

ADMINISTRATIVE PANEL DECISION

Averitt Express, Inc. v. 杨智超 (Yang Zhi Chao a/k/a Zhichao Yang)
Case No. D2022-3109

1. The Parties

The Complainant is Averitt Express, Inc., United States of America (“United States”), represented by Adams and Reese LLP, United States.

The Respondent is 杨智超 (Yang Zhi Chao a/k/a Zhichao Yang), China.

2. The Domain Names and Registrars

The disputed domain names <averittcaeers.com>, <averittcarees.com>, <averittcarers.com>, and <averittcreers.com> are registered with eName Technology Co., Ltd. (the “First Registrar”), and the disputed domain name <averittexpresa.com> is registered with Alibaba Cloud Computing (Beijing) Co., Ltd. (the “Second Registrar”) (together as the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on August 23, 2022 with respect to the disputed domain names <averittcaeers.com>, <averittcarees.com>, <averittcarers.com>, and <averittcreers.com>. On August 23, 2022, the Center transmitted by email to the First Registrar a request for registrar verification in connection with the disputed domain names. On August 24, 2022, the First Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on August 24, 2022 providing the registrant and contact information disclosed by the First Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint in English on August 27, 2022, requesting to add the disputed domain name <averittexpresa.com> into the proceedings. On August 29, 2022, the Center transmitted by email to the Second Registrar a request for registrar verification in connection with the disputed domain name <averittexpresa.com>. On August 30, 2022, the Second Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

On August 24, 2022, the Center transmitted another email communication to the Parties in English and Chinese regarding the language of the proceeding. On August 27, 2022, 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 Chinese and English of the Complaint, and the proceedings commenced on August 31, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 20, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 21, 2022.

The Center appointed Jonathan Agmon as the sole panelist in this matter on September 27, 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, Averitt Express, Inc., is one of the leading freight transportation and supply chain management providers in the United States. The Complainant and its predecessors have been using the AVERITT and AVERITT EXPRESS marks (collectively, the “Averitt Marks”) in connection with transportation services since as early as 1969 and 1971, respectively. The Complainant advertises its services through various websites, as well as print media and other advertising and promotional campaigns. The Complainant operates in over 100 locations in the United States and provides freight and other transportation services worldwide

The Complainant owns valid and subsisting registrations for the Averitt Marks in the following jurisdictions:

- Canadian Trademark Registration No. TMA958423 for “AVERITT”, registered on December 20, 2016;
- Canadian Trademark Registration No. TMA958422 for “AVERITT EXPRESS”, registered on December 20, 2016;
- China Trademark Registration No. 25252236 for “AVERITT”, registered on July 7, 2018;
- Mexico Trademark Registration No. 606616 for “AVERITT EXPRESS”, registered on April 22, 1999;
- United States Trademark Registration No. 2616865 for “AVERITT EXPRESS”, registered on September 10, 2002; and
- United States Trademark Registration No. 2619908 for “AVERITT”, registered on September 17, 2002.

The Complainant states that it and its licensees own many domain names incorporating the Averitt Marks, including but not limited to, <averitt.com>, <averitt-express.com>, <averittcareers.com>, and <averittexpress.com>. The Complainant also states that it operates its principal website at <averittexpress.com> to advertise the Complainant’s various transportation and supply chain management services, including storage and delivery of freight, packages, and cargo, and transportation logistics management and consulting services. The Complainant also operates a website at <averittcareers.com> for recruiting new employees.

The disputed domain names <averittcaers.com>, <averittcarers.com>, and <averittcreers.com> were registered on May 9, 2022, <averittcarees.com> was registered on April 20, 2022, and <averittexpresa.com> was registered on December 9, 2021. The disputed domain names resolved to commercial parking pages showing Pay-Per-Click (“PPC”) links to websites advertising jobs for applicants in the Complainant’s industry, or otherwise offering services identical or related to those of the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant argues that the disputed domain names are confusingly similar to its Averitt Marks as the disputed domain names wholly incorporate the Averitt Marks in its entirety and misspellings of the words "career" or "express". The slight misspellings in the disputed domain names are insufficient to distinguish them from the Complainant's mark. The disputed domain names are therefore identical or confusingly similar to the Averitt Marks.

