



Asian Domain Name Dispute Resolution Centre
- a charitable institution limited by guarantee registered in Hong Kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1300495
Complainant:	Deutsche Telekom AG
Respondent :	Zhao Ke
Disputed Domain Names:	<t-systems.net> & <t-systems.org>

1. The Parties and Contested Domain Names

The Complainant is Deutsche Telekom AG, of Friedrich-Ebert-Allee 140, 53113, Bonn, Germany. The authorized representatives of the Complainant in the proceedings are Hogan Lovells; their address is at 11th Floor, One Pacific Place, 88 Queensway, Hong Kong.

The Respondent is Zhao Ke, of Jinke Road 2555 / 255, Pudong, Shanghai, China, 201203, contact email is: zhaoke5@gmail.com.

The domain names at issue are <t-systems.net> & <t-systems.org>, with <t-systems.net> registered by Respondent with Hangzhou Aiming Network Co., Ltd, of 1F, Building No. 2, the Digital Entertainment Industry Park, No. 75 West Wenyi Road, West Lake District, Hangzhou, Zhejiang, 310012, China. With <t-systems.org> registered by Respondent with Click Registrar, Inc. d/b/a publicdomainregistry.com 9450 SW Gemini Dr. #48732 Beaverton OR 97008 United States of America.

2. Procedural History

On 8 May 2013, the Complainant submitted its Complaint to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (the “ADNDRC”), in accordance with the Uniform Domain Name Dispute Resolution Policy (the “Policy”) adopted by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on 24 October 1999, the Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the “Rules”), and ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the “ADNDRC Supplemental Rules”).

The ADNDRC notified the Registrars of the Disputed Domain of the proceedings by email on 9 May 2013.

The Complaint was served upon the Respondent by the ADNDRC by email on 14 May 2013 to the addresses, zhaoke5@gmail.com, postmaster@t-systems.org, [Page 1](mailto:postmaster@t-</p></div><div data-bbox=)

systems.net provided by the Respondent as his contact emails, according to the Complainant's WHOIS search and Registrar's data base on 9 and 13 May 2013.

This constitutes valid service of these proceedings upon the Respondent.

No Response was filed with the ADNDRC within the allotted time, on or before 3 June 2013. The Sole Panel, Dr. Timothy Sze, was appointed on 7 June 2013, with the papers being delivered to the Panelist on the same day. In accordance with the ADNDRC Rules, in the absence of exceptional circumstances as determined by the Panel in its sole discretion, the Panel shall forward its decision on the Complaint to the Provider within fourteen (14) calendar days of its appointment on or before 21 June 2013.

Having reviewed the communication records in the case file, the Panel finds that the ADNDRC has discharged its responsibility under Paragraph 2(a) of the Rules "to employ reasonably available means calculated to achieve actual notice to Respondents". Therefore, the Panel shall issue its Decision based upon the Complaint, the Policy, the Rules and the Supplemental Rules and without the benefit of any Response from Respondents.

3. Factual background

For the Complainant

The Complainant is Europe's largest telecommunications company and one of the global engines of innovation in the industry. The Complainant covers the entire spectrum of modern telecommunications, and is therefore one of the few telecommunications companies in the world to offer genuinely integrated solutions from a single source.

The Complainant is continuously driving ahead the internationalisation of the Deutsche Telekom Group with a variety of strategic shareholdings. It has established a presence in the major economic centres of the world, serving customers in more than 65 countries around the globe through regional units with a focus on the most dynamic markets in Europe and the United States.

The Complainant owns more than 800 trade mark registrations for or incorporating "T-Systems" in more than 60 countries worldwide, including 22 in the People's Republic of China ("PRC"). A complete list of these trade mark registrations is attached at **Annexure 2**. Because of the volume of these registrations the Complainant is only providing copies of a selection of these registrations (copies which are attached at **Annexure 3**) but would be happy to provide copies of others upon request. These trade marks registrations shall collectively be referred as the "**T-Systems Trade Marks**".

