

ADMINISTRATIVE PANEL DECISION

Verizon Trademark Services LLC v. 李虹澎 (Li Hong Peng)
Case No. D2023-1614

1. The Parties

The Complainant is Verizon Trademark Services LLC, United States of America (“US”), represented internally.

The Respondent is 李虹澎 (li hong peng), China.

2. The Domain Names and Registrars

The disputed domain names <totalbyverison.com> and <totallyverizon.com> are registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn).

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 13, 2023. On April 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On April 14, 2023, the 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 April 17, 2023, the Center sent an email in English and Chinese to the Parties regarding the language. The Complainant confirmed its request that English be the language of the proceeding on April 17, 2023. The Respondent did not comment on the language of the proceeding.

The Center verified that the 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 April 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 14, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 15, 2023.

The Center appointed Douglas Clark as the sole panelist in this matter on June 1, 2023. 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 US-based limited liability company that is incorporated and operates under the laws of Delaware, US, founded in 2000. The Complainant is an intellectual property holding company and is the owner of:

The trade mark and service mark applications TOTAL BY VERIZON and the TOTAL BY VERIZON Logo (collectively, the "TOTAL BY VERIZON Applications") (US Serial Nos. 97358855 and 97358961) filed in the US on April 12, 2022, including wireless telephone communications products and services in the US. US registered trade marks and service marks consisting of or incorporating VERIZON and the VERIZON Logo (collectively, the "VERIZON Marks") (Registration Nos. 2886813 and 2879802) registered on September 21, 2004 and August 31, 2004 in international Classes 9, 16, 35, 36, 37, 38, 41, and 42, including telecommunications products and services in the US.

US registered trade marks and service marks consisting of or incorporating TOTAL WIRELESS and the TOTAL WIRELESS Logo (collectively, the "TOTAL WIRELESS Marks") (Registration Nos. 4732218, 4753409, and 5076114) registered on May 5, 2015 and June 9, 2015 in international Classes 35 & 38 and in November 8, 2016 in Class 9, including wireless telephone communications products and services in the US.

(Collectively referred to as "the Complainant's Marks")

The Complainant has authorised its affiliates, including Verizon Communications Inc ("Verizon Companies") to use the Complainant's Marks.

The Respondent is an individual based in China.

The disputed domain names were registered on September 21, 2022. At the date of this decision the disputed domain names resolved to parking pages with links to telecommunications services.

5. Parties' Contentions

A. Complainant

The Complainant contends as follows:

Identical or confusingly similar

The Complainant contends it has rights in VERIZON Marks and that the Respondent's domain names are intentionally misspelled versions of their TOTAL BY VERIZON Applications, which make them highly similar and confusing to one another. For example, the disputed domain name <totallyverizon.com>, which has replaced the letter "b" in "by" with "l" or the disputed domain name <totalbyverison.com>, which has replaced the letter "z" in VERIZON with "s".

No rights or legitimate interests

At the time when the Respondent registered and began using the disputed domain names, the Complainant did not give any permission - explicit or implicit - for the Respondent to utilise the Complainant's Marks. The Complainant argues that the Respondent is not commonly known by the disputed domain names or any names reflected thereby. The disputed domain names are active, and the Respondent's landing page is connecting consumers to third party websites offering third party products to consumers would expect to find on the Complainant's website.

Registered and used in bad faith

The Complainant contends that the Respondent registered and used the disputed domain names to take unfair advantage of the Complainant's goodwill and reputation in relation to the Complainant's VERIZON Marks and TOTAL BY VERIZON Applications. The Complainant's evidence shows that the Respondent was aware of the Complainant's Marks at the time of their registration and use, and the Complainant claims that the Respondent registered and used the disputed domain names to profit unfairly from the traffic created by confused consumers who were seeking the Complainant's website. In addition to this, the Complainant argues that the Respondent's registration of the disputed domain names was done on the same date that the Complainant's TOTAL BY VERIZON Applications were first used.

According to the Complainant, the Respondent intentionally created a likelihood of confusion with the Complainant's Marks in order to obtain Internet users/consumers for the Respondent's websites, for commercial gain. Furthermore, the Complainant contends that the Respondent has engaged in "typosquatting" by registering and using disputed domain names that include obvious misspellings or omissions of the Complainant's TOTAL BY VERIZON Applications, and that this amounts to bad faith.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Issues

The Complainant requested the language of the proceeding to be in English, as paragraph 11(a) of the Rules provides that: "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."

