

## **ADMINISTRATIVE PANEL DECISION**

Tradedoubler AB v. zhu shu tian

Case No. D2023-4969

### **1. The Parties**

The Complainant is Tradedoubler AB, Sweden, represented by Groth & Co KB, Sweden.

The Respondent is zhu shu tian, China.

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

The disputed domain name <tradedoublers.com> is registered with Gname.com Pte. Ltd. (the "Registrar").

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on November 29, 2023. On November 29, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 30, 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 (To be named later) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 30, 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 amendment to the Complaint in English on December 1, 2023.

On November 30, 2023, the Center informed the parties in Chinese and English, that the language of the registration agreement for the disputed domain name is Chinese. The Parties did not comment on the Center's email regarding 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 the Respondent in English and Chinese of the Complaint, and the proceedings commenced on December 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 28, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 9, 2024.

The Center appointed Matthew Kennedy as the sole panelist in this matter on January 12, 2024. 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 provides performance marketing and technology solutions for advertisers and publishers. It holds multiple trademark registrations for TRADEDOUBLER including International trademark registration number 975862, registered on November 30, 2007, designating multiple jurisdictions, and specifying goods and services in classes 9, 35, and 42. On December 7, 2016, the Complainant designated additional jurisdictions, including China. The Complainant has also registered the domain name <tradedoubler.com> that it uses in connection with a website where it provides information about itself and its services. According to the Complaint, the Complainant was formerly the registrant of the disputed domain name as well but failed to renew that registration.

The Respondent is an individual based in China.

The disputed domain name was registered by the Respondent on June 23, 2022. As recently as November 23, 2023, it resolved to a website in Chinese for “澳门博彩协会” (which may be translated as the “Macao Gambling Association”) that displayed advertising and hyperlinks to gambling websites, the most prominent of which was for “BET VICTOR 伟德”. After the Complainant filed an abuse report with the Registrar, the use of the disputed domain name changed. As of November 28, 2023, the disputed domain name resolved to a website in Chinese with a header that read “BEVITOR 伟德（中国）控股有限公司” (which may be translated as “BEVITOR (China) Holding Co., Ltd”) that at different times has provided information about the Medical College of Guangxi University and the Macao Gaming Inspection and Coordination Bureau.

#### **5. Parties’ Contentions**

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

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

Notably, the Complainant contends that the disputed domain name is identical to its TRADEDOUBLER mark. The Respondent has no rights or legitimate interests in respect of the disputed domain name. The disputed domain name was registered and is being used in bad faith.

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

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

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

##### **6.1 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 Panel notes that the Complaint was filed in English.

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.

In the present case, despite the Center having sent an email regarding the language of the proceeding and the notification of the Complaint in both Chinese and English, the Respondent did not make any submissions with respect to the language of the proceeding nor express any interest in otherwise participating in this proceeding. Accordingly, the Panel considers that requiring the Complainant to translate the Complaint would create an undue burden and delay whereas accepting it in English as filed will not cause unfairness to the Respondent.

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. 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:

- (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**

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 the Complainant's trademark and the disputed domain name. See [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of the TRADEDOUBLER trademark for the purposes of the Policy. See [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Although the disputed domain name adds a plural "s", the Panel finds that the mark is recognizable within the disputed domain name. The only other additional element in the disputed domain name is a generic Top-Level Domain ("gTLD") extension (".com") which, as a standard requirement of domain name registration, may be disregarded in the comparison between the disputed domain name and the TRADEDOUBLER mark. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. See [WIPO Overview 3.0](#), sections 1.7 and 1.11.

For the above reasons, 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 the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See [WIPO Overview 3.0](#), section 2.1.

In the present case, the disputed domain name formerly resolved to a website for a gambling association displaying advertising and hyperlinks to gambling websites, and which now displays information relating to different organizations. It is clear from the Complaint that the Respondent has no license or authorization from the Complainant to use its TRADEDOUBLER trademark, yet the disputed domain name wholly incorporates that mark, adding only a plural “s” and a gTLD extension. The Panel takes note that the disputed domain name incorporates the word “double”, which has a meaning related to betting, but “tradedoubler” is a coined term. Further, nothing in the associated website’s current or past content has any particular connection to the disputed domain name. Up until the time that the Complainant gave notice of the dispute to the Registrar, the disputed domain name was used for the commercial gain of the Respondent or the operators of the linked gambling websites, or both. These circumstances give rise to the inference that the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods and services, nor making a legitimate noncommercial or fair use of the disputed domain name.

According to the Registrar’s verification email, the Respondent’s name is “zhu shu tian” and the website associated with the disputed domain name is for a company named “BEVITOR 伟德（中国）控股有限公司” (which may be translated as “BEVITOR (China) Holding Co., Ltd”). Neither of these names resembles the disputed domain name. Nothing in the record indicates that the Respondent has been commonly known by the disputed domain name.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the 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.

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

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

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. 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] web site or location or of a product or service on [the respondent’s] web site or location.”

The disputed domain name was registered by the Respondent in 2022, years after the registration of the Complainant’s TRADEDOUBLER mark, including in China where the Respondent is based. Even though the mark contains two ordinary words (i.e., “trade” and “double”) plus the suffix “r”, and suggests a meaning such as someone or something that doubles an amount of trade, it is nevertheless a coined term. The disputed domain name is almost identical to that mark, adding only a plural “s” and a gTLD extension. This does not appear coincidental. The Respondent provides no explanation for the choice of the disputed domain name and the associated website has no particular connection to the mark either. In view of these circumstances, the Panel considers it more likely than not that the Respondent had the Complainant’s mark in mind when he registered the disputed domain name.

As regards use, the disputed domain name formerly resolved to a website for a gambling association displaying advertising and hyperlinks to gambling websites. This use was for commercial gain for the reasons given in section 6.2B above. The disputed domain name is also almost identical to the Complainant's domain name, adding only the plural "s", which is an obvious typographical error in the spelling of that domain name. In the Panel's view, it is more likely than not that the disputed domain name is intended to attract Internet users searching for the Complainant and its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website within the terms of paragraph 4(b)(iv) of the Policy. Even though an Internet user who reached the Respondent's website would realize that it was not the Complainant's, by that stage the disputed domain name would have already achieved its diversionary purpose.

Accordingly, the Panel finds that the disputed domain name has been registered and is being used in bad faith.

The Panel takes note that the use of the disputed domain name has recently changed. Even though the associated website now displays information regarding different organizations, this change of use occurred after the Respondent received notice of the dispute. Accordingly, it does not change the Panel's conclusion; if anything, it may be further evidence of bad faith.

For the above reasons, the Panel finds that the Complainant has established the third element 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 name <tradedoublers.com> be transferred to the Complainant.

*/Matthew Kennedy/*

**Matthew Kennedy**

Sole Panelist

Date: January 22, 2024