

ADMINISTRATIVE PANEL DECISION

IP86, LLC v. 杨智超 (Zhichao Yang)

Case No. D2023-1860

1. The Parties

The Complainant is IP86, LLC, United States of America (“United States”), represented by Osha Bergman Watanabe & Burton LLP, United States.

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

2. The Domain Names and Registrar

The disputed domain names <epconcommunities.com> and <epconcommunitites.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 25, 2023. On the following day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On April 27, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names that differed from the named Respondent and contact information (Unknown) in the Complaint. The Center sent an email communication to the Complainant on May 4, 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 May 8, 2023.

On May 4, 2023, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. On May 11, 2023, the Complainant submitted a 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 English and Chinese of the Complaint, and the proceedings commenced on May 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 5, 2023.

The Center appointed Matthew Kennedy as the sole panelist in this matter on June 12, 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 the holding company for the intellectual property of the Epcon Communities franchising group, which provides residential building construction services and certain other related services. The Complainant owns the following United States trademark registrations:

- Number 3079215 for EPCON COMMUNITIES, registered on April 11, 2006, specifying services in class 37, with a claim of first use in commerce on May 31, 2002, and a disclaimer of the exclusive right to use “communities” apart from the mark;
- Number 3216379 for EPCON COMMUNITIES, registered on March 6, 2007, specifying services in class 35, with a claim of first use in commerce on March 14, 2005, and a disclaimer of the exclusive right to use “communities” apart from the mark;
- Number 3564430 for EPCON, registered on January 20, 2009, specifying services in classes 35 and 37, with claims of first use in commerce on May 31, 2002 and March 14, 2005; and
- Number 5190678 for EPCON, registered on April 25, 2017, specifying services in class 36, with a claim of first use in commerce on March 14, 2005.

The above trademark registrations remain current. The Complainant has also registered various domain names, including <epconcommunities.com>, registered on December 15, 2004, that it uses in connection with a website where it provides information about itself and its services.

The Respondent is an individual based in China. According to information provided by the Complainant, the Respondent’s name and contact telephone number are also displayed on websites associated with two other domain names that contain obvious misspellings of a third party trademark.

The disputed domain names were both created on March 1, 2023. Each of them resolves to a landing page displaying Pay-Per-Click (“PPC”) links related to communities.

5. Parties’ Contentions

A. Complainant

The disputed domain names are confusingly similar to the Complainant’s EPCON and EPCON COMMUNITIES trademarks.

The Respondent has no rights or legitimate interests in respect of the disputed domain names. The Complainant has not granted permission to the Respondent to use the disputed domain names or the Complainant’s trademarks, and is not related in any way to the Respondent. The Respondent is not making a legitimate noncommercial or fair use of the disputed domain names, but rather is capitalizing on the goodwill of the Complainant. The Respondent is not commonly known by the disputed domain names. The Respondent’s passive holding of the disputed domain names that are nearly identical to the Complainant’s domain name is not a *bona fide* offering of goods or services.

The disputed domain names were registered and are being used in bad faith. The Respondent registered and is using the disputed domain names intentionally to attract, for the Respondent’s commercial gain,

Internet users to the Respondent's websites, by creating a likelihood of confusion with the Complainant's legitimate domain name as to the source, sponsorship, affiliation, or endorsement of services advertised on the Respondent's websites.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue - Language of the Proceeding

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". The Registrar confirmed that the Registration Agreement for the disputed domain names is in Chinese.

The Complainant requests that the language of the proceeding be English. Its main arguments are that the disputed domain names include Latin letters, they resolve to websites that contain only English content while the Complainant is a United States company that would be burdened by working in Chinese.

Paragraphs 10(b) and (c) of the Rules require the Panel to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding take place with due expedition. Prior UDRP panels have decided that the choice of language of the proceeding should not create an undue burden for the parties. See, for example, *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#); and *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. Ltd.*, WIPO Case No. [D2008-0293](#).

In the present case, the Panel observes that the Complaint and the amended Complaint were filed in English. Despite the Center having sent emails regarding both the language of the proceeding and the notification of the Complaint in English and Chinese, the Respondent has not commented on the language of the proceeding nor expressed any interest in participating otherwise in this proceeding. Therefore, the Panel considers that requiring the Complainant to translate the Complaint would create an undue burden and delay.

