



Asian Domain Name Dispute Resolution Centre

beijing

## **ADMINISTRATIVE PANEL DECISION**

**Case No. CN-2301574**

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**Complainant: XPEL, INC.**

**Respondent: ceng xiangfang**

**Domain Name: xpelxpel.com**

**Registrar: PDR Ltd. d/b/a PublicDomainRegistry.com**

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### **1. Procedural History**

On August 17, 2023, the Complainant submitted a Complaint in English to the Beijing Office of the Asian Domain Name Dispute Resolution Center (the ADNDRC Beijing Office) and elected this case to be dealt with by a one-person panel, in accordance with the Uniform Domain Name Dispute Resolution Policy (the Policy) and the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules) approved by the Internet Corporation for Assigned Names and Numbers (ICANN), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the ADNDRC Supplemental Rules) approved by the ADNDRC.

On August 21, 2023, the ADNDRC Beijing Office sent to the Complainant by email an acknowledgement of the receipt of the Complaint and transmitted by email to ICANN and the Registrar PDR Ltd. d/b/a PublicDomainRegistry.com, a request for registrar verification in connection with the disputed domain name.

On August 21, 2023, the Registrar transmitted by email to the ADNDRC Beijing Office its verification response, confirming that the Respondent is listed as the registrant and providing the contact details. On August 22, 2023, the ADNDRC Beijing Office requested the Complainant to revise its submission. On August 25, 2023, the Complainant submitted the revised Complaint to ADNDRC Beijing Office.

On September 13, 2023, the ADNDRC Beijing Office notified the Complainant that the Complaint has been confirmed and transmitted to the Respondent and the case officially commenced. On the same day, the ADNDRC Beijing Office transmitted the Written Notice of the Complaint to the Respondent, which informed that the Complainant had filed a Complaint against the disputed domain name and the ADNDRC Beijing Office had sent the Complaint and its attachments through email

according to the Rules and the Supplemental Rules. On the same day, the ADNDRC Beijing Office notified ICANN and registrar, PDR Ltd. d/b/a PublicDomainRegistry.com of the commencement of the proceedings.

The Respondent failed to submit a Response within the time period. The ADNDRC Beijing Office notified the Respondent's default. Since the Respondent did not mention the Panel selection in accordance with the time specified in the Rules, the ADNDRC Supplemental Rules, and the Notification, the ADNDRC Beijing Office informed the Complainant and the Respondent that the ADNDRC Beijing Office would appoint a one-person panel to proceed to render the decision.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Mr. Chi Shaojie, the ADNDRC Beijing Office notified the parties on October 7, 2023 that the Panel in this case had been selected, with Mr. Chi Shaojie acting as the sole panelist. The Panel determines that the appointment was made in accordance with Paragraph 6 of the Rules and Articles 8 and 9 of the Supplemental Rules.

On October 8, 2023, the Panel received the file from the ADNDRC Beijing Office and should render the Decision within 14 days, i.e., on or before October 22, 2023.

Pursuant to Paragraph 11 (a) of the Rules, 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 language of the current disputed domain name Registration Agreement is English, thus the Panel determines English as the language of the proceedings.

## **2. Factual Background**

### **A. The Complainant**

The Complainant in this case is XPEL, INC. The registered address is 3251 INTERSTATE 35, SAN ANTONIO, TEXAS 78219, USA.

The authorized representative in this case is Yanmeng Zhao of LOK-STONE LAW FIRM.

### **B. The Respondent**

The Respondent in this case is ceng xiangfang. The registered address is tianhequzhongshandongluguangdongjishushifandaxuepang, guangzhou, China 515785.

The Respondent is the current registrant of the disputed domain name <xpelxpel.com>, which was registered on March 8, 2022 according to the WHOIS information. The registrar of the disputed domain name is PDR Ltd. d/b/a PublicDomainRegistry.com.

