

ADMINISTRATIVE PANEL DECISION

Cresset Administrative Services Corporation and Cresset Partners LLC v. 杨智超 (Zhi Chao Yang)
Case No. D2022-2093

1. The Parties

The Complainants are Cresset Administrative Services Corporation and Cresset Partners LLC (collectively “the Complainants”), United States of America (“United States”), represented by Fuksa Khorshid, LLC, United States.

The Respondent is 杨智超 (Zhi Chao Yang), China.

2. The Domain Name and Registrar

The disputed domain name <cressetcapita.com> is registered with Chengdu West Dimension Digital Technology Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 9, 2022. On June 10, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 11, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainants on June 13, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint in English on June 15, 2022.

On June 13, 2022, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainants requested that English be the language of the proceeding on June 15, 2022. The Respondent did not comment on the language of the proceeding.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent in English and Chinese of the Complaint, and the proceedings commenced on June 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 11, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 12, 2022.

The Center appointed Jonathan Agmon as the sole panelist in this matter on July 19, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainants, Cresset Administrative Services Corporation and Cresset Partners LLC, are part of Cresset and its subsidiaries and affiliates. Cresset is a financial advisory firm conducting business nationally with offices spanning the United States. Cresset provides an array of financial services, including by means of its boutique family office, private wealth management, and private investing lines of business, all totaling approximately USD 19.8 billion in assets under management.

The Complainants are the registered owners of the following trademarks containing CRESSET, including but not limited to (collectively referred to as the "CRESSET Marks"):

- United States Trademark Registration No. 5,531,975 for CRESSET, registered on July 31, 2018;
- United States Trademark Registration No. 5,603,015 for CRESSET WEALTH ADVISORS, registered on November 6, 2018;
- United States Trademark Registration No. 5,798,071 for CRESSET PARTNERS, registered on July 9, 2019;
- United States Trademark Registration No. 5,803,938 for CRESSET CAPITAL, registered on July 16, 2019; and
- United States Trademark Registration No. 5,803,937 for CRESSET CAPITAL MANAGEMENT, registered on July 16, 2019.

The disputed domain name was registered on February 16, 2022, and resolved to an active website with Pay-Per-Click ("PPC") links which appear to generate click-through commissions.

5. Parties' Contentions

A. Complainants

The Complainants argue that the disputed domain name is confusingly similar to the Complainants' registered CRESSET CAPITAL mark as the disputed domain name comprises of the Complainants' CRESSET CAPITAL mark in full with the omission of the letter "l", and generic Top-Level Domain ("gTLD") ".com".

The Complainants also argue that the Respondent has no rights or legitimate interests in respect of the disputed domain name as it has not licensed or permitted the Respondent to use any of their trademarks or register the disputed domain name. The Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services and is not making a legitimate noncommercial or fair use of the disputed domain name.

The Complainants further argue that the disputed domain name was registered and is being used in bad faith as the Respondent was well aware of the Complainants and their CRESSET CAPITAL mark at the time of registration of the disputed domain name and the circumstances indicate that the Respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name to the Complainants who are the owners of the trademark or service

mark or to a competitor of that Complainants, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the disputed domain name.

B. Respondent

The Respondent did not reply to the Complainants' contentions.

6. Discussion and Findings

6.1 Language of the Proceeding

Paragraph 11 of the Rules provides that: "(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 language of the Registration Agreement for the disputed domain name is Chinese.

The Complainants requested that the language of the proceeding be English.

The Respondent did not comment on the language of the proceeding.

The Panel cites the following with approval:

"Thus, the general rule is that the parties may agree on the language of the administrative proceeding. In the absence of this agreement, the language of the Registration Agreement shall dictate the language of the proceeding. However, the Panel has the discretion to decide otherwise having regard to the circumstances of the case. The Panel's discretion must be exercised judicially in the spirit of fairness and justice to both parties taking into consideration matters such as command of the language, time, and costs. It is important that the language finally decided by the Panel for the proceeding is not prejudicial to either one of the parties in his or her abilities to articulate the arguments for the case." (See *Groupe Auchan v. xmxzl*, WIPO Case No. [DCC2006-0004](#)).

