

## **ADMINISTRATIVE PANEL DECISION**

Artemis Marketing Corp. v. 刘营军 (liu ying jun)

Case No. D2023-0163

### **1. The Parties**

The Complainant is Artemis Marketing Corp., United States of America (“United States”), represented by Bryan Cave Leighton Paisner LLP, United States.

The Respondent is 刘营军 (liu ying jun), China.

### **2. The Domain Name and Registrar**

The disputed domain name <roomtogofurniturestore.com> is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on January 12, 2023. On January 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 16, 2023, 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 Complainant on January 16, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint in English on January 18, 2023.

On January 16, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On January 18, 2023, The Complainant confirmed its request that English be the language of the proceeding. 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”).

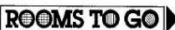
In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent in English and Chinese of the Complaint, and the proceedings commenced on January 24, 2023. In accordance with

the Rules, paragraph 5, the due date for Response was February 13, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 14, 2023.

The Center appointed Rachel Tan as the sole panelist in this matter on February 20, 2023. 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 Complainant was founded in 1991. Its licensees operate retail furniture stores and sell furniture under the Complainant's various ROOMS TO GO marks in the United States, and on the Internet through various websites, including the official website "www.roomstogo.com".

The Complainant is the owner of trade marks incorporating the "rooms to go" element in the United States, including Trade Mark Registration No. 1,756,239 for ROOMS TO GO registered on March 2, 1993 in class 42; Trade Mark Registration No. 2,396,055 for ROOMS TO GO registered on October 17, 2000 in class 20; Trade Mark Registration No. 1,801,702 for  registered on October 26, 1993 in class 42; and

Trade Mark Registration No. 3,587,032, for  registered on March 10, 2009 in classes 20 and 25.

The Respondent is 刘营军 (liu ying jun), China.

The disputed domain name was registered on December 14, 2022. According to the evidence provided by the Complainant, the disputed domain name previously resolved to a website in English which allegedly displayed the Complainant's registered  mark and mimicked the Complainant's official website at "www.roomstogo.com". However, at the time of this decision, the disputed domain name does not resolve to an active website.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to the ROOMS TO GO mark as it incorporates the mark in its entirety, dropping one letter in an obvious typo and adding the generic words "furniture" and "store" to the end of the mark. Instead of distinguishing the disputed domain name from the ROOMS TO GO mark, the additional words "furniture" and "store" reinforce the confusing similarity.

The Complainant further alleges that the Respondent does not have rights or legitimate interests in the disputed domain name. The Respondent is not in any way associated with the Complainant and is not licensed or otherwise authorized by the Complainant to use the ROOMS TO GO mark or the disputed domain name. There is no indication that the Respondent is commonly known as "Rooms To Go". Further, the Complainant claims that the resolved website of the disputed domain name illegally impersonates the Complainant and its official website.

The Complainant finally asserts that the Respondent registered and is using the disputed domain name in bad faith. The Respondent's fraudulent website conclusively establishes his bad faith registration and use of the disputed domain name. The Respondent clearly knew about the Complainant, its mark as well as its online retail furniture store. The Complainant further claims that the Respondent is a known adjudicated cybersquatter with a pattern and practice of incorporating well-known marks into confusingly similar domain names.

## **B. Respondent**

The Respondent did not reply to the Complainant's contentions.

## **6. Discussion and Findings**

### **6.1 Language of the Proceeding**

Initially, the Panel must address the language of the proceeding. Paragraph 11(a) of the Rules provides that the language of the administrative proceeding shall be the language of the Registration Agreement unless otherwise agreed by the parties, subject to the authority of the panel to determine otherwise, having regard to the circumstances of the administrative proceeding. The panel may choose to write a decision in either language, or request translation of either party's submissions.

In this case, the Registrar has confirmed to the Center that the language of the Registration Agreement as used by the registrant for the disputed domain name is Chinese. However, the Complainant has requested that English be adopted as the language of the proceeding for the reasons summarized below:

- (a) the Respondent will receive notice of this proceeding in both English and Chinese;
- (b) given the content of the website at the disputed domain name is in English, the Respondent cannot plausibly dispute his or her familiarity with English; and
- (c) requiring Chinese be adopted as the language of the proceeding would cause unnecessary burdens on the Complainant and unnecessarily delay the proceeding.

It is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding, in order to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. Language requirements should not lead to undue burdens being placed on the parties and undue delay to the proceeding.

The Panel having considered the circumstances finds that English shall be the language of this proceeding. The reasons are set out below:

- (a) the Complainant is headquartered in the United States. Requiring the Complainant to submit documents in Chinese would lead to delay and cause the Complainant to incur translation expenses;
- (b) the disputed domain name previously resolved to a website in English;
- (c) even if the Respondent does not possess a sufficient command of English to understand the Complaint, there were ample opportunities for the Respondent to raise an objection. The Center notified the Parties in English and Chinese of the Complainant's request for English to be the language of the proceeding, but the Respondent did not protest against this request;
- (d) the Respondent has failed to participate in the proceeding even though the Center sent the notification of the Complaint in English and Chinese; and
- (e) the Complaint has been submitted in English. No foreseeable procedural benefit may be served by requiring Chinese to be used. On the other hand, the proceeding may proceed expeditiously in English.

