

ADMINISTRATIVE PANEL DECISION

TruPoint Bank v. 杨智超 (Zhi Chao Yang)

Case No. D2023-0640

1. The Parties

The Complainant is TruPoint Bank, United States of America (“United States” or “U.S.”), represented by Ballard Spahr LLP, United States.

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

2. The Domain Name and Registrar

The disputed domain name <www.trupointbank.com> is registered with Cloud Yuqu LLC (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on February 10, 2023. On February 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 14, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 15, 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 February 17, 2023.

On February 15, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On February 17, 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 February 22, 2023. In accordance with

the Rules, paragraph 5, the due date for Response was March 14, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 16, 2023.

The Center appointed Francine Tan as the sole panelist in this matter on March 27, 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 has offered its banking services since 2005 throughout southwest Virginia, northeast Tennessee, and western North Carolina in the United States. It states that it is known as one of the strongest banking and financial services providers in that region. Its services include the offering of loans, deposit products, merchant services, and online banking for businesses, as well as investment services including retirement planning, college saving, life insurance, and mortgage services for individuals.

The Complainant is the registered owner of the TRUPOINT and TRUPOINT BANK marks in the U.S., including but not limited to:

- United States Patent and Trademark Office ("USPTO") Registration No. 3083284 for TRUPOINT BANK, registered on April 18, 2006; and
- USPTO Registration No. 3916581 for TRUPOINT, registered on February 8, 2011.

The Complainant also states it has owned the domain name <trupointbank.com> since January 3, 2005.

The disputed domain name was registered on November 7, 2022. At the time of filing of the Complaint, the disputed domain name resolved to a website displaying pay-per-click ("PPC") links.

5. Parties' Contentions

A. Complainant

- 1) The Complainant has registered trade mark rights in TRUPOINT and TRUPOINT BANK. These marks are distinctive and the Complainant has developed a strong reputation in its brands in the field of banking and financial services. The disputed domain name is confusingly similar to the Complainant's registered TRUPOINT BANK and TRUPOINT marks as it incorporates the Complainant's marks in their entirety with the prefix "www". The omission of the period after "www", which is normally present as part of a website is clearly an intentional misspelling.
- 2) The Respondent lacks rights or legitimate interests in the disputed domain name as the Respondent is not commonly known by the name or nickname "Trupoint Bank" or "Trupoint". The Complainant has not licensed or permitted the Respondent to use any of its trade marks or to register the disputed domain name incorporating the TRUPOINT and TRUPOINT BANK marks. The Respondent has no proprietary rights or legitimate interests in the disputed domain name because he is not using it in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. The disputed domain name resolves to a PPC website where the links reference services offered by the Complainant as well as those offered by the Complainant's direct competitors (e.g., "Online Banking", "Bank of America Online Banking", and "Bank of America Credit Card Login".)
- 3) The Respondent has registered and used the disputed domain name in bad faith. The Respondent is using the disputed domain name to misdirect consumers for the Respondent's own financial gain. It is inconceivable that the Respondent was unaware of the Complainant's rights in the TRUPOINT and TRUPOINT BANK marks. The Respondent registered the disputed domain name solely to prevent the

Complainant from registering the disputed domain name and to make financial gain by creating a likelihood of confusion with the Complainant's said trade marks. Bad faith exists where domain names resolve to parked pages featuring PPC links that compete with the complainant's product and service offerings. The Respondent is taking advantage of the Complainant's goodwill associated with its TRUPOINT and TRUPOINT BANK marks.

B. Respondent

The Respondent did not reply to the Complainant's 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 Complainant requested that the language of the proceeding be English, for the following reasons:

- i. the Complainant is unable to communicate in the Chinese language and translating the Complaint into Chinese would cause an undue burden on the Complainant in terms of expense and unnecessarily delay the proceeding; and
- ii. the disputed domain name and the website to which the disputed domain name resolves are in the English language, which suggests that the Respondent is proficient in the English language.

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

As was mentioned in another UDRP panel decision,

"[...] 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](#)).

Having considered the circumstances of this case and relevant factors, the Panel determines that it would be appropriate for English to be the language of the proceeding. The Panel notes that the disputed domain name resolves to a landing page which contains PPC links which are all in English. Secondly, the composition of the words in the disputed domain name is primarily in English. Further, the Center's communications with the Parties have been sent in English and Chinese which has allowed the Respondent an opportunity to express concerns or objections to the language of the proceeding being in English. The Respondent could also have sent his communications in the Chinese language but did not do so. The Panel has the mandate of ensuring that the proceeding is conducted expeditiously. The Panel does not find it procedurally efficient to have the Complainant translate the Complaint into Chinese and is persuaded that

the Respondent has a sufficient understanding of the English language. The Respondent has provided no rebuttal arguments for the Panel to conclude otherwise.

