

## ADMINISTRATIVE PANEL DECISION

Corning Incorporated v. 深圳市优阅达数据科技有限公司 (shen zhen shi you yue da shu ju ke ji you xian gong si)

Case No. D2023-3633

### 1. The Parties

Complainant is Corning Incorporated, United States of America (“USA”), represented by Gowling WLG (Canada) LLP, Canada.

Respondent is 深圳市优阅达数据科技有限公司 (shen zhen shi you yue da shu ju ke ji you xian gong si), China.

### 2. The Domain Name and Registrar

The disputed domain name <corningglobal.com> is 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 August 29, 2023. On August 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 31, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Guang Dong, China) and contact information in the Complaint. The Center sent an email communication to Complainant on August 31, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint in English on September 13, 2023.

On August 31, 2023, the Center sent an email communication to the Parties in Chinese and English regarding the language of the proceeding. On September 13, 2023, Complainant requested English to be the language of the proceeding. Respondent did not submit any comment on the language of the proceeding.

The Center verified that the Complaint together with the amendment to 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 Respondent in Chinese and English of the Complaint, and the proceedings commenced on September 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 4, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on October 12, 2023.

The Center appointed Yijun Tian as the sole panelist in this matter on October 19, 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**

Complainant, Corning Incorporated, is a company incorporated in the USA. Complainant, a world-leading innovator in materials science with over 165 years of groundbreaking inventions, leverages expertise in glass science, ceramic science, and optical physics, coupled with robust manufacturing and engineering capabilities. In 2018, Complainant achieved remarkable success, generating USD 11.29 billion in revenue and accumulating over USD 30 billion between 2016 and 2018 (Exhibit 1 to the Complaint).

Complainant has rights in the CORNING marks. Complainant is the owner of numerous CORNING trademarks worldwide, including the USA trademark registration for CORNING, registered on January 3, 1956 (registration number: 618649); the Canadian trademark registration for CORNING, registered on October 20, 1972 (registration number: TMA186211); and the Chinese trademark registration for CORNING, registered on December 20, 1991 (registration number: 576489).

Complainant also operates domain names that contain the CORNING mark in its entirety, such as <corning.com>, which is the official website of Complainant (Exhibit 2 to the Complaint).

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

Respondent is 深圳市优阅达数据科技有限公司 (shen zhen shi you yue da shu ju ke ji you xian gong si), China.

##### **C. The Disputed Domain Name**

The disputed domain name <corningglobal.com> was registered on June 27, 2023, after the registration of the CORNING marks in 1956.

According to the relevant evidence provided by Complainant, the disputed domain name is resolved to an inactive website (Exhibit 5 to the Complaint).

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

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

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, Complainant contends that the disputed domain name is confusingly similar in that it wholly incorporates Complainant's registered trademark CORNING in its entirety. The fact that the disputed domain name includes the word "global" does nothing to diminish confusion.

Complainant contends that Respondent has no rights or legitimate interests in respect of the disputed domain name.

Complainant contends that the disputed domain name was registered and is being used in bad faith.

Complainant requests that the disputed domain name be transferred to it.

## **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

### **6.1 Procedural Issue: Language of the Proceeding**

The language of the Registration Agreement for the disputed domain name 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.

The Complaint was filed in English. Complainant requested that the language of the proceeding be English for several reasons, including the fact that:

- (a) the disputed domain name is expressed in English (and not in Chinese). Respondent is unlikely to be prejudiced by the proceeding in English.
- (b) The selection of Chinese as the language of the proceeding would cause an undue burden on Complainant in terms of translation expenses.
- (c) The selection of Chinese as the language of the proceeding would cause undue delay. Respondent is unlikely to be prejudiced if the proceeding were conducted in English.

Respondent did not provide submissions regarding 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 (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

On the record, Respondent appears to be located in China and is thus presumably not a native English speaker, but considering the following aspects, the Panel has decided that the language of the proceeding shall be English: (a) the disputed domain name is registered in Latin characters, particularly in English (e.g., English word "global"), rather than Chinese script; (b) the generic Top-Level Domain ("gTLD") of the disputed domain name is ".com", so the disputed domain name seems to be prepared for users worldwide, particularly English speaking countries; (c) the Center has notified Respondent of the language of the proceeding in both Chinese and English, and Respondent has indicated no objection to Complainant's request that English be the language of the proceeding; (d) the Center also notified Respondent in both Chinese and English of the Complaint, and informed Respondent that it would accept a response in either English or Chinese, but Respondent chose not to file any response.

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 Issues: Three Elements

### A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of the other term "global" may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

### B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which Respondent may demonstrate rights or legitimate interests in a disputed domain name.

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. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

More specifically,

(i) there has been no evidence adduced to show that Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services. Respondent has not provided evidence of a legitimate use of the disputed domain name or reasons to justify the choice of the term "corning", Complainant's CORNING trademark, in the disputed domain name. There has been no evidence to show that Complainant has licensed or otherwise permitted Respondent to use the CORNING marks or to apply for or use any domain name incorporating the CORNING marks.

(ii) there has been no evidence adduced to show that Respondent has been commonly known by the disputed domain name. There has been no evidence adduced to show that Respondent has any registered trademark rights with respect to the disputed domain name. Respondent registered the disputed domain name in 2023, after the CORNING marks became widely known. The disputed domain name is confusingly similar to Complainant's CORNING marks; and

(iii) there has been no evidence adduced to show that Respondent is making a legitimate noncommercial or fair use of the disputed domain name. By contrast, the disputed domain name is resolved to an inactive website.

Moreover, the composition of the disputed domain name is inherently misleading as it effectively impersonates or suggests sponsorship or endorsement by Complainant. [WIPO Overview 3.0](#), section 2.5.1.

Based on the available record, the Panel finds the second element of the Policy has been established.

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

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that Respondent has registered and used the disputed domain name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

UDRP panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put. [WIPO Overview 3.0](#), section 3.3. Having reviewed the record, the Panel notes the distinctiveness or reputation of Complainant's trademark, the composition of the disputed domain name, and the implausibility of any good faith use to which the disputed domain name may be put, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

## **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 name <corningglobal.com> be transferred to Complainant.

*/Yijun Tian/*

**Yijun Tian**

Sole Panelist

Dated: November 23, 2023