

## ADMINISTRATIVE PANEL DECISION

Rivian IP Holdings, LLC v. 杜佳杰 (du jia jie)  
Case No. D2023-2039

### 1. The Parties

The Complainant is Rivian IP Holdings, LLC, United States of America (“United States”), represented by Coates IP LLP, United States.

The Respondent is 杜佳杰 (du jia jie), China.

### 2. The Domain Name and Registrar

The disputed domain name <riv-ian.com> (the “Domain Name”) is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

### 3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 7, 2023. On May 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On May 9, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Unknown Respondent) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 10, 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 11, 2023.

On May 10, 2023, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant submitted its request that English be the language of the proceeding on May 12, 2023. 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 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 5, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 6, 2023.

The Center appointed Karen Fong as the sole panelist in this matter on June 13, 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, which is based in the United States, is an electric automobile manufacturer and technology company. Founded in 2009, the Complainant develops vehicles focused on sustainable transportation and delivery. In 2017, the Complainant announced the introduction of world's first electric adventure vehicles - a five passenger pick up truck, and a seven passenger sport utility vehicle under its brand name RIVIAN. The Complainant is a publicly traded company and counts Amazon as one of its customers and investors with Amazon having purchased more than a fleet of 1,000 electric vans.

The Complainant's RIVIAN trade mark is registered in the United States and around the world including under United States Trade Mark registration No. 6,075,546, registered on June 9, 2020 (the "Trade Mark"). The Complainant's website is found at domain name <rivian.com>.

The Respondent, based in China, registered the Domain Name on April 5, 2023. The Domain Name previously resolved to a web page which comprised a login page bearing the Complainant's "Compass logo" trade mark with a field for a phone number and another for a password (the "Website"). The Respondent also created social media accounts on Telegram, a messenger app, titled "Rivian Official Group" and "Rivian Customer Service". Both of these groups bear the Compass logo. Another account was created on April 25, 2023 under the name "Rivian Earning Daily". The registration link on these Telegram accounts took users to the Website. When users engaged with the Telegram accounts, it offered financial rewards to sign up other users to these accounts. The Domain Name is now inactive.

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

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

The Complainant contends that the Domain Name is confusingly similar to the Trade Mark, that the Respondent has no rights or legitimate interests with respect to the Domain Name, and that the Domain Name has been registered and is being used in bad faith. The Complainant requests transfer of the Domain Name to the Complainant.

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

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

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

##### **A. General**

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the Domain Name, the Complainant must prove each of the following, namely that:

- (i) the Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name was registered and is being used in bad faith.

## **B. Language of the Proceeding**

The Rules, paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement, the language of the 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. According to the information received from the Registrar, the language of the Registration Agreement for the Domain Name is Chinese.

The Complainant submits that the language of the proceeding should be English for the following main reasons:

- (a) the Registrar communicates in English and the Registration Agreement is in English on its website;
- (b) the Complainant is based in the United States and does not have a presence in China;
- (c) the Respondent is familiar with English, as indicated by the Website content and fraudulent communications associated with the Domain Name;
- (d) the Domain Name which comprises the Trade Mark is a brand in the English language; and
- (e) requiring the Complainant to translate and communicate in Chinese would be unduly burdensome and increases costs.

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 accepts the Complainant's submission regarding the language of the proceeding. The Respondent has not challenged the Complainant's language request and in fact has failed to file a response in either Chinese or English. The Panel is also mindful of the need to ensure the proceeding is conducted in a timely and cost effective manner. In this case, the Complainant may be unduly disadvantaged by having to conduct the proceeding in Chinese. The Panel notes that all of the communications from the Center to the Parties were transmitted in both Chinese and English. In all the circumstances, the Panel determines that English be the language of the proceeding.

## **C. Identical or Confusingly Similar**

The Panel is satisfied that the Complainant has established that it has rights to the Trade Mark.

The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the trade mark and the domain name to determine whether the domain name is confusingly similar to the trade mark. The test involves a side-by-side comparison of the domain name and the textual components of the relevant trade mark to assess whether the mark is recognizable within the domain name.