Through its business customer unit T-Systems, the Complainant provides information and communication technology solutions in more than 50 countries around the globe through regional units. In 2011 alone, T-Systems recorded a revenue of EUR€9.2 billion and employed approximately 48,200 employees, 22,700 of which are situated outside of Germany. In addition, the Complainant devotes vast resources annually for the promotion of its brands, including T-Systems. In 2012, the Complainant expended EUR€2.143 billion worldwide on corporate advertising and EUR€65.9 billion on research and development. Net revenue in 2012 amounted to EUR€58.2 billion, with 55.7% of the net revenue generated internationally. Attached at **Annexure 4** are copies of the relevant pages from the Complainant's 2012 Annual Report.

In 2005, T-Systems expanded to the China. It is headquartered in Beijing, and has branch offices in Shanghai, Wuhan, Shenzhen and Hong Kong. With its twin data centres located in Beijing and Shanghai, a regional help desk and significant systems integration expertise, T-Systems helps organisations in the PRC optimize their business value chain with ICT infrastructure and ICT solutions including business consulting, dealer services, enterprise resource planning, product lifecycle management and supply chain management. T-Systems is one of the few service providers which can offer high-quality, one-stop services in the PRC, from consulting to planning, implementation and operation. Currently, T-Systems has approximately 335 employees in the China, with a business profit of approximately RMB10 million. Two campaigns have been launched by T-Systems in China, namely, the Cloud Campaign in 2012 and the Airport Campaign in 2013. The Complainant refers the Panel to **Annexure 5** for pictures of the Complainant's Cloud Ads on buses in China and pictures of the Complainant's Airport Campaign.

In recognition of T-System's prominent position in its industry, T-Systems was recently presented with a number of awards including the international "Superbrands 2012" award and the "Service Desk Award 2012", highlighting T-Systems strength in innovation, implementation, tangible benefit and speed of response time in the help and service desk industry. In addition, in December 2012, T-Systems in China has also has been awarded "The Award of Business Technology Innovation" by ceocio.com and "Best Cloud Solutions" by IT Times. Attached at **Annexure 6** are print outs of press releases detailing the "Superbrands 2012" and the "Service Desk Award 2012" awards from the Complainant's official website as well as a Cloud Campaign Report of T-Systems' awards in China.

For the Respondent

Respondent has failed to file a response in this matter.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

- i. The Disputed Domain Names are identical or confusingly similar to a trade mark or service mark in which the Complainant has rights.**

The Complainant submits that the Disputed Domain Names are identical and/or confusingly similar to marks in which the Complainant has rights on the basis of the Complainant's numerous trade mark registrations for "T-Systems" spanning more than 60 countries as referred to above. As shown in Annexure 2, the Complainant obtained its first trade mark registration for "T-Systems" in 2000 in Germany and in 2009 in the PRC (where the Respondent is located), whereas the Disputed Domain Names were both created in July 2012.

In particular, the Complainant's trade mark registrations for "T-Systems" includes, but are not limited to, the following:

German trade mark registration No. 30036965 registered on 25 August 2000;
German trade mark registration No. 30069307 registered on 17 January 2001;
German trade mark registration No. 30726364 registered on 5 November 2007;
Community trade mark registration No. 1935659 registered on 18 December 2001;
United States of America trade mark registration No. 3238547, registered on 8 May 2007 with a priority date of 16 May 2000;
PRC trade mark registration No. 5358582, registered on 21 May 2009;
PRC trade mark registration No. 5358586, registered on 21 October 2009; and
PRC trade mark registration No. 5358583, registered on 07 January 2010.

Extracts from the official databases of the relevant trade mark offices are attached at Annexure 3.

