

## **ADMINISTRATIVE PANEL DECISION**

Hexarmor, Limited Partnership (previously known as Performance Fabrics, Inc. dba HexArmor) v. YangZhiChao  
Case No. D2022-3243

### **1. The Parties**

The Complainant is Hexarmor, Limited Partnership (previously known as Performance Fabrics, Inc. dba HexArmor)<sup>1</sup>, United States of America (“United States”), represented by Price Heneveld LLP, United States.

The Respondent is YangZhiChao, China.

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

The disputed domain name <hexarmo.com> (the “Disputed Domain Name”) is registered with 22net, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on August 31, 2022. On September 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On September 2, 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 September 5, 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 September 9, 2022.

On September 5, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On September 8, 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”).

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<sup>1</sup> On October 25, 2022, the Complainant notified the Center that it had officially changed its name to “Hexarmor, Limited Partnership”.

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 September 12, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 2, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 3, 2022.

The Center appointed Kar Liang Soh as the sole panelist in this matter on October 20, 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 is a leading protective clothing, gear, and equipment manufacturer in the United States. Since its founding 15 years ago, the Complainant has grown into an international safety supplier in over 75 countries in the world. The Complainant's products are marketed under the trademark HEXARMOR which has been registered in many jurisdictions worldwide, including:

Jurisdiction	Trademark No.	Registration Date
China	9145096	7-Mar-12
European Union	11200169	23-Jan-13
United States	2924762	8-Feb-05

These HEXARMOR trademark registrations cover protective clothing, personal protective and safety equipment, and the like. The Complainant also holds many domain name registrations incorporating the HEXARMOR trademark, including <hexarmor.com>, <hexarmor.eu>, and <hexarmor.com.au>.

Very little information about the Respondent is known beyond the Registrar's verification in this proceeding. The Respondent appears to be an individual based in China who is also the named respondent in at least 11 other successful complaints under the Policy. The Disputed Domain Name was registered on March 28, 2022. On or before the Complaint was filed, the Disputed Domain Name resolved to a parking webpage presenting three prominent banners entitled "Personal Protective Equipment", "Ppe Equipment", and "Ppe Means". The banners were linked to webpages with various Google Ad links to websites associated with safety products and protection equipment.

The Complainant has provided evidence showing that the Registrar provides a facility to search its Whois database. The search result provided by the Registrar's Whois database includes a notice that "hexarmo" may have related trademarks and provides a link to an online trademark search resource entitled "Comprehensive Trademark Search". Querying "hexarmo" on this resource produces a list that includes HEXARMOR trademark registrations some of which are associated with the Complainant.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant contends that:

- a) the Disputed Domain Name is identical or confusingly similar to the HEXARMOR trademark of the Complainant. The Respondent is a typo-squatter. The misspelling in the Disputed Domain Name which omits the last letter "r" in the HEXARMOR trademark does not negate the confusing similarity of the Disputed Domain Name with the Complainant's trademark;

b) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Respondent has no connection or affiliation with the Complainant and has not been granted consent or a license, express, or implied, to use its HEXARMOR trademark in a domain name or any other manner. The Respondent has never been known, recognized, or otherwise associated with the Disputed Domain Name. The Respondent's only use of the Disputed Domain Name is associated with the website to which it resolves to misdirect Internet traffic. This use neither demonstrates a *bona fide* offering of goods or services nor a legitimate business interest; and

c) the Disputed Domain Name is registered and is being used in bad faith. The Respondent knew of the Complainant's rights in the HEXARMOR trademark at the time of registering the Disputed Domain Name. The Respondent would have discovered the Complainant's websites with minimal Internet searching. The Respondent would also have discovered the HEXARMOR trademark with a cursory trademark search via the Registrar's resource. There is no plausible good faith explanation for the Respondent's use of the Disputed Domain Name. The Respondent's website misdirects Internet users to the Complainant competitors' websites. The Respondent is seeking commercial gain through the pay-per-click parking website. The Respondent has exhibited a pattern of abusive domain name registrations. The Respondent is the named respondent in at least 11 other UDRP proceedings which resulted in transfer of all domain names concerned.