In this case, the Domain Name contains the Complainant's Trade Mark in its entirety except for a hyphen between the letters "v" and "i" to divide up the two syllables of the Trade Mark. The addition of the hyphen does not prevent a finding of confusing similarity between the Complainant's Trade Mark and the Domain Name. For the purposes of assessing identity or confusing similarity under paragraph 4(a)(i) of the Policy, it is permissible for the Panel to ignore the generic Top-Level Domain which in this case is ".com". It is viewed as a standard registration requirement (section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Panel finds that the Domain Name is confusingly similar to the Trade Mark in which the Complainant has rights, and that the requirements of paragraph 4(a)(i) of the Policy therefore are fulfilled.

#### **D. Rights or Legitimate Interests**

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights or legitimate interests in the domain name by demonstrating any of the following:

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

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a domain name, it is well established that, as it is put in section 2.1 of the [WIPO Overview 3.0](#), a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. Once such *prima facie* case is made out, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent does come forward with relevant evidence of rights or legitimate interests, the panel weighs all the evidence, with the burden of proof always remaining on the complainant.

The Complainant contends that the Respondent has not been authorised to use the Trade Mark as a domain name or in any other way. The Complainant further contends that the Website was being used to perpetrate a financial fraud by enticing Internet and social media users to provide personal information, download malware and entice others to do the same. Such fraudulent activities can never amount to *bona fide* offering of goods or services or a legitimate noncommercial or fair use under the Policy.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not responded and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the Domain Name.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name. The fact that the Domain Name does not currently resolve to an active website does not obviate the Panel's finding of lack of rights or legitimate interests.

The requirements of paragraph 4(a)(ii) of the Policy therefore are fulfilled.

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

To succeed under the Policy, the Complainant must show that the Domain Name has been registered and is being used in bad faith.

The Panel is satisfied that the Respondent was aware of the Trade Mark when he registered the Domain Name given the use of the Complainant's Compass logo on the Website and the use of the Trade Mark and Compass logo on the Telegram accounts associated with the Website. It therefore seems implausible that the Respondent was unaware of the Complainant when he registered the Domain Name.

In the [WIPO Overview 3.0](#), section 3.2.2 states as follows:

“Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant’s mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant’s mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent’s claim not to have been aware of the complainant’s mark.”

The fact that there is a clear absence of rights or legitimate interests coupled with the Respondent’s clear targeting of the Complainant’s Trade Mark to perpetrate a fraud are also significant factors to consider (as stated in section 3.2.1 of the [WIPO Overview 3.0](#)). The Domain Name falls into the category stated above, and the Panel finds that registration is in bad faith.

The Panel also finds that the actual use of the Domain Name is in bad faith. The Website was being used as part of a fraudulent scheme of possibly identity theft, malware distribution, and obtaining financial or confidential personal information. It is highly likely that social media and Internet users after seeing the use of the Trade Mark and the Complainant’s Compass logo, when clicking the link to the Website were assuming they were being directed to a website operated by the Complainant or connected to the Complainant rather than the Respondent’s website.

The Domain Name is likely to confuse Internet users trying to find the Complainant’s official website. Such confusion will inevitably result due to the complete incorporation of the Trade Mark in the Domain Name. The Respondent employs the reputation of the Trade Mark to mislead Internet and social media users into visiting the website connected to the Domain Name instead of the Complainant’s. From the above, the Panel concludes that the Respondent intentionally attempted to attract for commercial gain, by misleading Internet users into believing that the Respondent’s Domain Name is somehow connected to the Complainant.

Under the circumstances of this case, the current non-use of the Domain Name does not change the Panel’s finding of the Respondent’s bad faith.

The Panel therefore concludes that the Domain Name was registered and is being used in bad faith both under paragraph 4(b)(iv) 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 Domain Name <riv-ian.com> be transferred to the Complainant.

*/Karen Fong/*

**Karen Fong**

Sole Panelist

Date: June 27, 2023