

## **ADMINISTRATIVE PANEL DECISION**

Artemis Marketing Corp. v. 杨智超 (Zhichao Yang), 殷玉坤 (Yu Kun Yin), and 杨智强 (Zhi Qiang Yang)

Case No. D2022-4399

### **1. The Parties**

The Complainant is Artemis Marketing Corp., United States of America (“United States”), represented by Bryan Cave Leighton Paisner LLP, United States.

The Respondents are 杨智超 (Zhichao Yang), 殷玉坤 (Yu Kun Yin), and 杨智强 (Zhi Qiang Yang), China.

### **2. The Domain Names and Registrars**

The disputed domain name <eromstogo.com> is registered with Alibaba Cloud Computing (Beijing) Co., Ltd., the disputed domain name <roomstogo.com> is registered with Cloud Yuqu LLC, and the disputed domain names <roomtgo.com>, <roomtog.com>, <roomtogi.com>, <roomyogo.com> and <romstogo.com> are registered with West263 International Limited (together, the “Registrars”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) in English on November 17, 2022. On November 18, 2022, the Center transmitted by email to the Registrars requests for registrar verification in connection with the disputed domain names. On November 21, 2022 and November 22, 2022, the Registrars transmitted by email to the Center their respective verification responses 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 November 23, 2022 providing the registrant and contact information disclosed by the Registrars, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint in English on November 28, 2022.

On November 23, 2022, the Center sent an email communication to the Parties in English and Chinese regarding the language of the proceeding. On November 25, 2022, the Complainant confirmed its request that English be the language of the proceeding. The Respondents 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 Respondents in English and Chinese of the Complaint, and the proceeding commenced on December 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 21, 2022. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on December 22, 2022.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on December 28, 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**

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

The Complainant is a United States furniture retailer established in 1991 and headquartered in Florida, operating since its inception under the trade mark ROOMS TO GO (the “Trade Mark”).

The Complainant is the owner of numerous registrations in the United States for the Trade Mark, including United States registration No. 1,756,239, registered on March 2, 1993, with a claimed first use in commerce of May 8, 1992.

The Complainant promotes its business at “www.roomstogo.com”.

The Complainant prevailed in a previous UDRP proceeding against the Respondent 杨智超 (Zhichao Yang) - *Artemis Marketing Corp. v. 杨智超 (Yang Zhi Chao a/k/a Zhichao Yang)*, WIPO Case No. [D2021-3157](#) – in which the panel, by decision dated December 18, 2021, ordered the transfer of the domain name <roomstogo.com> and 10 additional domain names to the Complainant. The disputed domain name <roomstogo.com> was subsequently registered by the Respondent 殷玉坤 (Yu Kun Yin) on August 24, 2022, when the Complainant inadvertently failed to renew its registration.

##### **B. Respondents**

The Respondents are apparently individuals with addresses in China.

##### **C. The Disputed Domain Names**

The disputed domain name <roomstogo.com> was registered on July 30, 2020. Each of the disputed domain names <roomtgo.com>, <roomtog.com>, <roomtogi.com>, <roomyogo.com>, and <ropmstogo.com> was registered on the same date, June 12, 2022. The disputed domain name <roomstogo.com> was registered on August 24, 2022.

##### **D. The Websites at the Disputed Domain Names**

The disputed domain names all resolve to similar English language websites containing sponsored links relating to in particular furniture and furniture retail (the “Websites”) – the same goods and services offered by the Complainant since 1992 under the Trade Mark.

## 5. Parties' Contentions

### A. Complainant

The Complainant contends that the disputed domain names are confusingly similar to the Trade Mark, the Respondents have no rights or legitimate interests in respect of the disputed domain names, and the disputed domain names were registered and are being used in bad faith.

### B. Respondents

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

## 6. Discussion and Findings

### 6.1. Preliminary Issue: Consolidation of Respondents

Section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)) provides as follows:

"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."