The Complainant also argues that the Respondent has no rights or legitimate interests in respect of the disputed domain names as it is not affiliated with or authorized the Respondent to use any of its trademarks or register the disputed domain names and that the Respondent is not commonly known by any of the disputed domain names. The Respondent is not using the disputed domain names in connection with a *bona fide* offering of goods or services, or in a legitimate noncommercial or fair manner as the disputed domain names resolve to parking pages with PPC links purportedly offering services identical or related to those of the Complainant.

The Complainant further argues that the disputed domain names were registered and are being used in bad faith for commercial gain by creating a likelihood of confusion with the Complainant's Averitt Marks and the Respondent had actual knowledge of the Complainant's marks at the time of registration.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Issue

A. Consolidation of the Proceeding

The Complainant requested a consolidation of the proceeding in relation to the disputed domain names which are registered in the names of multiple respondents.

On this issue, the Panel finds guidance from the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2:

"Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario.

Panels have considered a range of factors, typically present in some combination, as useful to determining whether such consolidation is appropriate, such as similarities in or relevant aspects of (i) the registrants' identity(ies) including pseudonyms, (ii) the registrants' contact information including email address(es), postal address(es), or phone number(s), including any pattern of irregularities, (iii) relevant IP addresses, name servers, or webhost(s), (iv) the content or layout of websites corresponding to the disputed domain names, (v) the nature of the marks at issue (*e.g.*, where a registrant targets a specific sector), (vi) any naming patterns in the disputed domain names (*e.g.*, <mark-country> or <mark-goods>), (vii) the relevant language/scripts of the disputed domain names particularly where they are the same as the mark(s) at issue, (viii) any changes by the respondent relating to any of the above items following communications regarding the disputed domain name(s), (ix) any evidence of respondent affiliation with respect to the ability to control the disputed domain

name(s), (x) any (prior) pattern of similar respondent behavior, or (xi) other arguments made by the complainant and/or disclosures by the respondent(s).”

The Complainant contends that it is more likely than not that the disputed domain names are all under common control. Considerations raised by the Complainant in support of its request include the following:

- (a) The English version of the registrant’s name of all the disputed domain names is nearly identical, “Yang Zhi Chao” being only a different format of the same name, “Zhichao Yang”;
- (b) The registrant of all the disputed domain names is located in Hefei, Anhui, China and share the same phone number;
- (c) All of the disputed domain names use the same IP location and name server;
- (d) All of the disputed domain names are listed for sale at the same price;
- (e) All of the disputed domain names target the Complainant’s AVERITT trademark and consist of typo-variants of the Complainant’s official domain names;
- (f) All of the disputed domain names appear to utilize the same commercial parking page provider given the similarity in appearance of, and the privacy policies linked to, the parking pages;
- (g) “Zhichao Yang” and “Yang Zhi Chao” have both been named respondents in many UDRP proceedings and demonstrate a pattern of cybersquatting; and
- (h) At least one other panel has considered “Yang Zhi Chao” and “Zhichao Yang” to be the same respondent. See *Artemis Marketing Corp. v. 杨智超 (Yang Zhi Chao a/k/a Zhichao Yang)*, WIPO Case No. [D2021-3157](#) (December 18, 2021), *Ally Financial Inc. v. 杨智超 (Zhichao Yang), 杨智强 (yang zhi qiang), 钱梦聃 (qianmengdan), 徐海民 (Xu Hai Min)*, WIPO Case No. [D2022-1907](#) (July 20, 2022).