The Disputed Domain Names incorporate the Complainant's T-Systems Trade Marks in its entirety. The incorporation of a trade mark in its entirety is sufficient to establish that a domain name is identical or confusingly similar to the Complainant's registered trade mark (see *Britannia Building Society v. Britannia Fraud Prevention*, WIPO Case No. D2001-0505, a copy of which is attached at **Annexure 7**).

Further, the Complainant notes that it is well established that, in making an enquiry as to whether a trade mark is identical or confusingly similar to a domain name, the domain extension, in this case <.net> and <.org>, should be disregarded. The Complainant refers the Panel to the WIPO decision of *Rohde & Schwarz GmbH & Co. HG v. Pertshire Marketing, Ltd* (Case No. D2006-0762), a copy of which is attached at **Annexure 8**.

The Complainant accordingly submits that it has proved that the Disputed Domain Names are identical and/or confusingly similar to registered trade marks in which the Complainant has rights or interests for the purposes of Article 4(a)(i) of the ICANN UDRP.

ii. The Respondent has no rights or legitimate interests in respect of the Disputed Domain Names

As mentioned above, the Complainant established T-Systems in October 2000 and obtained its first trade mark for "T-Systems" in 2000. The Complainant's registration and use of the T-Systems Trade Marks therefore predates the Respondent's registration of the Disputed Domain Names (i.e. July 2012) by over a decade. In addition, the Complainant commenced trading in the PRC in 2005 and obtained its first registration for the "T-Systems" trade mark in the PRC in 2009.

The fact that the Complainant's adoption and first use of the T-Systems Trade Marks pre-date the Respondent's registration and use of the Disputed Domain Names has the practical effect of shifting to the Respondent the burden of proof in establishing that it has rights and/or legitimate interests in the Disputed Domain Names. The Complainant refers the Panel to *PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS COMPUTER INDUSTRY (a/k/a EMS)* (WIPO Case No. D2003-0696), a copy of which is attached at **Annexure 9** in support of this principle.

The Complainant has not consented to nor has it authorised the Respondent's use of the "T-Systems" trade marks in respect of the Disputed Domain Names or otherwise and there is no evidence that the Respondent is commonly known by the Disputed Domain Names.

The Complainant has been the registrant of the <t-systems.com> and <t-systems.cn> domain names since 2004 and 2003 respectively, both of which significantly predates the registration of the Disputed Domain Names in July 2012.

The Disputed Domain Names are in no way related to the name of the Respondent. The Complainant's legal representative also conducted proprietor trade mark searches on the official database of the China Trade Marks Office in the name of the Respondent. The search results indicate that the Respondent does not have any trade mark registrations or applications which correspond to the Disputed Domain Names in the PRC, being the Respondent's location, as stated in the WHOIS results for the Disputed Domain Names. Copies of the trade mark search results are attached at **Annexure 10**.

There is no evidence to suggest that the Respondent has been commonly known by the Disputed Domain Names. While the components of the "T-Systems" trade mark are generic, the combination of the letter "T" and the word "Systems" with a hyphen in between has no meaning in English or Chinese, which indicates the lack of necessity and any other justifiable basis for the Respondent to use the Disputed Domain Names.

As at the date of this Complaint, the <t-systems.org> is an inactive site, while <t-systems.net> resolves to a websites which at first glance appears to host active online forums. However, it is the Complainant's assertion that <t-systems.net> is used as placeholders to create a false impression of legitimate use for the following reasons:

- (i) a database error occurs when visitors attempt to read a thread/post, meaning that it is not possible to access the content (if any) contained in either of the online forums; and
- (ii) threads/user names appear to be automatically generated to create a sense that the forums are populated and used by a large number of users.