### **3. Parties' Contentions**

#### **A. The Complainant**

(1) The disputed domain name is identical or extremely similar to the trademark or service mark owned by the Complainant, which is likely to cause confusion

In the disputed domain name <xpelxpel.com> in this case, “.com” is the top-level domain symbol and is not distinctive, and “xpelxpel” is the distinguishing part of the disputed domain name. The Complainant has registered trademarks of “XPEL” and “~~XPEL~~” in many countries. “XPEL” is a contrived term and has no special meaning itself. The distinguishing part of the disputed domain name “xpelxpel” is similar to the trademarks “XPEL” and “~~XPEL~~” registered by the Complainant. Thus, the domain name <xpelxpel.com> is identical or extremely similar to the Complainant’s trademark.

In addition, the official website domain name used by the Complainant is <xpel.com>, and the official website domain name used by the Complainant’s general distributor in China, Shanghai Xingying Trading Co., Ltd. is <xpel.com.cn>. The distinguished part of the domain names is also similar to that of the disputed domain name.

Therefore, the disputed domain name is very easy to cause confusion, and it is easy for the relevant public to believe that the disputed domain name <xpelxpel.com> was registered by the Complainant or have a certain connection with the Complainant.

Based on the above reasons, the Complainant believes that the Complaint meets the conditions stipulated in Article 4(a)(i) of the Policy.

(2) The Respondent does not have the rights or legitimate interests in the domain name

There is no evidence showing that the Respondent has any rights to “xpel”, “xpelxpel” or its identical or similar logo, nor does the Respondent claim any rights or legitimate interests, nor does the Respondent register the domain name by obtaining the permission of the Complainant.

In addition, the purpose of the Respondent’s registration of the domain name is to imitate the website of the Complainant’s exclusive distributor in China, and to provide electronic warranty inquiries for the counterfeit products sold by him/her or the co-infringer, in order to defraud consumers’ trust. Combined with the Respondent’s obvious malice, the Respondent will not have the rights or legitimate interests in the domain name.

Based on the above reasons, it can be presumed that the Respondent does not have rights or interests in the disputed domain name, its registration and use of the disputed domain name lack a reasonable basis, and the Complainant's complaint meets the conditions stipulated in Article 4(a)(ii) of the Policy.

(3) The domain name of the Respondent has been registered maliciously and is being used maliciously

The Complainant was established in the United States in 1997. It is an international manufacturer dedicated to safety protection products. It has branches in the United Kingdom, Canada, Germany, Mexico, Denmark, Asia and other countries and regions. Agents and distributors not only cover the entire United States, but also extend to more than 80 countries and regions on all continents, including the Americas, Europe, Asia, Australia, etc. It is leading enterprise in the field of automotive paint protection film (also known as invisible car clothing in China), and has extremely high awareness and good reputation. The Complainant was listed on the Canadian stock market in 2006 under the stock code DAP.U, and in 2019 on the Nasdaq stock market in the United States under the stock code XPEL. XPEL automotive paint protection film entered the Chinese market in 2009, and currently nearly a thousand XPEL dealers are located in various provinces and cities in Chinese mainland.

The Complainant's exclusive general distributor in China is Shanghai Xingying Trading Co., Ltd. (Xingying). In China, to sell XPEL protection film, you must get the authorization of Xingying to become a franchise dealer, and then you can obtain the channels and sales qualifications to purchase XPEL genuine products. In addition, each roll of XPEL car paint protection film has a unique roll number, which can be used to identify the authenticity of the paint protection film and track whereabouts in the internal system.

After the dealer sells the XPEL car paint protection film to the consumer, the consumer can obtain the electronic warranty ID. Through the electronic warranty ID, the authenticity of the product and the information of the consumer, vehicle, and film can be inquired on the electronic warranty query system of Xingying's website.