The Panel finds that the Complainant has demonstrated by a preponderance of the evidence in this case that a single person or entity has registered the disputed domain names. The same Chinese version of the registrant’s name of all the disputed domain names, and the other factors enumerated above are, in combination sufficient indicators of common control, and the Panel notes that the Respondent did not object to the request for consolidation. Accordingly the Panel agrees to consolidate in this proceeding, the disputed domain names <averittcaers.com>, <averittcarees.com>, <averittcarers.com>, <averittcreers.com>, and <averittexpresa.com>.

B. 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 Agreements for the several of the disputed domain names is Chinese.

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

- (i) the disputed domain names are in Latin characters;
- (ii) the disputed domain names incorporate misspellings of English words, “careers” and “express”;
- (iii) the disputed domain names direct to commercial marking pages showing PPC links in English; and
- (iv) additional expense and delay would be incurred if the Complaint is translated into Chinese.

The Respondents did not object to the request to make English, the language of the proceeding.

The Panel cites the following with approval: “Thus, 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 above factors, the Panel determines that English be the language of the proceeding. The Panel agrees that the Respondent appears to be familiar with the English language, taking into account the Respondent’s selection of the English-language trademark and misspelling of English words “careers” and “express” in the disputed domain names. In the absence of an objection by the Respondent, the Panel does not find it procedurally efficient to have the Complainant translate the Complaint and evidence into Chinese.

6.2 Substantive Issues

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a complainant to show that a domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belongs to its respective owner. The Complainant has provided evidence that it owns the Averitt Marks.

The disputed domain names wholly incorporate the AVERITT mark in its entirety followed by a misspelling of the words “careers” or “express”.

It is established that “a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element” (see [WIPO Overview 3.0](#), section 1.9).

It is also established that the applicable generic Top Level Domain (“gTLD”) in a domain name is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test ([WIPO Overview 3.0](#), section 1.11). The addition of a gTLD to a disputed domain name does not prevent a finding of confusing similarity as the use of a gTLD is technically required to operate a domain name (see *Accor v. Noldc Inc.*, WIPO Case No. [D2005-0016](#); *F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.*, WIPO Case No. [D2006-0451](#); *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *L’Oréal v Tina Smith*, WIPO Case No. [D2013-0820](#); *Titoni AG v Runxin Wang*, WIPO Case No. [D2008-0820](#); and *Alstom v. Itete Peru S.A.*, WIPO Case No. [D2009-0877](#)).

The disputed domain names consist of misspelled variants of the Complainant’s Averitt Marks, misspelled “careers” or “express” and the addition of the gTLD “.com” does not in the Panel’s view avoid a finding of confusing similarity with the Complainant’s trademark (see *Schneider Electric S.A. v. Domain Whois Protect Service / Cyber Domain Services Pvt. Ltd.*, WIPO Case No. [D2015-2333](#)).

Therefore, the Panel finds that all of the disputed domain names are confusingly similar to the Averitt Marks and the element under paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the complainant to show that the respondent has no rights or legitimate interests in respect of the domain name. Once the complainant establishes a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the domain name (see [WIPO Overview 3.0](#), section 2.1).

In the present case, the Complainant has demonstrated *prima facie* that the Respondent lacks rights or legitimate interests in respect of the disputed domain names and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant submitted evidence that it did not authorize or license the Respondent to use the Averitt Marks (see *OSRAM GmbH. v. Mohammed Rafi/Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org*, WIPO Case No. [D2015-1149](#); *Sanofi-Aventis v. Abigail Wallace*, WIPO Case No. [D2009-0735](#)).

The Complainant also submitted that the Respondent's use of the disputed domain names resolved to parking pages with PPC links identical with or related to the Complainant's business. It is well established that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering of goods or services 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). In this case, the Panel finds that the Respondent is not making a *bona fide* offering of goods or services as the PPC links on the websites at the disputed domain names appear related to the Complainant and/or its services and would also mislead unsuspecting Internet users seeking the Complainant.

