Panel Decision for dispute CAC-ADREU-008552

Case number	CAC-ADREU-008552
Time of filing	2023-11-27 16:43:43
Domain names	pylontech.eu

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	Pylon Technologies Co., Ltd.

Complainant representative

Organization	Chofn Intellectual Property

Respondent

Name	Chris de Jong

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

The Panel is not aware of any other legal proceedings relating to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is a Chinese supplier specializing in battery energy storage systems, which was established in 2009. Over the past few years, the Complainant's global shipments have continued to rise, with its products spreading to more than 80 countries and regions around the world, and more than 10,000 sets of energy storage systems have been put into operation. On December 30, 2020, the Complainant was formally listed on the Science and Technology Board of the Shanghai Stock Exchange.

The Complainant owns several registered trademarks, including International trademark registration PYLONTECH with registration number 11149396 of November 12, 2012 for battery related goods in class 9, which designates the European Union (the "PYLONTECH trademark").

The disputed domain name was registered on May 5, 2021 and does not resolve to an active website.

A. COMPLAINANT

The Complainant alleges that the disputed domain name completely contains the PYLONTECH trademark and is likely to cause confusion.

According to the Complainant the Respondent has no rights to or legitimate interests in the disputed domain name as the Respondent does not own one or more trademarks, is not a reseller of the Complainant and was never directly or indirectly authorized to use the disputed domain name.

The Complainant claims to believe that the Respondent has malicious intent when it registered the disputed domain name because the Complainant has prior rights in the POLYTECH trademark and before the disputed domain name was registered the PYLONTECH trademark had already gained sufficient visibility in the world, including in the European Union, and the Complainant participated in a number of industry trade shows in the European Union. The Complainant alleges that it has a high global market share in the field of batteries storage systems, and the Respondent knew or should have known of the existence of the POLYTECH trademark at the time of registration of the disputed domain name, which has therefore been registered in bad faith.

Further the Complainant alleges that the disputed domain name has been registered for more than two years, and there is no evidence that the

disputed domain name has been used during this time. Therefore, the Complainant contends that this shows that the disputed domain name has been registered in order to prevent the Complainant from reflecting its POLYTECH trademark in a corresponding domain name as set forth in paragraph B11(f) of the .eu Alternative Dispute Resolution Rules (the “ADR Rules”).

B. RESPONDENT

The Respondent did not file a response.

DISCUSSION AND FINDINGS

In absence of a Response, the Respondent has not rebutted any of the Complainant’s allegations. In accordance with Paragraph B10(1) ADR Rules the Panel shall proceed to a decision on the Complaint and consider the Respondent’s failure to file a Response as ground to accept the claims of the Complainant, and the Panel shall draw such inferences therefrom as it considers appropriate (paragraph 10B(2) ADR Rules).

Under Article 4(4) of Regulation (EU) 2019/517 ("Regulation") in order to succeed under this dispute resolution procedure, the Complainant must show that the disputed domain name:

(a) is identical or confusingly similar to a name in respect of which a right is established by Union or national law, and either;
(b) has been registered by its holder without rights or legitimate interest in the name; or
(c) has been registered or is being used in bad faith.

These elements are discussed below.

At the outset, considering the substantive similarities between the ADR Rules and the Uniform Domain Name Dispute Resolution Policy (e.g., CAC-ADREU-008471), the Panel also refers to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”) where appropriate.

a. Identical or Confusingly Similar

With regard to the assessment of identity or confusing similarity, it is generally accepted that this test involves a reasoned but relatively straightforward comparison between the Complainant’s trademark and the disputed domain name (see section 1.7 WIPO Overview 3.0). It is also well-established precedent that the Top-Level Domain “.eu” may be disregarded in assessing identity or confusing similarity between the trademark on the one hand and the disputed domain name on the other hand (see section 1.11 WIPO Overview 3.0).

The Panel finds that the disputed domain name incorporates the PYLONTECH trademark, which is established by Union law, in its entirety.

Consequently, the Panel finds that the disputed domain name is identical to the Complainant’s trademark so that the first element of Article 4(4) Regulation has been satisfied.

b. Rights or Legitimate Interests

Article 4(4) sub (a) Regulation requires the Complainant to demonstrate that the Respondent has no rights to or legitimate interests in the disputed domain name. This condition is met if the Complainant makes out a prima facie case that the Respondent has no such rights or legitimate interests and if the Respondent fails to rebut this (see Section 2.1 WIPO Overview 3.0).

The Panel is satisfied that the Complainant has made such a prima facie case, showing that the Respondent has not used the disputed domain name in connection with a bona fide offering of goods or services before the Respondent had received the notice of the dispute, and that the Respondent was not commonly known by the disputed domain name and was not authorized to use the disputed domain name (see paragraph B11(e) ADR Rules).

The Panel finds that the Complainant has satisfied the second element of article 4(4) Regulation

c. Registered or Used in Bad Faith

As the Panel decided that the second requirement of Article 4(4) Regulation was satisfied, it is not required that the third element also be demonstrated (e.g. CAC-ADREU-007801). The Panel will discuss it nevertheless. According to Article 4(4) sub (b) Regulation it is sufficient that the Complainant shows that the Respondent either registered or used the disputed domain name in bad faith (see paragraph V. Bad Faith, section 1, Overview of CAC Panel Views on Selected Questions of the Alternative Dispute Resolution for .EU Domain Name Disputes, 2nd Edition (“CAC .EU Overview 2.0”)).

The Respondent did not offer an explanation for its passive holding of the disputed domain name during more than two years, nor can the Panel infer a logical explanation for non-use of the disputed domain name from the circumstances as presented in this case. The Panel is therefore satisfied that the disputed domain name has been used in bad faith as it has not been used in a relevant way for at least two years from the date of registration as meant in paragraph B11(f)(2)(ii) ADR Rules.

Consequently, the Panel finds that the Complainant has also satisfied the last element of article 4(4) Regulation.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain name <pylontech.eu>

be revoked.

PANELISTS

Name	**Alfred Meijboom**

DATE OF PANEL DECISION 2023-11-27

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: pylontech.eu

II. Country of the Complainant: China, country of the Respondent: the Netherlands

III. Date of registration of the domain name: May 5, 2021

IV. Rights relied on by the Complainant (B(11)(f) ADR Rules) on which the Panel based its decision:
International trademark registration PYLONTECH with registration number 11149396 of November 12, 2012, which designates the European Union

V. Response submitted: No

VI. Domain name is identical to the protected right of the Complainant

VII. Rights or legitimate interests of the Respondent (B(11)(e) ADR Rules):
1. No
2. Why: The Respondent has not used the disputed domain name in connection with a bona fide offering of goods or services before the Respondent had received the notice of the dispute, and that the Respondent was not commonly known by the disputed domain name and was not authorized to use the disputed domain name.

VIII. Bad faith of the Respondent (B(11)(f) ADR Rules):
1. Yes
2. Why: Disputed domain name not used (paragraph B11(f)(2)(ii) ADR Rules)

IX. Other substantial facts the Panel considers relevant: -

X. Dispute Result: Revocation of the disputed domain name