Attached at **Annexure 11** are screenshots of <t-systems.net> showing the above. As such it is the Complainant's assertion that the Respondent is precluded from arguing under Article 4(c)(i) to (iii) of the Policy that:

- (i) the Respondent has used, or has shown demonstrable preparations to use, the Disputed Domain Names in connection with a bona fide offering of goods or services;
- (ii) the Respondent has been commonly known by the Disputed Domain Names; and
- (iii) the Respondent is making legitimate non-commercial or fair use of the Disputed Domain Names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

In light of the combination of the foregoing observations, and given the degree of fame of the Complainant throughout the world, including the PRC, it is inconceivable that the Respondent was not aware of the Complainant's rights at the time of registering the Disputed Domain Names.

The Complainant accordingly submits that it has proved that the Respondent has no right or legitimate interest in respect of the Disputed Domain Names for the purposes of Article 4(a)(ii) of the ICANN UDRP.

iii. The Disputed Domain Names have been registered and is being used by the Respondent in Bad Faith

The Complainant submits that the Disputed Domain Names have been registered and are being used by the Respondent in bad faith on the following grounds:

The Respondent does not have any rights or legitimate interests in the Disputed Domain Names. The fact that the Respondent has registered the Disputed Domain Names without having any rights or legitimate interests in it is of itself evidence of bad faith on the part of the Respondent in registering the Disputed Domain Names.

As already demonstrated, the T-Systems Trade Marks are highly distinctive and well-known all throughout the world, including in the PRC where the Respondent is based. It would therefore be inconceivable for the Respondent to argue that it was unaware of the Complainant and the T-Systems Trade Marks at the time the Disputed Domain Names were registered, especially given the fact that the Complainant is also the registrant of numerous domain names incorporating the T-Systems Trade Marks. There can be no plausible explanation for the Respondent's use of the T-Systems Trade Marks other than a dishonest attempt on the part of the Respondent to draw a false association with the Complainant and its business.

As discussed in relation to the Respondent's lack of rights or legitimate interests in the Disputed Domain Names, it is the Complainant's assertion that the Disputed Domain Names are passively held, and that the Respondent has created the Websites to create a false impression of legitimate use. It is submitted that the non-use or passive holding of the Disputed Domain Names by the Respondent, in combination with the other evidence of bad faith as discussed above, amounts to the use of the Disputed Domain Names in bad faith. The Complainant refers the Panel to the decision of *Telstra Corporation Limited v Nuclear Marshmallows*, WIPO Case No. D2000-0003, copies of which are attached at **Annexure 12**, which makes it clear that the concept of "use in bad faith" is not limited to positive action and that inaction is within the concept, i.e. inactivity by the Respondent may therefore amount to 'the use of the domain name in bad faith'.

On 24 January 2013, the Complainant's legal representatives approached the Respondent with an anonymous offer to purchase the Disputed Domain Names. In his reply, the Respondent stated that as the Disputed Domain Names are currently in use by his company, he will require compensation in the tens of thousands of an unspecified currency. Printouts of the emails between the Complainant's legal representatives and the Respondent regarding the sale of the Disputed Domain Names are attached at **Annexure 13**. Given that the

Disputed Domain Names are in fact passively held, the Respondent's reply to the anonymous offer from the Complainant's legal representatives is further evidence that the Disputed Domain Names have been registered and are being used in bad faith. The Complainant asserts that the Respondent has intentionally created a false impression of legitimate use in order to be able to demand higher monetary compensation when the Complainant attempts to recover the Disputed Domain Names.

Further, the above exchange suggests that the Respondent is aware of the value and reputation of the T-Systems Trade Marks and registered the Disputed Domain Names for the purpose of selling the Disputed Domain Names to the Complainant or to a competitor of the Complainant in order to make undue profits. This falls squarely within the scope of Article 4(b)(i) of the Policy, which states that "registering the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name to the Complainant or a competitor of the Complainant, for valuable consideration in excess of the out-of-pocket costs directly related to the domain name" constitutes evidence of bad faith on the part of the Respondent. The Complainant also refers the panel to *Education Testing Service v. TOEFL*, WIPO Case No D2000-0044, a copy of which is attached as **Annexure 14**.