In addition, the Respondent “杨智超 (Yang Zhi Chao a/k/a Zhichao Yang)” is not commonly known by the disputed domain names.

The Respondent did not submit a Response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain names which is sufficient to rebut the Complainant's *prima facie* case.

The Panel is therefore of the view that the Respondent has no rights or legitimate interests in respect of the disputed domain names and accordingly, paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

The complainant must show that the respondent registered and is using the disputed domain name in bad faith (paragraph 4(a)(iii) of the Policy). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence that the disputed domain names resolved to parked pages containing PPC links on the websites at the disputed domain names that appear to be related to the Complainant and/or its services and would likely mislead unsuspecting Internet users seeking the Complainant. It is up to the Respondent to control the content appearing on the websites under the disputed domain names. PPC links that provide links to websites purportedly offering jobs in the trucking industry or otherwise related to services offered by the Complainant under the Averitt Marks represent the Respondent's knowledge of and targeting the Complainant and its mark which is a clear indication of bad faith registration and use of the disputed domain names.

The Complainant also states that given the distinctiveness of its Averitt Marks and its reputation, and the fact that its first use and registrations of the Averitt Marks long pre-date the registration of the disputed domain names by decades, it is reasonable to infer that the Respondent was clearly aware of the Complainant and its Averitt Marks at the time of registration of the disputed domain names.

In addition, the disputed domain names incorporating the Complainant's Averitt Marks in its entirety followed by a misspelt version of the words “careers” or “express” are also similar to the Complainant's domain names <averittcareers.com> and <averittexpress.com>, causing false affiliation with the Complainant and misleading Internet users searching for the Complainant's websites to the Respondent's websites instead.

The Complainant further states that it sent cease-and-desist messages to the Respondent via the Registrar's standard domain name registrant contact form prior to the proceedings on July 27, 2022, and the Respondent never responded.

The Complainant has also submitted evidence that all of the disputed domain names are being offered for sale for USD7,999. Given the circumstances of this particular case, including evidence that the Respondent registered the disputed domain names long after the Complainant registered its trademarks, it is suggestive that the Respondent was aware of the Complainant and targeted the Complainant in registering the disputed domain names for the purpose of selling it to the Complainant or its competitor for possibly in excess of its documented out-of-pocket costs (see *Bayer AG v. Whois Agent, Whois Privacy Protection Service, Inc. / Syed Hussain, IBN7 Media Group*, WIPO Case No. [D2016-2354](#)).

In addition, the Respondent did not submit a Response in this proceeding which is a further indication of the Respondent's bad faith, which has been considered by the Panel. The Panel has also taken into consideration that fact that the Respondent appears to be engaging in a pattern of cybersquatting, as demonstrated by his numerous registrations of other domain names comprising third party trademarks and history as a named respondent in other UDRP proceedings (see, for example, *Andrey Ternovskiy dba Chatroulette v. Domain Administrator, See PrivacyGuardian.org / Zhichao Yang*, WIPO Case No. [D2018-1388](#); and *The Chemours Company, LLC v. Yang Zhi Chao (杨智超)*, WIPO Case No. [D2022-2508](#)).

Based on the totality of evidence presented to the Panel, including the confusing similarity between the disputed domain names and the Complainant's mark, the fact that the disputed domain names are being used for displaying PPC links to competitive products or services, the fact that no Response was submitted by the Respondent to the Complaint and the Respondent's pattern of cybersquatting, the Panel concludes that the disputed domain names were registered and are being used in bad faith, and accordingly, paragraph 4(a)(iii) of the Policy is satisfied.

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 names, <averittcaers.com>, <averittcarees.com>, <averittcarers.com>, <averittcreers.com>, and <averittexpresa.com>, be transferred to the Complainant.

/Jonathan Agmon/

Jonathan Agmon

Sole Panelist

Date: October 11, 2022