At present, some infringers in China sell counterfeit XPEL car paint protection film products at prices lower than the genuine ones. Although the car paint protection film packaging box shells are basically the same as the genuine ones, they also use the Complainant's registered trademark "XPEL", but since counterfeit products cannot provide electronic warranty, some consumers who are familiar with XPEL products can identify the authenticity of the products. In this case, some counterfeiters registered domain names including "xpel" and copied Xingying's website to provide a false electronic warranty query system to deceive consumers that it is an authorized franchise store and convince consumers that its product is genuine XPEL.

The website in this case is one of several fake websites discovered by the Complainant. The domain name <xpel.com.cn> used by Xingying's website was registered in 2010, and the domain name of the Respondent <xpelxpel.com> was registered in the March of 2022. It was much later than the registration and use of Xingying's domain name, and except for the suffix part, the domain name identification part "xpel" and "xpelxpel" are extremely similar.

It can be clearly seen from the web pages submitted by the Complainant that the website <www.xpelxpel.com> used by the Respondent completely copied the electronic warranty webpage of the website <www.xpel.com.cn> of Xingying, and the two websites are consistent in interface design and website content.

For example, after entering the warranty number 623699, the information of a vehicle with the counterfeit XPEL auto paint protective film can be found. This proves that the fake website is indeed helping to sell fake paint protection film.

In addition, the webpage name of <www.xpelxpel.com> is also same to that of <www.xpel.com.cn>, which is "XPEL Electronic Warranty and Dealer Locator".

The purpose of the Respondent's creation of a fake website is to provide a counterfeit electronic warranty inquiry system, and then sell fake goods by himself or help others sell fake goods to deceive consumers. The act of the Respondent selling counterfeit goods and using the counterfeit website is not only a trademark infringement, but may also constitute a criminal offense of selling counterfeit registered trademark goods or selling counterfeit goods.

In addition, the Respondent concealed his identity information when registering the domain name <xpelxpel.com>, and did not disclose his information on the website when using this domain name. The website <www.xpelxpel.com> did not file for the ICP recordation, also for hiding its identity information. Those can also reflect the malice of the Respondent.

In summary, the Respondent's malicious registration and use of the <xpelxpel.com> domain name are very obvious.

Since the Respondent concealed his identity information when implementing the counterfeiting behavior, if the <xpelxpel.com> domain name is not transferred to the Complainant, the Complainant has no other appropriate way to stop the counterfeiting behavior of the Respondent, which is not only damage to the Complainant's exclusive right to use a registered trademark, but will also cause serious infringements on the legitimate rights and interests of consumers.

In addition, the fake websites using the domain names <xpel.cloud><xpel.gold><xpel.gdn> and <xpel.live> are almost identical to the situation in this case, and the fake websites are also almost identical. The ADNDRC Beijing Office made the Decisions No. CN-2101386, CN-2101411, CN-2101444, and

CN-2301546 respectively on June 3, 2021, August 13, 2021, March 7, 2022, and May 25, 2023, and decided to transfer the domain names <xpel.cloud><xpel.gold><xpel.gdn> and <xpel.live> to the Complainant.

In conclusion, the Complainant's complaint meets the conditions stipulated in Article 4(a)(iii) of the Policy; and the Complainant requested that the disputed domain name be transferred to the Complainant.

## **B. The Respondent**

The Respondent has not made any response to what the Complainant says in the Complaint.

