

ADMINISTRATIVE PANEL DECISION

Rady Children's Hospital and Health Center v. 蒋黎 (Jiang Li)
Case No. D2022-0390

1. The Parties

The Complainant is Rady Children's Hospital and Health Center, United States of America ("United States"), represented by Procopio Cory Hargreaves & Savitch, LLP, United States.

The Respondent is 蒋黎 (Jiang Li), China.

2. The Domain Name and Registrar

The disputed domain name <wwwmychartatradychildrens.org> (the "Disputed Domain Name") is registered with Xin Net Technology Corp. (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on February 4, 2022. On February 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On February 9, 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 Complainant on February 9, 2022 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 9, 2022.

On February 9, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On February 9, 2022, the Complainant submitted a 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 15, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 7, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 9, 2022.

The Center appointed Kar Liang Soh as the sole panelist in this matter on March 14, 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 Complainant operates a children's hospital in San Diego, United States, under the name "Rady Children's Hospital – San Diego". Since 2006, the Complainant has used the trademark RADY CHILDREN'S in connection with pediatric medical services and owns several trademark registrations including United States trademark registration number 3,479,163 registered on August 5, 2008, for the trademark RADY CHILDREN'S.

The Complainant is a prestigious medical institution with platforms for international cooperation, including with the Chengdu Women's and Children's Central Hospital affiliated to the School of Medicine of the University of Electronic Science and Technology of China. In 2018 and 2019, specialists from the Complainant traveled to the Chengdu Women's and Children's Central Hospital to train its practitioners on complex cardiac bypass technology. Essentially all the first page hits from a Google search on "rady children's" are associated with the Complainant. The Complainant is the registrant of the domain names <mychartatradychildrens.com> and <mychartatradychildrens.org>, and operate a patient portal website at the URL "www.mychartatradychildrens.org".

The Respondent appears to be an individual in China. There is very little information about the Respondent before the Panel beyond the Registrar verification provided to the Center pursuant to paragraph 4(b) of the Rules. The address of the registrant only referred to a street name in the city of Chengdu in China without including any building number or name.

The Disputed Domain Name was registered on August 3, 2018. On or about January 7, 2022, the Disputed Domain Name resolved to a parking page with the prominent links entitled "Electronic Medical Records", "Patient Appointment Scheduling" and "Mychart" that either redirect to blank pages or third party webpages.

5. Parties' Contentions

A. Complainant

The Complainant contends that:

a) The Disputed Domain Name is identical or confusingly similar to the trademark RADY CHILDREN'S. The Disputed Domain Name bears a clear resemblance to the Complainant's website at "www.mychartatradychildrens.com". The entirety of the trademark is within the five-word Disputed Domain Name and the dominant feature. The "mychart" prefix is identical to the beginning of the Complainant's domain name;

b) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. There is no relationship or affiliation between the Complainant and the Respondent giving rise to any license, permission or other right by which the Respondent could own or use any domain name incorporating the Complainant's mark. The Respondent has not used or prepared to use the Disputed Domain Name in connection with any *bona fide* offering of goods or services or made any noncommercial or fair use of the Disputed Domain Name; and

c) The Disputed Domain Name was registered and is being used in bad faith. The Disputed Domain Name is used to attract Internet users by creating a likelihood of confusion with the Complainant's mark. The Respondent registered the Disputed Domain Name without the Complainant's authorization. The Respondent is seeking to profit from confused visitors (likely, a parent of a child patient) or commit medical identity theft by gaining access to valid insurance information. Mistyping the Complainant's website URL by missing a period would land a visitor at the Respondent's website which contains links that could lead to payment mistakes.

B. Respondent

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

6. Discussion and Findings

6.1 Language of Proceedings

The Registration Agreement is in Chinese. The default language of the proceedings is accordingly Chinese. The Complainant has requested the Panel to allow English to be adopted as the language of proceedings instead. Under paragraph 11 of the Rules, the Panel may determine the language of proceedings having regard to the circumstances. Having done so, the Panel determines that the language of proceedings should be English. In making this determination, the Panel has considered the following factors:

- a) The evidence demonstrates that the Respondent has a working knowledge of the English language or at least access to such knowledge. The Disputed Domain Name is a concatenation of 5 words, 4 of which are obvious English dictionary words - "my chart at Rady children's". The website resolved from the Disputed Domain Name and the webpages directed by prominent links on the website are entirely in English;
- b) The Complaint has already been submitted in English. Requiring the Complainant to translate to the Complaint to Chinese would unnecessarily delay the proceedings;
- c) The Respondent, having filed no Response, has chosen not to contest the proceeding. The Respondent has also not objected to the Complainant's language request;
- d) The Panel is bilingual and is comfortable with handling submissions in both Chinese and English should there be a need to do so; and
- e) Insisting that Chinese should be the language of the proceedings would not result in any procedural efficacy but in fact lead to unnecessary inconvenience to the parties and the proceedings.