The Respondent has engaged in a pattern of illegitimate domain name registrations. The Respondent was previously named as the respondent in *Basf SE v. Zhao Ke*, WIPO Case No. D2011-1910, where it was found that the Respondent had registered and used the <basf-usa.com> domain name in bad faith. The Panel in that case stated that the Respondent had intended to "ride on the goodwill of Complainant's trademarks in an attempt to exploit, for commercial gain, Internet users destined for Complainant". In addition, the Respondent has also been involved in several other UDRP proceedings where he was found to have registered and used domain names in bad faith, namely:

- *Société Nationale des Chemins de Fer Français SNCF, SNCF International v. Zhao Ke*, WIPO Case No. D2011-1503 (<sncinternational.com> & <sncinternational.net>);
- *Missoni S.p.A v. Zhao Ke*, WIPO Case No. D2011-1768 (<hotelmissoni.net>);
- *Dr. Ing. H.c. F. Porsche AG v. Zhao Ke*, WIPO Case No. D2011-1913 (<porschese.com>);
- *L'Oréal v. Zhao Ke*, WIPO Case No. D2012-0179 (<shuueuraus.com>);
- *Lagardere S.C.A. v. Zhao Ke*, WIPO Case No. D2012-0473 (<lagarderepublicite.com>); and
- *GA Modefine S.A. v. Zhao Ke*, WIPO Case No. D2012-0595 (<armanibeautyusa.com>).

Copies of the decisions mentioned above are attached at **Annexure 15**. This evidences a pattern of domain name hi-jacking targeted at famous brands and constitutes an illegitimate and deliberate manipulation of the domain name registration system under the ICANN UDRP.

In these circumstances of blatant misappropriation of the Complainant's T-Systems Trade Marks, there can be no possible grounds on which to find that the Respondent's registration and/or use of the Disputed Domain Names have been otherwise than in bad faith and for the sole purpose of misappropriating the Complainant's goodwill and disrupting the Complainant's business. Such registration and use are in bad faith and fall squarely within the scope of Article 4(a)(iii) of the ICANN UDRP, which states that the registration of a

domain name to "attempt to attract, for commercial gain, Internet users to your web site 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 your web site or location or of a product or service on your web site or location" will constitute evidence of bad faith.

The Complainant accordingly submits that it has proved that the Respondent has registered and is using the Disputed Domain Names in bad faith for the purposes of Article 4(a)(iii) of the ICANN UDRP.

B. Respondent

No Response was filed.

5. Findings

Respondent in Default

The Rules of Procedure of UDRP, 5(e) provides that “[i]f a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint.” The Panel finds that no exceptional circumstances exist. Accordingly the Panel will decide the dispute based upon the Complaint and the evidence submitted therewith.

The Language of the Proceedings

Paragraph 11(a) of the Rules provides:

Unless otherwise agreed by the Parties, the language of the proceedings shall be the language of the Registration Agreement, subject always to the authority of the Panel to determine otherwise, having regard to all the circumstances of the proceedings.

Respondent did not make any submission with respect to the language of the proceeding and did not object to the use of English as the language of the proceeding.

The Panel has taken into consideration the facts that Complainant is a company incorporated in Germany, and Complainant will be spared the burden of dealing with Chinese as the language of the proceeding. The Panel has also taken into consideration the fact that the disputed domain names includes English word “systems”.

On the record, Respondent appears to be Chinese individuals and are thus presumably not a native English speaker, but the Panel finds that persuasive evidence in the present proceeding to suggest that Respondent may have sufficient knowledge of English. The ADNDRC has notified Respondent of the proceedings in both Chinese and English, and Respondent has indicated no objection to Complainant’s request that English be the language of the

proceeding; and the ADNDRC informed Respondent that it would accept a Response in either English or Chinese.