6.2 Discussion and Findings on the Merits

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 trade mark or service mark in which the Complainant has rights.

The WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8, states as follows:

"Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements."

The disputed domain name contains the Complainant's trade mark TRUPOINT BANK with the addition of the letters "www" which are essentially the common abbreviation for the "world wide web". Its addition does not prevent a finding of confusing similarity with the Complainant's said trade mark. The Complainant's trade marks TRUPOINT and TRUPOINT BANK are clearly recognizable in the disputed domain name.

Further, it is well established that the generic Top-Level Domain ("gTLD") ".com" is disregarded when considering the issue of identity or confusing similarity between a domain name in dispute and the complainant's trade mark (see [WIPO Overview 3.0](#), section 1.11.1).

Consequently, the Panel finds that the Complainant has shown that the disputed domain name is confusingly similar to a trade mark in which the Complainant has rights. Paragraph 4(a)(i) of the Policy has been satisfied.

B. Rights or Legitimate Interests

Once a complainant establishes a *prima facie* case that the respondent lacks rights or legitimate interests in a 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 Complainant has demonstrated a *prima facie* case 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 Complainant has provided evidence that it owns trade mark registrations for TRUPOINT and TRUPOINT BANK long before the date that the disputed domain name was registered. The Complainant is not affiliated with, nor has it licensed or otherwise permitted the Respondent to use the Complainant's trade marks (see *LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master*, WIPO Case No. [D2010-0138](#)).

The disputed domain name resolves to a parked webpage with PPC links to services which compete with or are associated with those of the Complainant. It has been held by prior UDRP panels that "the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users". (See [WIPO Overview 3.0](#), section 2.9). Additionally:

"Panels have recognized that the use of a domain name to host a page comprising PPC links would be permissible – and therefore consistent with respondent rights or legitimate interests under the UDRP - where the domain name consists of an actual dictionary word(s) or phrase and is used to host PPC links genuinely related to the dictionary meaning of the word(s) or phrase comprising the domain name, and not to trade off

the complainant's (or its competitor's) trade mark.”

In this case, “Trupoint” is not an actual dictionary word with a meaning. Hence, it is rather evident that the Respondent seeks to trade off the Complainant's trade mark and reputation therein. Therefore, the Respondent has not used the disputed domain name for a *bona fide* offering of goods or services or a legitimate noncommercial or fair use.

There is no evidence 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 he has rights or legitimate interests in the disputed domain name which would be sufficient to rebut the Complainant's *prima facie* case.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Paragraph 4(a)(ii) of the Policy has been satisfied.

C. Registered and Used in Bad Faith

To succeed in the Complaint, the Complainant must also show that the Respondent registered and is using the disputed domain name in bad faith (Policy, paragraph 4(a)(iii)).

The disputed domain name incorporates a typosquatting variation of the Complainant's website at “www.trupointbank.com” which the Panel finds is an attempt by the Respondent to confuse and/or mislead Internet users seeking or expecting the Complainant. The Respondent's omission of a full stop between “www” and “trupointbank.com” is deliberate. Previous UDRP panels have ruled that in such circumstances that “a likelihood of confusion is presumed, and such confusion will inevitably result in the diversion of Internet traffic from the Complainant's site to the Respondent's site” (see *Edmunds.com, Inc v. Triple E Holdings Limited*, WIPO Case No. [D2006-1095](#)). Attracting Internet traffic for commercial gain by using a domain name that is identical or confusingly similar creates a likelihood of confusion with a registered trade mark may be evidence of bad faith under paragraph 4(b)(iv) of the Policy. Given the evidence presented to the Panel, the Panel concludes that the Respondent was well aware of the Complainant and its TRUPOINT BANK and TRUPOINT trade marks at the time of registering the disputed domain name and specifically targeted the Complainant and its goodwill. The circumstances of this case fall within the ambit of paragraph 4(b)(iv) of the Policy.

The Respondent did not submit a Response in this proceeding, from which the Panel draws an adverse inference.

Accordingly, having regard to the circumstances of this particular case, the Panel finds that the Complainant has met its burden under paragraph 4(a)(iii) 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 <www.trupointbank.com> be transferred to the Complainant.

/Francine Tan/

Francine Tan

Sole Panelist

Date: April 10, 2023