

## **ADMINISTRATIVE PANEL DECISION**

Earthbound Holding, LLC v. 杨智超 (Zhichao Yang)  
Case No. D2022-0332

### **1. The Parties**

The Complainant is Earthbound Holding, LLC, United States of America (“United States”), represented by Polsinelli PC, United States.

The Respondent is 杨智超 (Zhichao Yang), China.

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

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

### **3. Procedural History**

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 31, 2022. On February 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On February 7, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. In response to a notification by the Center that the Complaint was administratively deficient, the Complainant filed an amended Complaint in English on February 16, 2022.

On February 7, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On February 10, 2022, the Complainant submitted 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 18, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 10, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 11, 2022.

The Center appointed Karen Fong as the sole panelist in this matter on March 23, 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**

Founded in 1994, the Complainant is a leading retailer of home décor items, meditation essentials, textiles, stone, jewelry, accessories, clothing and other goods in the United States. It trades under the name Earthbound Trading Company and its goods are available to customers online and in over 130 stores in the United States. The official website of the Complainant is found at "www.earthboundtrading.com".

The Complainant has various trade mark registrations for EARTHBOUND TRADING COMPANY and EARTHBOUND TRADING CO (the "Trade Marks"). The earliest trade mark submitted in evidence is United States Trade Mark Registration No. 2312004 for EARTHBOUND TRADING COMPANY registered on January 25, 2000.

The Respondent, who is based in China, registered the Domain Name on December 27, 2021. The Domain Name resolves to a pay-per-click webpage with link headings such as: "Earthbound Store", "Earthbound Near Me", "Trading Company". Some of these links then resolve to third party companies which provide competing services to those of the Complainant (the "Website").

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

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

The Complainant contends that the Domain Name is confusingly similar to the Trade Marks, that the Respondent has no rights or legitimate interests with respect to the Domain Name, and that the Domain Name was registered and is being used in bad faith. The Complainant requests transfer of the Domain Name.

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

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

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

##### **A. General**

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the Domain Name, the Complainant must prove each of the following, namely that:

(i) The Domain Name is identical or confusingly similar to the trade marks or service marks in which the Complainant has rights; and

(ii) The Respondent has no rights or legitimate interests in respect of the Domain Name; and

(iii) The Domain Name was registered and is being used in bad faith.

## **B. Language of the Proceeding**

The Rules, paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement, the language of the 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. According to the information received from the Registrar, the language of the Registration Agreement for the Domain Name is Chinese.

The Complainant submits that the language of the proceeding should be English for the following reasons:

- the Domain Name is in English and the Website is also in English indicating the Respondent's awareness of the English language;
- the Complainant, based in the United States, is unable to communicate in Chinese and would be put to great expense and inconvenience to have to translate the Complaint and its evidence in Chinese, which would cause undue delay.

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.

The Panel accepts the Complainant's submissions regarding the language of the proceeding. The Respondent has not challenged the Complainant's language request and in fact has failed to file a response. The Panel is also mindful of the need to ensure the proceeding is conducted in a timely and cost effective manner. In this case, the Complainant may be unduly disadvantaged by having to conduct the proceeding in Chinese. The Panel notes that all of the communications from the Center to the Parties were transmitted in both Chinese and English. In all the circumstances, the Panel determines that English be the language of the proceeding.

## **C. Identical or Confusingly Similar**

The Panel is satisfied that the Complainant has established that it has registered rights to the Trade Marks.

The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the trade mark and the domain name to determine whether the domain name is confusingly similar to the trade mark. The test involves a side-by-side comparison of the domain name and the textual components of the relevant trade mark to assess whether the mark is recognizable within the domain name.

In this case, the Domain Name contains the Trade Marks minus the words "company" or "co" and the letter "g" from the word "trading". It is well established that domain names which consist of a common, obvious, or intentional misspelling of a trade mark is considered to be confusingly similar to the relevant mark for the purposes of the first element. This stems from the fact that the domain name contains sufficiently recognizable aspects of the relevant mark (see section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). This is a typical typosquatting case as the Domain Name is clearly a misspelling of the dominant part of the Trade Marks, *i.e.*, EARTHBOUND TRADING.

