

## ADMINISTRATIVE PANEL DECISION

FuJae Partners v. Wang Peng Cheng (王鹏程)

Case No. D2024-1301

### 1. The Parties

The Complainant is FuJae Partners, China, internally represented .

The Respondent is Wang Peng Cheng (王鹏程), China.

### 2. The Domain Name and Registrar

The disputed domain name <fujaelaw.com> is registered with eName Technology Co., Ltd. (the “Registrar”).

### 3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on March 27, 2024. On March 27, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 28, 2024, 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 (John Doe (Identity Unknown)) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 28, 2024, 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 Chinese on March 30, 2024.

On March 28, 2024, the Center informed the Parties in English and Chinese, that the language of the registration agreement for the disputed domain name is Chinese. On April 2, 2024, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

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 Chinese and English of the Complaint, and the proceedings commenced on April 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 25, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 2, 2024.

The Center appointed James Wang as the sole panelist in this matter on May 6, 2024. 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 is a Shanghai-based law firm founded in 2013. The Complainant advises on cross-border investment and corporate transactions involving China.

The Complainant has registered the following FUJAE trademarks:

- China trademark registration No. 18001974, registered on November 14, 2016, for services in class 35; and
- China trademark registration No. 18003617, registered on November 14, 2016, for services in class 45.

The disputed domain name was registered on September 15, 2015. The disputed domain name does not resolve to an active web page.

#### **5. Parties' Contentions**

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

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name. The Complainant claims to have owned the disputed domain name from September 15, 2015, until its expiry on September 15, 2023, after which point it was "rush registered" by the Respondent.

Notably, the Complainant contends that the disputed domain name is confusingly similar to the FUJAE trademark in which the Complainant has rights. The Respondent has no rights or legitimate interests in respect of the disputed domain name. The disputed domain name was registered and is being used in bad faith.

The Complainant requested that the disputed domain name be transferred to the Complainant.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

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

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English, but also provided a courtesy translation of the amended Complaint in Chinese.

The Respondent did not make any specific submissions with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Considering the Center has already sent Chinese-English dual language case-related communications to the Parties, including communications regarding the language of the proceeding, and thereby given the Respondent an opportunity to comment on or to oppose the Complainant's request and arguments, and considering the Respondent's default and lack of reaction after having been given a fair chance to comment or oppose, together with the fact that the disputed domain name consists of only Latin letters instead of Chinese characters, the Panel finds it would not be unfair to proceed in English as requested by the Complainant.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

## **6.2 Substantive Elements**

According to paragraph 4(a) of the Policy, the Complainant must prove that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent 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.

### **A. Identical or Confusingly Similar**

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has provided evidence that it is the registrant of two FUJAE trademark registrations. The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark FUJAE is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, "law") may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

### **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task

of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise. Further, the composition of the disputed domain name is such to carry a risk of implied affiliation to the Complainant, which cannot constitute fair use. [WIPO Overview 3.0](#), section 2.5.1.

The Panel finds the second element of the Policy has been established.

### **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1. In the present case, FUJAE is a coined mark, registered in China where the Respondent is reportedly located, and has no inherent meaning in English or Chinese Pinyin. As the Complainant’s main practice is law, the fact that the disputed domain name contains both the Complainant’s trademark FUJAE and a term “law” demonstrates that the Respondent obviously knew of the Complainant’s trademark at the time of the registration.<sup>1</sup>

According to the evidence submitted by the Complainant, the disputed domain name does not resolve to an active webpage.

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness of the Complainant’s trademark, and the composition of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

The Panel finds that the Complainant has established the third element of the Policy.

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<sup>1</sup>While the Complainant claims to have owned the disputed domain name prior to the Respondent’s registration thereof, no evidence has been presented to support this assertion. The Panel need not rely on that assertion for purposes of this Decision and thus has not considered it in the above. However, the Panel did visit the archived captures of the website associated with the disputed domain name using “archive.org”, which do reflect that the disputed domain name previously resolved to the Complainant’s website at “www.fujaelaw.com”, reinforcing the Panel’s finding that the Respondent likely knew of the Complainant and its website and opportunistically registered it within a couple months of the disputed domain name’s expiry. See [WIPO Overview 3.0](#), section 4.8, on a panel’s general powers to conduct limited factual research into matters of public record.

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

*/James Wang/*

**James Wang**

Sole Panelist

Date: May 20, 2024