Considering these circumstances, the Panel finds the choice of English as the language of the proceeding is fair to both parties and is not prejudicial to either one of the parties in his or her ability to articulate the arguments for this case. Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that English shall be the language of the proceeding, and the decision will be rendered in English.

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent's domain name must be identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- ii. Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. Respondent's domain name has been registered and is being used in bad faith.

A) Identical / Confusingly Similar

In the present case, the preliminary issue is whether the Complainant has protectable rights in the mark to which it contends Respondent's Domain Names are confusingly similar.

The Complainant owns more than 800 trade mark registrations for or incorporating "T-Systems" in more than 60 countries worldwide, including 22 in the People's Republic of China ("**PRC**"). The Panel finds that the Complainant has rights in the <T-Systems> mark acquired through registration. The <T-Systems> mark has been registered worldwide including in Germany, USA and China, and the Compliant has a widespread reputation in telecommunication industry in the world.

The disputed domain names <t-systems.net> & <t-systems.org> comprises the <T-Systems> mark in its entirety, the domain extension, in this case <.net> and <.org>, should be disregarded. (*Rohde & Schwarz GmbH & Co. HG v. Pertshire Marketing, Ltd* WIPO Case No. D2006-0762).

Accordingly, the Panel finds that the Complainant has satisfied the first condition under paragraph 4(a)(i) of the Policy.

B) Rights and Legitimate Interests

The Panel accepts that the Complainant has amply demonstrated that Respondent lacks any rights or legitimate interests, and by virtue of its default, the Respondent has failed to come forward with any evidence to rebut that finding (including the examples listed in paragraph 4(c) of the Policy).

The Respondent has not used or made preparations to use the domain names in connection with a *bona fide* offering of goods and services.

The Respondent was never commonly known as “T-Systems.” A Google search turns up no results relating to the Respondent. On the other hand, Google results turn up many hits related to the Complainant, who owns the trademark in “T-Systems”.

There is similarly no evidence that the Respondent is making a legitimate non-commercial or fair use of the domain names without intent for commercial gain.

Accordingly, the Panel finds that the Complainant has satisfied the second condition under paragraph 4(a)(ii) of the Policy.

C) Bad Faith

The Panel agrees that the Respondent conduct falls under paragraph 4(b)(i) of the Policy, which states the Respondent “has registered the disputed domain name 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 Complainant, for valuable consideration in excess of the documented out-of-pocket costs directly related to the Domain Name.”

The amount that the Respondent has demanded for the sale of the Disputed Domain Names indicates that he is aware of the value of the Complainant's mark and its associated goodwill and is trading on that value. Moreover, the Respondent did not respond formally to the Complaint. The Panel therefore concludes that the disputed domain names were used by the Respondent in bad faith.

In summary, the Respondent, by choosing to register and use the disputed domain names, which are confusingly similar to the Complainant's well-known trademarks, intended to ride on the goodwill of the Complainant's trademarks in an attempt to exploit, for commercial gain, internet users destined for the Complainant. In the absence of evidence to the contrary and rebuttal from the Respondent, the choice of the disputed domain names and the conduct of the Respondent as far as the website on to which the disputed domain names resolves is indicative of registration and use of the disputed domain names in bad faith.

The Panel therefore holds that this is sufficient to establish bad faith under paragraph 4(a)(iii) of the Policy.

6. Decision 裁决

Based on the above analysis, the Panel decides that:

The disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and the Respondent has no rights or legitimate interests in respect of the domain names; and the domain names has been registered and is being used in bad faith.

Accordingly, pursuant to paragraph 4(a) of the Policy and 15 of the Rules, the Panel decides that the Disputed Domain Names <t-systems.net> & <t-systems.org> should be transferred to the Complainant.

专家组裁定投诉人的投诉成立，被投诉人应将争议域名<t-systems.net>以及 <t-systems.org>转移给投诉人。

Timothy Sze
Sole Panelist

Dated: 21 June, 2013