## **4. Discussions and Findings**

It is meaningful for the parties to understand the nature of the current proceeding which is totally different from that of arbitration or litigation. Though the proceeding is known as administrative proceeding, it is NOT the proceeding by a government agency or any of dispute resolution bodies. The jurisdiction by the Panel over the current dispute on the domain name registered by the Respondent comes from the authorization by the organization for the administration of domain name registration and maintenance. Anyone intended to register a domain name needs to sign a registration agreement with the domain name administrative authority which makes no substantive examination on the registration application, but stipulates in the registration agreement that whenever a claim against the registration is submitted to the authorized domain name dispute resolution body, e.g. the ADNDRC Beijing Office, the registrant is obliged to be a procedural party which has rights to make arguments against the claim by the Complainant, but subject to a decision made by a Panel constituted in conformity with the stipulated procedural rules. As it is, the current proceeding is a part of the whole proceeding for the registration and maintenance of domain names. As such, the fundamental feature of the Panel's making a judgment on the entitlement to the disputed domain name is to decide on a core issue of which party should be the rightful holder of the disputed domain name, so as to be in conformity with the basic requirements set forth under the Policy and to help keep the good operative order for the running of the internet, and to be beneficiary to the protection of common interests of the web-users.

Paragraph 4(a) of the Policy provides that in order to be entitled to the requested transfer of the disputed domain name, the Complainant shall prove the following three indispensable elements, i.e.

(i) The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

(ii) The registrant 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.

The Panel is going to give the following analyses and groundings on the three prerequisites for the decision.

#### **A. Identity or Confusing Similarity**

As revealed in the subtitle of “Identity or Confusing Similarity”, what the Panel needs to do is to hold either of the facts with regard to the judgment of the key element of “Identity” OR “Similarity”, and the two basic elements to be compared are the Complainant’s registered trademarks and the identifying part of the disputed domain name.

The Complainant submits and proves that it owns a series of trademarks containing the key word of “XPEL” which is also the tradename of the Complainant, and the identifying part of the disputed domain name is “xpelxpel”; thus, “XPEL” and “xpelxpel” are the two subject matters to be compared. Obviously, the two are not identical but confusingly similar, due to the fact that the latter is no more than the simple repeat of the former. Judging from the spelling of the Respondent’s name and his registered address, he may be a Chinese who seems to make the Chinese consumers in relation to the Complainant’s products pay “double attention” to the web-site using the disputed domain name. That is to say, the Respondent may appear to try to avoid the element of “Identity” while doubles the element of “Similarity”.

As such, the Panel has sufficient reason to hold that the identifying part of the disputed domain name is of high confusing similarity with the Complainant’s registered trademark; therefore the Complainant meets the first requirement for the could-be transfer of the disputed domain name.

#### **B. Rights or Legitimate Interests of the Respondent**

Pursuant to Paragraph 4(a) (ii), the second prerequisite for the Complainant to meet in terms of the request for the transfer of the disputed domain name is to prove that the Respondent does not enjoy any right to or legitimate interest in the domain name at issue.

Literarily understanding, it seems to be the Complainant who shall take the burden of proof to establish the fact that the Respondent does NOT have rights or legitimate interests in connection to the disputed domain name. Since the Complainant submits that it is exclusively entitled to the word XPEL and the Respondent has nothing to do with such a word except using it to register the disputed domain name in bad faith, it can hardly provide any evidence to prove something it does not think to exist. For this reason, the Panel pays more attention to whatever the Respondent could argue with regard to the rights or legitimate interests in respect to the disputed domain name. The

Policy gives the chance to the Respondent to make arguments on this issue by stipulating several could-be circumstances in the relevant article of the Policy.

Regrettably, the Respondent makes no argument to say it does have certain rights or legitimate interest in regard to the domain name at issue. Under the circumstances, how could the Panel hold that the Respondent does have a right or legitimate interest in the disputed domain name?

On the other side, the Complainant submitted enough exhibits to certify such facts as the word "XPEL" is created and used by the Complainant as the tradename ever since its foundation, as well as the brand of its products and service offered to the consumers all over the world. It is worth being mentioned that the Complainant and/or its associated business partners registered the domain name <XPEL.com> to market its products and service on internet much earlier than the Respondent's registration of the disputed domain name.

Based upon comprehensive analyses of all the relevant evidences by the Complainant, the Panel has sufficient reason to ascertain that it is none other than the Complainant who has rights and legitimate interests in connection to the disputed domain name; and further holds that the Complainant meets the second requirement set forth under Paragraph 4(a)(ii).