Having considered all the circumstances above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English. The Panel would have accepted a Response in Chinese, but none was filed.

6.2 Substantive Issues

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following elements with respect to each of the disputed domain names:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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 is being used in bad faith.

The burden of proof of each element is borne by the Complainant.

A. Identical or Confusingly Similar

Based on the evidence submitted, the Panel finds that the Complainant has rights in the EPCON and EPCON COMMUNITIES marks.

The disputed domain names wholly incorporate the EPCON mark and they also incorporate misspellings of the EPCON COMMUNITIES marks, differing from that mark only in the addition of an extra “m” or the omission of the second “i”, which are obvious typographical errors in the spelling of that mark. These differences do not prevent a finding of confusing similarity with the mark. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.9.

The only additional element in the disputed domain names is the generic Top-Level Domain (“gTLD”) “.com”. As a standard requirement of domain name registration, this element may be disregarded in the comparison between a domain name and a mark unless it has some impact beyond its technical function, which is not the case here. See [WIPO Overview 3.0](#), section 1.11.1.

Therefore, the Panel finds that the disputed domain names are confusingly similar to a trademark in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the Panel, shall demonstrate that the Respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- (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 trademark 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 trademark or service mark at issue.

As regards the first and third circumstances set out above, the disputed domain names, which wholly incorporate the Complainant’s EPCON mark and contain misspelt versions of its EPCON COMMUNITIES mark, resolve to landing pages displaying PPC links to sites for communities. The PPC links operate for the commercial gain of the Respondent, if he is paid to direct traffic to the linked sites, or for the commercial gain of the operators of the linked sites, or both. The Complainant submits that it has not granted permission to the Respondent to use the disputed domain names or the Complainant’s trademarks, and that it is not related in any way to the Respondent. In view of these circumstances, the Panel has no reason to find that the Respondent is using the disputed domain names in connection with a *bona fide* offering of goods or services, nor that the Respondent is making a legitimate noncommercial or fair use of the disputed domain names.

As regards the second circumstance set out above, the Registrar verified that the Respondent’s name is 杨智超 (Zhichao Yang), not the disputed domain names. Nothing on the record indicates that the Respondent has been commonly known by either of the disputed domain names.

In summary, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain names. The Respondent failed to rebut that *prima facie* case because he did not respond to the Complainant’s contentions.

Therefore, based on the record of this proceeding, the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that certain circumstances, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The fourth circumstance is as follows:

- (iv) by using the [disputed] domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] 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 [the respondent's] website or location or of a product or service on [the respondent's] website or location.

As regards registration, the disputed domain names were registered in 2023, years after the Complainant obtained its registration for the EPCON and EPCON COMMUNITIES marks. The disputed domain names wholly incorporate the EPCON mark and contain misspelt versions of the EPCON COMMUNITIES mark. There appears to be no reason to register the disputed domain names other than to approximate the Complainant's domain name <epconcommunities.com>. This gives rise to the inference that the Complainant was aware of the Complainant, its marks, and its domain name at the time that he registered the disputed domain names. That inference is confirmed by the fact that, according to the information provided by the Complainant, the Respondent has registered other domain names that contain obvious misspellings of a third party trademark.

As regards use, the disputed domain names resolve to landing pages displaying PPC links to sites for communities. The disputed domain names evidently are intended to operate by attracting Internet users searching in a browser for the Complainant's website but who accidentally mistype its domain name, including the EPCON mark, and diverting them to the Respondent's landing pages. This use is for commercial gain for the reasons set out in section 6.2B above. Given these circumstances, the Panel finds that the use of the disputed domain names intentionally attempts to attract, for commercial gain, Internet users to the Respondent's landing pages by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's landing pages as set out in paragraph 4(b)(iv) of the Policy.

Therefore, the Panel finds that the disputed domain names have been registered and are being used in bad faith. The Complainant has satisfied the third element in paragraph 4(a) of the Policy.

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 <epconcommunities.com> and <epconcommunitites.com> be transferred to the Complainant.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: June 22, 2023