## 6.2 Analysis of the Complaint

### A. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has adduced evidence to demonstrate their established rights in the ROOMS TO GO mark.

The Panel notes that the disputed domain name consists of a misspelling of the ROOMS TO GO mark in addition to two English words “furniture” and “store”. In cases where a domain name consists of a common, obvious, or intentional misspelling of a trade mark, the domain name will normally be considered confusingly similar to the relevant mark for purposes of UDRP standing. See section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”); *Mediarex Enterprises Limited v. Yong Woon Chin, Webolutions*, WIPO Case No. [DCO2020-0014](#).

Further, it is accepted by previous UDRP panels that the addition to the complainant’s trade mark of other words or terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element of the Policy. Accordingly, the additional English words “furniture” and “store” do not prevent a finding of confusing similarity between the disputed domain name and the Complainant’s ROOMS TO GO mark. See section 1.8 of the [WIPO Overview 3.0](#).

It is permissible for the Panel to ignore the generic Top-Level Domain, in this case “.com”. See section 1.11.1 of the [WIPO Overview 3.0](#). Consequently, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s ROOMS TO GO mark.

Accordingly, the Complainant has satisfied the first element under paragraph 4(a) of the Policy.

### B. Rights or Legitimate Interests

In circumstances where the Complainant possesses exclusive rights to the ROOMS TO GO mark, whereas the Respondent seems to have no trade mark rights, the Panel is satisfied that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, and the burden of production shifts to the Respondent. See section 2.1 of the [WIPO Overview 3.0](#).

The Respondent has not provided evidence of a legitimate noncommercial or fair use of the disputed domain name or reasons to justify the choice of the term “room to go”. There is no indication to show that the Respondent is commonly known by the disputed domain name or otherwise has rights or legitimate interests in it. In addition, the Complainant has not granted the Respondent a license or authorization to use the Complainant’s ROOMS TO GO mark or register the disputed domain name.

The Panel notes that the disputed domain name previously resolved to a website in English which allegedly offered furniture. The website displayed the Complainant’s ROOMS TO GO mark and copied certain features from the Complainant’s official website. The website did not accurately and prominently disclose the lack of a relationship between the Complainant and the Respondent. Therefore, the facts do not support a claim of fair use under the “Oki Data test”. See *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#).

None of the circumstances in paragraph 4(c) of the Policy are present in this case. For these reasons, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

Accordingly, the Complainant has satisfied the second element under paragraph 4(a) of the Policy.

### C. Registered and Used in Bad Faith

The Complainant’s ROOMS TO GO mark is registered before the registration of the disputed domain name. Through use and advertising, the Complainant’s ROOMS TO GO mark is known throughout the world.

Search results using the term “rooms to go” on the Internet direct users to the Complainant and its products/services, which indicates that an exclusive connection between the ROOMS TO GO mark and the Complainant has been established. The Panel further notes that the disputed domain name previously resolved to a website allegedly offering furniture, displaying the Complainant’s ROOMS TO GO mark and copying the features from the Complainant’s official website. As such, the Respondent clearly knew of the Complainant’s ROOMS TO GO mark and domain name when registering the disputed domain name, see section 3.2.2 of the [WIPO Overview 3.0](#).

The Panel is of the view that the Respondent intentionally created a likelihood of confusion with the Complainant’s ROOMS TO GO mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website. This demonstrates bad faith registration and use of the disputed domain name, as provided in paragraph 4(b)(iv) of the Policy.

The Panel notes that the disputed domain name currently does not resolve to any active website. The current inactive use of the disputed domain name in this case would not prevent a finding of bad faith under the doctrine of passive holding. In its determination, the Panel considers the degree of distinctiveness and reputation of the Complainant’s ROOMS TO GO mark, the Respondent’s failure to respond in the face of the Complainant’s allegations of bad faith, as well as the implausibility of any good faith use that the disputed domain name may be put. See section 3.3 of the [WIPO Overview 3.0](#).

The Panel also notes that the Respondent appears to be engaged in a pattern of abusive registration having registered multiple domain names comprising third-party trade marks. The Panel finds this case is a continuation of that bad faith pattern. See *LEGO Juris A/S v. 刘营军 (Liu Ying Jun)*, WIPO Case No. [D2021-2060](#). Such behaviour constitutes evidence of bad faith registration and use as contemplated under paragraph 4(b)(ii) of the Policy.

Taking into account these circumstances, the Panel finds that the Respondent must have known of the Complainant before registering the disputed domain name and, considering the Respondent’s lack of rights or legitimate interests, and by registering and using the disputed domain name as discussed above, the Panel is led to conclude that the disputed domain name was registered and is being used in bad faith.

Accordingly, the Panel finds that the Complainant has satisfied the third element under paragraph 4(a) of the Policy.

## 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 <roomtogofurniturestore.com> be transferred to the Complainant.

*/Rachel Tan/*

**Rachel Tan**

Sole Panelist

Date: March 6, 2023