of bad faith:

- (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 that 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; or
- (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 online 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.

The Complainant contends that the Complainant's trademark predates the registration of the disputed domain name; and the Respondent very likely knows about the Complainant and its trademark because the Complainant's trademark KRUPP is a distinctive and well-known trademark worldwide.

While constructive knowledge is insufficient for a finding of bad faith, per Policy paragraph 4(a)(iii), registration of a disputed domain name with actual knowledge of another's trademark rights is sufficient to establish bad faith, and can be shown by the notoriety of the mark and the use the Respondent makes of the disputed domain name. *See Orbitz Worldwide, LLC v. Domain Librarian*, FA 1535826 (Forum February 6, 2014) ("The Panel notes that although the UDRP does not recognize 'constructive notice' as sufficient grounds for finding Policy paragraph 4(a)(iii) bad faith, the Panel here finds actual knowledge through the name used for the domain and the use made of it."); *see also AutoZone Parts, Inc. v. Ken Belden*, FA 1815011 (Forum December 24, 2018) ("Complainant contends that Respondent's knowledge can be presumed in light of the substantial fame and notoriety of the AUTOZONE mark, as well as the fact that Complainant is the largest retailer in the field. The Panel here finds that Respondent did have actual knowledge of Complainant's mark, demonstrating bad faith registration and use under Policy paragraph 4(a)(iii)."). The Panel agrees and infers, due to the manner of use of the disputed domain name as well as the notoriety of the Complainant's mark around the world including in China where the Respondent resides that the Respondent had actual knowledge of the Complainant's rights in its mark KRUPP at the time of registering the disputed domain name, and thus the Panel finds the bad faith registration of the disputed domain name.

The Complainant further contends that the Complainant's company name "thyssenkrupp" as well as its trademarks have a strong reputation and are widely known not only in Germany but also in many other countries in the world. Neither Thyssen nor Krupp nor the combination of both has a specific meaning in any language. Considering all these circumstances it has to be inferred passive holding of the disputed domain name in bad faith. Moreover, the registration of a domain name which appears to be connected to a well-known trademark has been found to constitute opportunistic bad faith. There is no other reason to choose a domain name comprising the Complainant's well-known trademark as the distinctive and therefore dominant element, except of the fact, that the Respondent's obviously intend is to participate in the Complainant's reputation and economic success. The Respondent thus purchased/registered the disputed domain name containing the Complainant's well-known trademarks at least in order to benefit from the Complainant's reputation.

The Panel observes that under Policy paragraph 4(b)(iii), passing off as a complainant is a disruption of a complainant's business and evidence of bad faith registration and use. *See Artistic Pursuit LLC v. calcuttawebdevelopers.com*, FA 894477 (Forum Mar. 8, 2007) (finding that the respondent's registration and use of the disputed domain name, which displayed a website virtually identical to the complainant's website, constituted bad faith pursuant to Policy paragraph 4(b)(iii)). The Complainant provides a screenshot of the disputed domain name's resolving webpage. The Panel notes that the disputed domain name's resolving webpage prominently displays Complainant's mark and purports to offer for sale the competing goods with those of the Complainant's goods. Therefore, the Panel finds the Respondent registered and uses the disputed domain name in bad faith under Policy paragraph 4(b)(iii).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **www.krupp-materials.com**: Transferred

PANELLISTS

Name	Mr. Ho-Hyun Nahm Esq.
------	------------------------------

DATE OF PANEL DECISION 2023-06-23

Publish the Decision