The Complainant contends that there should be consolidation of the Respondents in the present proceeding, for several reasons, including in particular the following:

- (i) each of the disputed domain names is used in the same manner in respect of the Websites;
- (ii) the disputed domain names are closely similar and consist of misspelt versions of the Trade Mark;
- (iii) each of the disputed domain names is associated with the same name server;
- (iv) the registrants named in the Whois searches for the disputed domain names are located in the same city in China;
- (v) the Respondents 杨智超 (Zhichao Yang) and 杨智强 (Zhi Qiang Yang) have been found in a prior decision under the UDRP to be acting together and exercising common ownership and control over multiple domain names (*Ally Financial Inc. v. 杨智超 (Zhichao Yang), 杨智强 (yang zhi qiang), 钱梦琳 (qianmengdan), 徐海民 (Xu Hai Min)*, WIPO Case No. [D2022-1907](#)); and
- (vi) the registration by the Respondent 殷玉坤 (Yu Kun Yin) of the disputed domain name <roomstpggo.com> after it had previously been wrongfully registered and used by the Respondent 杨智超 (Zhichao Yang) also demonstrates common ownership and control.

For the above reasons put forward by the Complainant, the Panel concludes that there are sufficient grounds to support the conclusion that the disputed domain names are subject to common control and that consolidation would be fair and equitable to all Parties. The Panel notes, in addition to the factors relied upon by the Complainant, none of the Respondents has objected to the Complainant's consolidation request.

Save where the context suggests otherwise, the Respondents will accordingly be referred to as the “Respondent” hereinafter.

## **6.2. Preliminary Issue: Language of the Proceeding**

The language of the Registration Agreements for the disputed domain names 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.

Paragraph 11(a) of the Rules allows the Panel to determine the language of the proceeding having regard to all the circumstances. In particular, it is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding, in order to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. Language requirements should not lead to undue burden being placed on the parties and undue delay to the proceeding (see [WIPO Overview 3.0](#), section 4.5.1).

The Complainant has requested that the language of the proceeding be English.

The Respondent did not make any submissions regarding the language of the proceeding, and did not file any response in either Chinese or English, after the Respondent had been duly notified in both Chinese and English of the language of the proceeding, and the Complaint.

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 is also mindful of the need to ensure the proceeding is conducted in a timely and cost effective manner.

The Panel notes, in particular, that the Websites are in the English language; and the Respondents 杨智超 (Zhichao Yang) and 杨智强 (Zhi Qiang Yang) have been found in prior decisions under the Policy to be conversant in the English language.

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.

## **6.3. Substantive Elements of the Policy**

The Complainant must prove each of the three elements in paragraph 4(a) of the Policy in order to prevail.

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

The Panel finds that the Complainant has rights in the Trade Mark acquired through use and registration.

Disregarding the generic Top-Level Domain (“gTLD”) “.com”, the disputed domain name <eromstogo.com> incorporates the entirety of the Trade Mark, prefaced by the letter “e” (see [WIPO Overview 3.0](#), section 1.7). Where a relevant trade mark is recognisable within a disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element (see [WIPO Overview 3.0](#), section 1.8).

Each of the remaining disputed domain names consists of a common, obvious, or intentional misspelling of the Trade Mark (see [WIPO Overview 3.0](#), section 1.9).

The Panel therefore finds that the disputed domain names are confusingly similar to the Trade Mark.

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

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in the disputed domain name:

- (i) before any notice to the respondent of the dispute, the respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent (as an individual, business, or other organisation) has been commonly known by the disputed domain name even if the respondent has acquired no trade mark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

The Complainant has not authorised, licensed, or permitted the Respondent to register or use the disputed domain names or to use the Trade Mark. The Panel finds on the record that there is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain names, and the burden is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that he has acquired any trade mark rights in respect of the disputed domain names or that the disputed domain names have been used in connection with a *bona fide* offering of goods or services. To the contrary, each of the disputed domain names has been resolved to the Websites, containing sponsored links relating to furniture and furniture retail, the goods and services provided by the Complainant since 1992 under the Trade Mark.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain names.

There has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain names.

In all the circumstances, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names.

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

In light of the composition of each of the disputed domain names, their dates of registration, the manner of use of the Websites set out section 6.3.B. above, the opportunistic registration and use by the Respondent of the disputed domain name <roomstpgo.com>, the Panel finds that bad faith has been made out by the Complainant under paragraph 4(b)(iv) of the Policy.

For all the foregoing reasons, the Panel concludes that the disputed domain names have been registered and are 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 disputed domain names <eromstogo.com>, <roomstpgo.com>, <roomtgo.com>, <roomtog.com>, <roomtogi.com>, <roomyogo.com>, and <ropmstogo.com> be transferred to the Complainant.

*/Sebastian M.W. Hughes/*

**Sebastian M.W. Hughes**

Sole Panelist

Dated: January 11, 2023