In this case, the Complainant contends that it is appropriate for the proceedings to be in English for the following reasons:

- 1) The Complainant is an US entity. Both the Complainant and their representatives are not able to communicate in Chinese;
- 2) The available evidence suggests that the Respondent has proficiency in English language, as they chose to register the disputed domain names in Latin script instead of Chinese script. Furthermore, the disputed domain names are written in the English alphabet and are deliberately misspellings of the Complainant's TOTAL BY VERIZON word mark applications; and
- 3) Substantial additional expense and delay would likely be incurred if the Complaint had to be translated into Chinese.

The final determination of the language of the proceeding lies with this Panel.

In accordance with paragraph 11(a) of the Rules and taking into consideration paragraph 10(b) and (c) of the Rules, the Panel hereby determines that the language of the proceeding shall be in English after considering the following circumstances:

- the Center has notified the Respondent of the proceeding in both English and Chinese;
- the Respondent has not commented on the language of the proceeding;

- the websites the disputed domain names resolve to are in English; and
- an order for the translation of the Complaint and other supporting documents will result in significant expenses for the Complainant and a delay in the proceeding.

The Respondent did not respond to the Center's preliminary determination. This Panel decided in *Zappos.com, Inc. v. Zufu aka Huahaotrade*, WIPO Case No. [D2008-1191](#), that a Respondent's failure to respond to a preliminary determination by the Center as to the language of the proceedings "should, in general, be a strong factor to allow the Panel to decide to proceed in favour of the language of the Complaint".

Therefore, the Panel will render its decision in English.

6.2. Substantive Issues

The Complainant must satisfy all three elements of paragraph 4(a) of the Policy in order to succeed:

- (i) the disputed domain name is identical or confusingly similar to a trade mark in which the complainant has rights to;
- (ii) the respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and are being used in bad faith.

A. Identical or Confusingly Similar

The Panel finds that the disputed domain names <totallyverizon.com> and <totalbyverison.com> are confusingly similar to the Complainant's VERIZON Marks. The VERIZON mark is clearly recognisable in the disputed domain names with the word "totally" or "total by" used as a prefix. The addition of these prefixes does not prevent from any finding of confusing similarity. The misspelling of the VERIZON Mark in the disputed domain name <totalbyverison.com> does not prevent such finding.

The Panel notes the Complainant does not rely on any registered trade marks in China where the Respondent is located. Although the ownership of a trade mark is normally a necessary condition to bring a complaint under the UDRP, its registration date, the location of the trade mark, and the goods or services it includes are not relevant to establish trade mark rights under the first element of the UDRP. However, under the second and third elements of the UDRP these elements may be taken into consideration by the panel when making a decision. (See section 1.1.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)."))

The first element of paragraph 4(a) of the Policy is therefore satisfied.

B. Rights or Legitimate Interests

The Respondent has not responded to the Complaint in order to claim any rights or legitimate interests.

The Complainant has claimed that the Respondent has no business or affiliation with them and is not authorised or licensed to use their Marks or register the disputed domain names. There is no indication that the Respondent is commonly known by the Complainant's Marks.

Section 2.1 of the [WIPO Overview 3.0](#) stated that:

"While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of 'proving a negative', requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie*

case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.”

Therefore, based on the evidence presented, the Panel finds that the Complainant has established a *prima facie* case showing that the Respondent lacks any rights or legitimate interests in the disputed domain names. The Respondent has not provided any evidence to rebut this claim, and henceforth, the Panel concludes that the Respondent has no rights or legitimate interests in relation to the disputed domain names.

The second element of the paragraph 4(a) of the Policy is therefore satisfied.

C. Registered and Used in Bad Faith

Based the evidence presented, the disputed domain names were registered and are being used in bad faith.

The Panel is satisfied that the Respondent was aware of the Complainant’s VERIZON Marks and TOTAL BY VERIZON Applications at the time of registering and using the disputed domain names. The use of the disputed domain names to redirect Internet users to websites featuring pay-per-click links to telecommunications services is clearly in bad faith. The Respondent’s registration and use of the disputed domain names is for the purpose of attracting Internet users to the websites for commercial gain in breach of paragraph 4(b)(iv) of the Policy.

The third element of paragraph 4(a) of the Policy is, therefore, 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, <totalbyverison.com> and <totallyverizon.com>, be transferred to the Complainant.

/Douglas Clark/

Douglas Clark

Sole Panelist

Date: June 16, 2023