The Panel finds that in the present case, the following should be taken into consideration upon deciding on the language of the proceeding:

- (i) the Complainants are unable to communicate in Chinese and may be unduly disadvantaged by having to conduct the proceeding in the Chinese language;
- (ii) the disputed domain name contains Latin characters instead of Chinese script;
- (iii) the content of the disputed domain name's website is in English;
- (iv) the disputed domain name contains the Complainants' trademark in conjunction with an English word;
- (v) if translation is required, the Complainants would incur considerable costs and there would be an undue delay of the proceeding; and
- (vi) the Respondent has demonstrated working knowledge of English language

Upon considering the above, the Panel determines that English be the language of the proceeding.

6.2 Substantive Issues

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The disputed domain name contains the Complainants' CRESSET CAPITAL mark in with the omission of the letter "I" and the gTLD ".com".

Here, the omission of the letter "I" at the end of the CRESSET CAPITAL mark does not prevent a finding of confusing similarity. It is also well established that the addition of a gTLD ".com" is viewed as a standard registration requirement and as such is typically disregarded under the first element confusing similarity test. (See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.11.1).

Consequently, the Panel finds that the Complainants have shown that the disputed domain name is confusingly similar to a trademark in which the Complainants have rights.

B. Rights or Legitimate Interests

Once the complainant establishes a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the disputed domain name (see [WIPO Overview 3.0](#), section 2.1).

In the present case, the Complainants have demonstrated *prima facie* that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the Respondent has failed to assert any such rights or legitimate interests. The Complainants have provided evidence that they own a trademark registration for the CRESSET CAPITAL mark before the disputed domain name was registered. The Complainants are not affiliated with nor have they licensed or otherwise permitted the Respondent to use the Complainants' trademark (see *LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master*, WIPO Case No. [D2010-0138](#)). There is also no evidence on record showing that the Respondent is commonly known by the disputed domain name (see [WIPO Overview 3.0](#), section 2.3).

Further, the Respondent did not submit a Response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain name to rebut the Complainants' *prima facie* case. There can indeed be little doubt the Respondent unfairly sought to target the Complainants with the disputed domain name.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The complainant must also show that the respondent registered and is using the disputed domain name in bad faith (see Policy, paragraph 4(a)(iii)).

The Complainants have submitted evidence that the disputed domain name resolved to a parked page comprising PPC links which appear to generate click-through commissions.

In this case, the evidence shows that the Complainants' marks were registered prior to the registration of the disputed domain name. Given the portfolio of the Complainants' CRESSET Marks and the reputation of the Complainants, the Respondent is unlikely to have registered the disputed domain name without sight and knowledge of the Complainants' marks and it is implausible that there is any good faith use to which the (typo) disputed domain name may be put to. It is also the Complainants' evidence that the Respondent could not have registered the disputed domain name without prior knowledge of the Complainant's marks as the Respondent's name has no connection with the Complainants' CRESSET Marks which were registered prior to the disputed domain name. This is another indicator of bad faith on the part of the Respondent (see *Boursorama SA v. Estrade Nicolas*, WIPO Case No. [D2017-1463](#)).

The Respondent did not submit a Response in this proceeding which is a further indication of the Respondent's bad faith, which was considered by the Panel.

In the particular circumstances of the present case and based on the fact that the disputed domain name website displayed the Complainants and/or their CRESSET mark and CRESSET CAPITAL mark without the letter "I", including the third party links related to services which compete with the Complainants' business, it is clear to the Panel that the Respondent specifically targeted the Complainants and their marks and registered the disputed domain name to divert traffic and benefit commercially from unsuspecting Internet users seeking out the Complainants.

Based on the evidence presented to the Panel, including the confusing similarities between the disputed domain name and the Complainants' marks, the fact that the disputed domain name was used to host a parked page comprising PPC links to generate click-through commissions, the fact that no Response was submitted by the Respondent in response to the Complaint, and the fact that the Respondent has a long history of abusive domain name disputes against third-party trademark owners, the Panel draws the inference that the disputed domain name was registered and is being used in bad faith

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <cressetcapita.com> be transferred to the Complainants.

/Jonathan Agmon/

Jonathan Agmon

Sole Panelist

Date: August 2, 2022