For the purposes of assessing identity or confusing similarity under paragraph 4(a)(i) of the Policy, it is permissible for the Panel to ignore the generic Top-Level Domain ("gTLD") which in this case is ".com". It is viewed as a standard registration requirement (section 1.11.1 of the [WIPO Overview 3.0](#)).

The Panel finds that the Domain Name is confusingly similar to the Trade Marks in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy therefore are fulfilled.

#### **D. Rights or Legitimate Interests**

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights or legitimate interests in the disputed domain name by demonstrating any of the following:

(i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) the respondent has been commonly known by the domain name, even if it has acquired no trade mark or service mark rights; or

(iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers, or to tarnish the trade mark or service mark at issue.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name, it is well established that, as it is put in section 2.1 of the [WIPO Overview 3.0](#) that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests. Once such a *prima facie* case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent does come forward with some allegations of evidence of relevant rights or legitimate interests, the panel weighs all the evidence, with the burden of proof always remaining on the complainant.

The Complainant contends that the Respondent is not commonly known by the Domain Name. It has not authorised, licensed or otherwise permitted the Respondent to use the Trade Marks in the Domain Name or for any other purpose. Further, the display of pay-per-click links on the Website does not constitute a *bona fide* offering of goods or services or legitimate noncommercial or fair use of the Domain Name.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for a reply from the Respondent. The Respondent has not responded and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the Domain Name.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

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

To succeed under the Policy, the Complainant must show that the Domain Name has been both registered and used in bad faith. It is a double requirement.

The Panel is satisfied that the Respondent must have been aware of the Trade Marks when he registered the Domain Name given that the Trade Marks were registered before the Domain Name and it is almost identical to the Complainant's domain name of its official website except that it is missing a "g" at the end of the word "trading".

In the [WIPO Overview 3.0](#), section 3.2.2 states as follows:

"Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant's mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should

have known, that its registration would be identical or confusingly similar to a complainant's mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent's claim not to have been aware of the complainant's mark."

There is a clear absence of rights or legitimate interests coupled with no explanation for the Respondent's choice of the Domain Name are also significant factors to consider (as stated in section 3.2.1 of the [WIPO Overview 3.0](#)). In light of the above, the Panel finds that the Respondent deliberately registered the Domain Name in bad faith.

The Panel also finds that the actual use of the Domain Name is in bad faith. The Website is a pay-per-click site which has been set up for the commercial benefit of the Respondent. It is highly likely that Internet users when typing the Domain Name into their browser, or finding them through a search engine would have been looking for a site operated by the Complainant rather than the Respondent. The Domain Name is likely to confuse Internet users trying to find the Complainant's website. Such confusion will inevitably result due to the fact that both the Domain Name and the Complainant's domain name <earthboundtrading.com> are identical except for the absence of the letter "g" at the end of the Domain Name.

The Respondent employs the reputation of the Trade Marks to mislead users into visiting the Website instead of the Complainant's. From the above, the Panel concludes that the Respondent intentionally attempted to attract for commercial gain, by misleading Internet users into believing that the Respondent's Website is that of or authorised or endorsed by the Complainant. The Panel therefore concludes that the Domain Name was registered and is being used in bad faith under paragraph 4(b)(iv) of the Policy.

The Panel has also notes that a number of UDRP cases concerning other third party brand owners where the Respondent has been the named respondent and those domain names have been ordered to be transferred. These include *Syneos Health LLC v. 杨智超 (Zhichao Yang)*, WIPO Case No. [D2021-2731](#), *Granicus, LLC v. 杨智超 (Zhichao Yang)*, WIPO Case No. [D2021-2844](#), *Corning Incorporated v. 杨智超 (Zhichao Yang)*, WIPO Case No. [D2021-4227](#), *CenterPoint Energy, Inc. v. 杨智超 (Zhichao Yang)*, WIPO Case No. [D2021-4046](#). This is an indication that the Respondent is a serial cybersquatter and is engaged in a pattern of bad faith conduct (section 3.1.2 of the [WIPO Overview 3.0](#)).

The Panel finds that the 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 Domain Name <earthboundtradin.com> be transferred to the Complainant.

*/Karen Fong/*  
**Karen Fong**  
Sole Panelist  
Date: April 22, 2022