

ADMINISTRATIVE PANEL DECISION

TPS Parking Management, LLC v. 杨智超 (yang zhi chao)
Case No. D2023-4488

1. The Parties

The Complainant is TPS Parking Management, LLC, United States of America (“United States”), represented by Neal, Gerber & Eisenberg, United States.

The Respondent is 杨智超 (yang zhi chao), China.

2. The Domain Names and Registrar

The disputed domain names <thaparkingspot.com>, <theparkingapot.com>, <theparkingspoy.com>, <theparkingsppt.com>, <thepatkingspot.com>, and <ttheparkingspot.com> are registered with Xin Net Technology Corp. (北京新网数码信息技术有限公司) (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on October 27, 2023. On October 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On November 1, 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 (Xin Net Technology Corporation) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 1, 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 November 3, 2023.

On November 1, 2023, the Center informed the parties in Chinese and English, that the language of the registration agreement for the disputed domain name is Chinese. On November 3, 2023, the Complainant confirmed English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

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 November 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 4, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 5, 2023.

The Center appointed Andrew Sim as the sole panelist in this matter on December 18, 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 United States company founded in the 1990s and engages in the provision of vehicle parking lot and shuttle services across the United States under the name "The Parking Spot".

The Complainant is the owner of THEPARKINGSPOT marks (the "Marks"), which are registered in the United States (e.g., Registration No. 2,351,007, registered on May 16, 2000; and Registration No. 2,963,762, registered on June 28, 2005) and in various jurisdictions including Canada, Australia, and the European Union. The Complainant also owns the domain name <theparkingspot.com> which is used to promote its services.

The disputed domain names were registered on March 29, 2023. At the time of drafting this decision, the disputed domain names resolve to websites featuring pay-per-click links offering services identical to, if not closely related to the Complainant.

5. Parties' Contentions

A. Complainant

Firstly, the Complainant contends that the disputed domain names are identical or at least confusingly similar to the Marks in which the Complainant has rights. In particular, the disputed domain names are comprised entirely by a deliberate misspelling of the Marks, a practice typically known as "typosquatting". The Complainant further asserts that such misspelling was adopted with the objective of taking advantage of Internet users mistyping the Complainant's domain name <theparkingspot.com> when trying to access the Complainant's website.

Secondly, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain names. The Complainant does not have a legal relationship with the Respondent through which the Respondent can claim rights to any of the Marks. Given that the disputed domain names are used to host pay-per-click links offering goods or services closely related to the Complainant, the Respondent cannot be said to be using the disputed domain names in connection with a *bona fide* offering of goods or services.

Finally, the Complainant contends that the disputed domain names were registered and are being used in bad faith. Given the renown of the Marks, the Respondent cannot be said to have innocently registered the disputed domain names without an intention to exploit their similarity with the Marks.

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

B. Respondent

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

6. Discussion and Findings

Procedural Matter - Language of the Proceeding

The language of the Registration Agreement 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 proceedings shall be the language of the registration agreement.

The Complainant on the other hand submits that the language of the proceeding be in English, noting that the disputed domain names consist of English variations and the Respondent has been named in previous UDRP proceedings conducted in English.

The Respondent did not make submissions with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, it is established practice for the Panel to take into account the Rules, paragraphs 10(b) and (c), to ensure fairness and allow proceedings to take place expeditiously. All relevant circumstances of the case, including the parties' ability to understand and use the proposed language, are taken into consideration (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

The Panel accepts the Complainant's submissions regarding the language of the proceeding. In particular, the Panel observes that the disputed domain names used by the Respondent are in English and are highly referential to the services offered by the Complainant, which demonstrates that the Respondent has some familiarity in the English language. Past WIPO UDRP decisions involving the Respondent are also in English (see for example *Yardi v. 杨智超 (Zhi Chao Yang)*, WIPO Case No. [D2023-0707](#)). The Panel further notes that the Center on November 3, 2023, has notified the Respondent in both Chinese and English the language of the proceedings, yet the Respondent deliberately chose not to comment. On the other hand, the Panel has taken into account the likelihood of undue delay and the prejudicial effect of the Complainant in asserting its rights should the proceedings be conducted in Chinese.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be in English.