## **B. Respondent**

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

## **6. Discussion and Findings**

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

The Registration Agreement of the disputed domain name is in the Chinese language. The default language of the proceeding in accordance with paragraph 11(a) of the Rules should be Chinese, subject to the Panel's general power to determine otherwise. The Complainant has requested that English be adopted as the language of the proceeding. Having considered the circumstances, the Panel grants the Complainant's request to adopt English as the language of this proceeding. In doing so, the following factors were considered:

- a) the Complaint has already been submitted in English;
- b) although the Center notified the Respondent in English and Chinese of the proceeding and informed the Respondent that the Response may be submitted in English or Chinese, the Respondent did not submit any Response;
- c) the Respondent did not object to the Complainant's request for English to be adopted as the language of the proceeding;
- d) the Complainant has confirmed that it cannot speak and read Chinese, and that it would suffer significant burden in cost and time to translate the Complaint into Chinese;
- e) the Respondent appears conversant in English as evidenced by the purely English-language webpage resolved from the Disputed Domain Name;
- f) no procedural benefit would be achieved by insisting that the default language of the proceeding be maintained. Instead, unnecessary delay of the proceeding will surely arise if such a requirement were to be imposed in this proceeding; and

g) the Panel is bilingual and conversant in English and Chinese. Had the Respondent opted to submit a Response, any communication or documents in Chinese, the Panel would have been equally equipped to review and consider them fairly and expediently. In any event, such circumstances have not arisen.

## 6.2 Discussion

In order to succeed in this proceeding, the Complainant must establish all three limbs of paragraph 4(a) of the Policy, namely:

- 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.

The Panel will consider each of these limbs in turn.

### A. Identical or Confusingly Similar

The Panel accepts that the Complainant has rights in the HEXARMOR trademark in view of the various trademark registrations tendered in the evidence. The HEXARMOR trademark is prominent and readily recognizable in the Disputed Domain Name to the Panel. The absence of the last letter “r” in the Disputed Domain Name does not prevent a finding of confusing similarity between the HEXARMOR trademark and the Disputed Domain Name. In accordance with the consensus opinion of past UDRP panels outlined in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), the Top-Level Domain “.com” component of the Disputed Domain Name is disregarded in the comparison of the HEXARMOR trademark and the Disputed Domain Name as it is a standard registration requirement. The Panel concludes that the Disputed Domain Name is confusingly similar to the HEXARMOR trademark and the first limb of paragraph 4(a) of the Policy is established.

### B. Rights or Legitimate Interests

The Complainant has confirmed unequivocally that the Respondent has no connection or affiliation with the Complainant and has not been granted consent or licence to use its HEXARMOR trademark in a domain name or otherwise. There is nothing in the evidence before the Panel to suggest that the Respondent has any rights or legitimate interests in the Disputed Domain Name. There is also nothing in the evidence to suggest that the Respondent is commonly known by the Disputed Domain Name or is making any noncommercial legitimate or fair use of the Disputed Domain Name. The Panel agrees with the Complainant that resolving the Disputed Domain Name to a parking website is not a noncommercial legitimate or fair use of the Disputed Domain Name. As such, the Panel is satisfied that the Complainant has made out a *prima facie* case that the Respondent has neither rights nor legitimate interests in the Disputed Domain Name. Since no Response has been forthcoming from the Respondent, the *prima facie* case is un rebutted and the second limb of paragraph 4(a) of the Policy has also been established on the facts.

### C. Registered and Used in Bad Faith

Having reviewed the evidence, the Panel finds it inconceivable that the Respondent could not have been aware of the HEXARMOR trademark when registering the Disputed Domain Name. The Panel also finds it hard to excuse the near identity of the Disputed Domain Name to the HEXARMOR trademark as mere coincidence. It would seem recklessly reprehensible for an initially ignorant domain name registrant on the Registrar’s platform to ignore or refuse the use of the convenient WhoIs and trademark search resources provided by the Registrar. Based on the evidence, the Panel is convinced that the Respondent must have been aware of the HEXARMOR trademark and the Complainant at the time of registering the Disputed Domain Name.

It is clear to the Panel that the present circumstances fall within the situation of bad faith registration and use described in paragraph 4(b)(iv) of the Policy set out below:

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

The Google Ad listings displayed when the banners on the website resolved from the Disputed Domain Name are evidence of an intention for commercial gain, whether on the part of the Respondent, or on the part of third parties connected to the undertakings advertised. The Panel finds that the Respondent has been using the Disputed Domain Name, intentionally attempt to attract, for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with the HEXARMOR trademark as to the source, sponsorship, affiliation, or endorsement of the website.

Further, in the light of the Respondent's prolific appearance in previous proceedings under the Policy, the Respondent has also exhibited a pattern of conduct described in paragraph 4(b)(ii) of the Policy set out below:

"[y]ou have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct."

The Complainant has essentially alleged that the Respondent is a serial typo-squatter. In the face of such a serious allegation, the Respondent has chosen to remain silent. The Panel believes that a misunderstood but reasonable respondent would have responded vehemently in denial rather than remaining silent. In not responding, the Panel is led to draw an adverse inference that the allegations must be true.

In the circumstances, the Panel concludes that the third limb of paragraph 4(a) of the Policy has accordingly been successfully established by the Complainant.

## **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, <hexarmo.com>, be transferred to the Complainant.

*/Kar Liang Soh/*

**Kar Liang Soh**

Sole Panelist

Date: November 9, 2022