

Decision for dispute CAC-UDRP-105593

Case number	CAC-UDRP-105593
-------------	-----------------

Time of filing	2023-09-12 10:07:45
----------------	---------------------

Domain names	doncastercable.com
--------------	--------------------

Case administrator

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

Complainant

Organization	EDDIE Whiteley (Amnack LTD (T/A) Doncaster Cables)
--------------	--

Respondent

Name	ang ka si te guang dong dian lan ke ji 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 has not explicitly identified any right related to its ownership and/or possession of any trademark related to the disputed domain name <doncastercable.com>. Inferred from the complaint and its attached annex, the complainant is the owner of the registered trademark "Doncaster Cables" in the United Kingdom (trademark UK00002409449 Doncaster Cables). But it is unclear from the Complaint itself whether such trademark rights were acquired in other jurisdictions.

FACTUAL BACKGROUND

The Complainant alleges that the domain name "doncastercable.com" is substantially similar to its registered trademark, "Doncaster Cables," and the use of it is causing confusion among consumers, diluting the distinctive qualities of its brand, and infringing upon its intellectual property rights.

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 not, 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 not, 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 not, 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

Pursuant to UDRP Rule 11(a): Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding 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 proceeding. The Complainant did not make any specific request in light of the potential Chinese language Registration Agreement of the disputed domain name involved at this Complaint, but provided Chinese language translation of the its arguments as submitted to “factual and legal grounds”.

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, 1) The dispute domain names consist of cognizable English language terms; 2) the contents of the website resolved to by the disputed domain name include complex English terms and English descriptions of Doncaster wiring products, demonstrating the registrants' adequate knowledge of the English language; (3) Chinese translations of the main arguments were included in the Complaint. 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 Complainant failed to demonstrate that 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).

It is unclear from the complaint that Complainant has substantial right of the trademark “Doncaster Cables”. Even though the Complainant has attached annex showing its UK trademark registration, the Complainant has not carefully presented its trademark right in the Complaint. It is thus unlikely that from the prima facie evidence that the Complainant has standing but for information provided in the annex. Had the Complainant clearly laid out its trademark right, the disputed domain name “Doncaster Cable” fully incorporates the identifiable part of the Complainant’s UK trademark “Doncaster Cables”, and the elimination of the letter “s” is insufficient to rebut that similarity.

The Panel therefore could not conclude that the disputed domain name is confusingly similar to a trademark in which the Complainant have rights within the meaning of paragraph 4(a)(i) of the Policy.

The Complainant has not established that the Respondent has no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

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.

In this case, the Complainant has not provided any evidence showing that the Respondent has no legitimate interests in the disputed domain name. Even though the Complainant claimed that such use of his trademark is “unauthorized”, it is unclear from the prima facie case that why the Panel should be persuaded so.

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 Complainant has not established that 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 Complaint was not able to establish that 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).

It is unclear from the Complaint that the domain name is registered and used in bad faith. The Complainant has not demonstrated why the use of the domain name "doncastercable.com" misleads potential consumers of its products, nor that how the website and its offerings are associated with or endorsed by our company, Amnack LTD, (trading as Doncaster Cables). The Complainant was also not able to show that the alleged unauthorized use of its trademark has the potential to damage its reputation and cause significant financial harm to our business.

Therefore, the Panel determines that the Complainant has not provided prima facie evidence undisputed by the Respondent 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.

Overall, the preparation of the written complaint shows the Complainant's lack of sufficient understanding of burden of proof, presentation of facts, arguments and evidence necessary in order to satisfy paragraph 4(a)(i)-(iii) of the Policy, and therefore this decision is made out of fully considering merits of the case. Nonetheless, it is essential to recognize that UDRP proceedings serve as a neutral, efficient, and effective mechanism for rights holders to safeguard their interests against potential infringements by domain name registrants. These proceedings are not intended to obstruct rights holders' access to competent legal representation aimed at achieving a just outcome. In light of these considerations and in order to preserve the Complainant's option to refile the complaint in the future, the current complaint is rejected without prejudice.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

- 1. **doncastercable.com**: Remaining with the Respondent

PANELLISTS

Name	Carrie Shang
------	--------------

DATE OF PANEL DECISION 2023-10-22

Publish the Decision