

## **ADMINISTRATIVE PANEL DECISION**

### **CW BRANDS LLC v. 杨智超 (Zhichao Yang)**

### **Case No. D2023-1790**

#### **1. The Parties**

The Complainant is CW BRANDS LLC, United States of America (“United States”), represented by Kaufman & Kahn, LLP, United States.

The Respondent is 杨智超 (Zhichao Yang), China.

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

The disputed domain names <coldmwatercreek.com>, <coldwatercreek.com>, <coldwatercreeke.com>, <coldwatercreekl.com>, <coldwatercreeko.com>, <coldwaterlcreek.com>, <coldwaterscreek.com>, <coldwatertcreek.com>, <coldwatervcreek.com>, <coldwaterxcreek.com>, <coldwwatercreek.com>, <ecoldwatercreek.com>, <icoldwatercreek.com>, and <tcoldwatercreek.com> are registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on April 20, 2023. On April 21, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On April 24, 2023, the 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 (Undisclosed Registrant) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 25, 2023, 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 April 26, 2023.

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 of the Complaint, and the proceeding commenced on May 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 22, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 23, 2023.

On May 26, 2023, the Center transmitted an email communication to the Respondent in English and Chinese regarding the language of the proceeding. The Respondent did not comment on the language of the proceeding.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on June 7, 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**

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

The Complainant is a company incorporated in the State of Delaware in the United States, carrying on business since 1984 as a manufacturer and retailer of women's clothing under the trade mark COLDWATER CREEK (the "Trade Mark").

The Complainant is the owner of numerous registrations for the Trade Mark in the United States and elsewhere, including United States registration No. 1,531,418, with a registration date of March 21, 1989.

##### **B. Respondent**

The Respondent is located in China.

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

Each of the disputed domain names was registered on the same date, March 17, 2023.

##### **D. Use of the Disputed Domain Names**

Each of the disputed domain names has resolved to the same English language parking page with sponsored links "Coldwater Creek Clothing", "Coldwater Creek Catalog", and "Coldwater Creek Outlet" (the "Website").

#### **5. Parties' Contentions**

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

The Complainant contends that the disputed domain names are confusingly similar to the Trade Mark, the Respondent has 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. Respondent**

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

#### **6. Discussion and Findings**

##### **6.1 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, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

The Complainant has requested that the language of the proceeding be English, for several reasons, including the fact the Website is an English language website.

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.

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.

In light of the English language content of the Website, the Panel finds there is sufficient evidence in support of the conclusion that the Respondent is conversant in English.

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

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.

## **6.2 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 registration and use.

Each of the 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 a 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 organization) 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, the disputed domain names have been resolved to parking pages with sponsored links relating to the Complainant and its COLDWATER CREEK clothing.

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

The Panel finds that the Respondent has failed to produce any evidence to rebut the Complainant's *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names.

The Panel therefore finds that the Respondent lacks rights or legitimate interests in the disputed domain names.

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

In light of the manner of the use of the disputed domain names highlighted above, the Panel finds that the requisite element of bad faith has been made out 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 <coldmwatercreek.com>, <coldswatercreek.com>, <coldwatercreeke.com>, <coldwatercreekl.com>, <coldwatercreeko.com>, <coldwaterlcreek.com>, <coldwaterscreek.com>, <coldwatertcreek.com>, <coldwatervcreek.com>, <coldwaterxcreek.com>, <coldwwatercreek.com>, <ecoldwatercreek.com>, <icoldwatercreek.com>, and <tcoldwatercreek.com> be transferred to the Complainant.

*/Sebastian M.W. Hughes/*

**Sebastian M.W. Hughes**

Sole Panelist

Dated: June 21, 2023