Substantive Matter - Three Elements

Under the Policy, the Complainant must prove that:

- (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which it has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has established that it has rights in the Marks.

Confusing similarity is determined by a straightforward side-by-side comparison of the Marks and the disputed domain names. It has been established that the presence of a Top-Level Domain element, in the present case ".com", is not relevant to the issue of "confusingly similar". [WIPO Overview 3.0](#), section 1.11.1.

The Panel observes that the disputed domain names consist of minor typographical variations of the Marks, most of which involve single-letter additions or deletions. Consider for example the insertion of the letter “t” in the disputed domain name <theparkingspot.com> and the replacement of the letter “r” with the letter “t” in the disputed domain name <thepatkingspot.com>. Despite such variations, the Mark remains evident and these alterations do not prevent a finding of confusing similarity in the present proceedings ([WIPO Overview 3.0](#), section 1.7).

The Panel therefore finds that the disputed domain names are confusingly similar to a trademark in which the Complainant has rights in accordance with the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

The Panel accepts the Complainant’s submissions that it has no connection with the Respondent and has not authorised the Respondent’s use of the Mark in any manner.

It is well established that the mere registration of a domain name does not confer trademark rights. Such rights can only arise through the *bona fide* offering of goods and services. The Complainant alleges that the disputed domain names are used as pay-per-click pages, which offer services similar to that of the Complainant such as airport parking services. This is substantiated based on the records filed by the Complainant and it has been established that these pages do not represent a *bona fide* offering of goods and services (*Combined Insurance Company of America v. Domain Administrator, See PrivacyGuardian.org / Zhichao Yang, PrivacyDotLink / Zhichao Yang, Moniker Privacy Services / Zhichao Yang, Whois Agent, Domain Protection Services, Inc. / Zhichao Yang, and Super Privacy Service LTD c/o Dynadot / Zhichao*, WIPO Case No. [D2020-0863](#); and *Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe*, WIPO Case No. [D2007-1695](#)).

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 disputed domain names. The Panel therefore finds that the Respondent has no rights or legitimate interests in respect of the disputed domain names in accordance with the Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

The disputed domain names were registered on March 29, 2023, long after the Complainant registered its Marks. The Panel finds that the Respondent had most likely been aware of the Marks or the Complainant’s services at the time the disputed domain names were registered, if not earlier.

As indicated in the section above, the Complainant has satisfied the Panel that the disputed domain names are not used as *bona fide* offering of goods or service. The Panel further views the disputed domain names to be parasitic on the reputation of the Marks. To raise one example, in the disputed domain name <theparkingspnt.com>, the replacement of the letter “o” with the letter “p” is simply intended to exploit the similarity with the Marks as the letters “o” and “p” are directly adjacent on an English language keyboard. Viewed with other similar disputed domain names as a whole, the Panel is of the opinion that the Respondent has attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Mark, which is a clear case of cybersquatting (*Rado Uhren AG v. DnsAdmin DnsAdmin, Turkticaret.net Yazilim Hizm. San. ve Tic. A.S.*, WIPO Case No. [D2018-0803](#)).

The Panel further notes that there are a number of UDRP cases concerning other third-party brand owners where the Respondent has been the named respondent and those domain names have been ordered to be transferred on the basis of cybersquatting (see for example *Averitt Express, Inc. v. 杨智超 (Yang Zhi Chao a/k/a Zhichao Yang)*, WIPO Case No. [D2022-3109](#); and *Burtons Grill LLC v. 杨智超 (Zhi Chao Yang)*, WIPO Case No. [D2023-0853](#)). These cases indicate that the Respondent has engaged in a series of cybersquatting behaviour pointing to bad faith ([WIPO Overview 3.0](#), section 3.1.2).

The Panel readily accepts 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 <thaparkingspot.com>, <theparkingapot.com>, <theparkingspoy.com>, <theparkingsppt.com>, <thepatkingspot.com>, and <ttheparkingspot.com> be transferred to the Complainant.

/Andrew Sim/

Andrew Sim

Sole Panelist

Date: January 3, 2024