### **C. Bad Faith**

Furthermore, the Complainant has yet to establish the fact of bad faith on the part of the Respondent as set forth in the Paragraph 4(a) (iii) of the Policy.

Paragraph 4(b) of the Policy states that the following circumstances in particular, but without limitation, shall be evidence of registration and use of a domain name in 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 complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name; or
- (ii) The respondent 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 its website or location or of a product or service on its website or location.

The logical thinking of the Panel on the above stipulation is something like that when a party registers a domain name which is NOT created by itself with a distinctive feature known in the real world, but identical or confusingly similar to a mark or logo or sign to which the other party has rights and legitimate interests with high market value, the intention of the registration is clear, namely taking advantages by causing confusion to the consumers.

On the other hand, if the registrant is NOT intentionally to take others' advantage, it should create a distinctive domain name to make web-users easily tell the name from others. What is more, if someone registers a domain name in bad faith, it is hard for him to make use of the registered subject matter in good-faith, otherwise the ill-intention of the registrant would not be revealed.

The conduct of "register only" may be regarded as sort of passive form of ill-use. That seems to be the considered factors underlying the stipulation under Item (ii) of Paragraph 4(b) of the Policy.

Using the disputed domain name in bad-faith further reveals the bad-faith in registration. This fundamental logic further supports the holding of bad-faith fact in the foregoing paragraph. On the other side, whether or not the registrant of the disputed domain name has any linkage to the actual user of the disputed domain name, the fundamental truth is that the disputed domain name is being badly used to damage the reputation of the Complainant and cause harm to internet users' interests.

The Complainant submits and proves such facts as, "the Complainant's exclusive general distributor in China is Shanghai Xingying Trading Co., Ltd.", "it can be clearly seen from the web pages submitted by the Complainant that the website <www.xpelxpel.com> used by the Respondent completely copied the electronic warranty webpage of the website <www.xpel.com.cn> of Xingying Company, and the two websites are consistent in interface design and website content", "the webpage name of <www.xpelxpel.com> is also same to that of <www.xpel.com.cn>, which is "XPEL Electronic Warranty and Dealer Locator", etc.

Since the Respondent failed to argue and prove that those facts alleged by the Complainant are not true, the Panel holds that,

- (i) The disputed domain name has been used in bad-faith deliberately and continuously which may cause harm to the Complainant's interests;
- (ii) The Respondent has not denied what the Complainant said has nothing to do with the former, i.e. the disputed domain name was badly used without the Complainant's permit;
- (iii) Paragraph 4(b)(iv) of the Policy i.e. "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 its website or location or of a product or service on its website or location" shall be the legal base for the Panel to hold that the disputed domain name has been used in bad-faith;

(iv)The fact of "use in bad-faith" further supports the fact of "register in bad-faith".

In view of the foregoing groundings, the Panel ascertains that the Complainant meets the third requirements for the requested transfer of the domain name at issue.

Based upon all the above findings and analyses, the Panel comes to the final conclusion that the Complaint fulfills each AND all of the conditions provided in Paragraph 4(a) (i) (ii) (iii) of the Policy; thus decides to support the Complainant's request for the transfer of the disputed domain name.

## **5. Decision**

In light of all the foregoing findings and in accordance with Paragraphs 4(a), 8(a) of the Policy and 5(e) of the Rules, the Panel holds:

(a) That the disputed domain name "xpelxpel.com" is confusingly similar to the registered trademark "XPEL" to which the Complainant has prior rights and legitimate interests; and

(b) That the Respondent has no rights to or legitimate interests in the disputed domain name; and

(c) That the disputed domain name was registered and used in bad faith.

As such, the Panel shall order that the disputed domain name "xpelxpel.com" be transferred to the Complainant XPEL, INC.



( Chi Shaojie )

Dated: October 22, 2023