6.2 Discussion

To succeed in this proceedings, the Complainant must show that:

- a) The Disputed Domain Name is identical or confusingly similar to a trademark in which the Complainant has rights;
- b) The Respondent has no rights or legitimate interests in the Disputed Domain Name; and
- c) The Disputed Domain Name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant owns a trademark registration for the trademark RADY CHILDREN'S and clearly has rights in it. The trademark registration pre-dates the registration of the Disputed Domain Name by many years.

The Disputed Domain Name incorporate the trademark RADY CHILDREN'S in its entirety with the exception of the apostrophe. The Panel is of the view that the letters "mychartat" prefixing the trademark RADY CHILDREN'S in the Disputed Domain Name obviously form the words "my chart at" which are descriptive of the services associated with the trademark RADY CHILDREN'S and do not prevent a finding of confusing similarity between the Disputed Domain Name and the trademark. The letters "www" are commonly associated with URLs for websites and also do not prevent a finding of confusing similarity between the Disputed Domain Name and the trademark. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.8. Moreover, it appears to the Panel that the Disputed Domain Name is an obvious typographical variation of the URL of the Complainant's website at "www.mychartatradychildrens.org", minus the period "." after the letters "www".

The generic Top-Level Domain ("gTLD") ".org" is a standard registration requirement. It is a consensus of past UDRP panels to disregard the gTLD when comparing domain names with relevant trademarks (see [WIPO Overview 3.0](#), section 1.11.1). As such, the Panel holds that the Disputed Domain Name is confusingly similar to the Complainant's trademark RADY CHILDREN'S and the first limb of paragraph 4(a) of the Policy is thereby established.

B. Rights or Legitimate Interests

The Complainant has denied any relationship or affiliation with the Respondent giving rise to any license, permission or other right by which the Respondent could register or use the Disputed Domain Name. There is no evidence before the Panel that even remotely suggests that the Respondent is commonly known by the Disputed Domain Name or has used or prepared to use the Disputed Domain Name in connection with any *bona fide* offering of goods or services, or made any noncommercial or fair use of the Disputed Domain Name. The Panel is satisfied that the Complainant has shown a *prima facie* case that the Respondent does not have any rights or legitimate interests in the Disputed Domain Name. Since no Response was filed, the *prima facie* case is unrebutted and the second limb of paragraph 4(a) of the Policy is accordingly established.

C. Registered and Used in Bad Faith

Paragraph 4(b)(iv) of the Policy describes an example of bad faith registration and use as follows:

"by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location."

The Panel has already observed the Disputed Domain Name to be a typographical variant of the URL of the Complainant's website, the only difference being the missing period "." after the letters "www" typical of most websites. The Panel also notes that the parking webpage resolved from the Disputed Domain Name offer prominent links associated with the field of medical services. The long string of 25 letters that make up the Disputed Domain Name are so specific and uncannily like the URL of the Complainant's website that the Panel cannot imagine the Disputed Domain Name was selected out of pure coincidence. All circumstances point directly to the Respondent's deliberate use of the Disputed Domain Name to intentionally attract Internet users to a website resolved from the Disputed Domain Name by creating a likelihood of confusion with the URL of the Complainant's website, and accordingly the trademark RADY CHILDREN'S, as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.

The likelihood that an objective of commercial gain exists in the circumstances is highly foreseeable. This risk is heightened by the nature of the Complainant's business. There is a serious risk of the Disputed Domain Name being deployed as an instrument of deception to commit medical identity theft and gaining unlawful access to sensitive records in the circumstances.

Despite the Complainant's forceful allegation, the special nature of the Complainant's business and the risks highlighted above, the Complaint is met with inexplicable silence from the Respondent when any reasonable person in the Respondent's shoes who may justifiably deny the allegation would and should have done so. In the circumstances, the Panel can only draw an adverse inference that the Respondent cannot deny that the Disputed Domain Name was registered and is being used in bad faith.

The Panel therefore concludes that the Respondent registered and is using the Disputed Domain Name in bad faith in the manner outlined in paragraph 4(b)(iv) of the Policy. The Panel finds that the third limb of paragraph 4(a) is made out on the facts.

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.mychartatradychildrens.org> be transferred to the Complainant.

/Kar Liang Soh/

Kar Liang Soh

Sole Panelist

Date: April 1, 2022