

## ADMINISTRATIVE PANEL DECISION

Cincinnati Bell Inc. v. Zhichao Yang (杨智超)

Case No. D2024-0243

### 1. The Parties

The Complainant is Cincinnati Bell Inc., United States of America (“United States”), represented by Frost Brown Todd LLC, United States.

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

### 2. The Domain Names and Registrar

The Disputed Domain Names <aaltafiber.com> and <altaafiber.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 January 19, 2024. On January 22, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Names. On January 23, 2024, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 24, 2024, 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 January 25, 2024.

On January 24, 2024, the Center informed the parties in Chinese and English, that the language of the registration agreement for the Disputed Domain Names is Chinese. On January 25, 2024, the Complainant requested 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 of the Complaint, and the proceedings commenced on January 31, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 20, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 21, 2024.

The Center appointed Douglas Clark as the sole panelist in this matter on March 8, 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 is Cincinnati Bell Inc. in Ohio, it is a provider of telecommunications products and services. Since as early as 1873, it (and its predecessors-in-interest) has served residential and business customers in Ohio, Kentucky, and Indiana in the United States. The Complainant is listed on the New York Stock Exchange under the ticker CBB.

The Complainant owns the following Trademark Registrations in the United States for ALTAFIBER:

Registration Number: 6,881,221  
Date of Registration: October 18, 2022  
Goods/Services: Education and entertainment services, video-on-demand, digital video recorder services etc. in Class 41.

Registration Number: 7,076,074  
Date of Registration: June 6, 2023  
Goods/Services: Marketing and advertising services, business consultation, etc. in Class 35.

The Complainant has owned the “www.altafiber.com” domain since as early as April 14, 2021, and used it from March 2, 2022.

The Respondent is an individual based in China.

The Respondent registered the two Disputed Domain Names on February 16, 2023. As at the filing of the Complaint, the websites under the Disputed Domain Names did not host any content. Instead, they resolved to pay-per-click (“PPC”) pages with links to “Cincinnati Bell Internet”, “Cincinnati Bell Login”, and “TV Internet”. As at the date of this decision they did not resolve to any content.

#### **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 Names.

First, it contends that the Disputed Domain Names are confusingly similar to its ALTAFIBER mark, as they incorporate the mark in full, with minor misspellings that do not mitigate confusion. It argues that this similarity could mislead consumers. This is especially since Disputed Domain Names containing a trademark in entirety are generally considered confusingly similar despite the addition of other words.

Second, the Complainant contends that the Respondent has no legitimate interest in the Disputed Domain Names. The Respondent is not affiliated with the Complainant, either as a distributor or through participation in a bona fide offering of goods and services in connection with the Disputed Domain Names. The Complainant contends that typosquatting - registering misspelt variations of well-known trademarks - evidences the Respondent's intent to exploit confusion with the marks for commercial gain.

Thirdly, the Complainant contends that the Disputed Domain Names were registered and are being used in bad faith. The Complainant further contends that it has intent to exploit the ALTA FIBER mark's reputation and goodwill, misleading consumers for commercial gain and further contends the Respondent is a serial cybersquatter with a history of registering the brand names of others as a part of a domain name.

Based on the above, the Complainant requests that the Disputed Domain Names be transferred to their control to remedy these violations.

## **B. Respondent**

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

## **6. Discussion and Findings**

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

The language of the Registration Agreement for the Disputed Domain Names is English. According 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. The Complainant requested that the language of the proceeding be English because it would help ensure expeditious and fair proceedings. First, it contends that the Disputed Domain Names incorporate English words, so English is the language of the Disputed Domain Names. Second, it contends that the content on the associated web pages is exclusively in English, indicating the Respondent's likely proficiency in the language. Thirdly, the Complainant contends that proceeding in another language would introduce unnecessary delays and potential unfairness.

The Respondent did not make any specific submissions concerning 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).

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**

#### **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. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights with respect to a trademark or service mark for the purposes of the Policy, as summarised in the Factual Background. [WIPO Overview 3.0](#), section 1.2.1. The Panel notes that the Complainant did not rely on any registered trademarks in China where the Respondent is located. The ownership of a trademark is generally considered to be a threshold standing issue. The location of the trademark, its date of registration (or first use) and the goods and/or services for which it is registered, are all irrelevant for the purpose of finding rights in a trademark under the first element of the UDRP. These factors may however bear on a panel's further substantive determination under the second and third elements. [WIPO Overview 3.0](#), section 1.1.2.

The entirety of the mark is incorporated within the Disputed Domain Names. The ALTAFIBER mark is incorporated in the "aaltafiber" and "altaafiber" names, with the intentional addition of one letter, i.e., "a". Accordingly, the Disputed Domain Names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Further, the Panel finds the mark is recognizable within the Disputed Domain Names for the reasons already given. Per section 1.9 of the [WIPO Overview 3.0](#), a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. Accordingly, the Disputed Domain Names are confusingly similar to the Complainant's mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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

The Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the Disputed Domain Names.

First, the practice of typosquatting inherently suggests a lack of rights or legitimate interests. Here, the typosquatting aims to confuse Internet users by making them believe that the website associated with the Disputed Domain Names is owned, operated, or sponsored by the owner of the ALTAFIBER mark (i.e., the Complainant). Such confusion is further evidenced by the false implication that visitors can receive ALTAFIBER telecommunication services through these sites, exploiting the brand's recognition for profit, especially when the registration occurred shortly after the launch of the ALTAFIBER mark.

Secondly, the Respondent has no legitimate interests in the Disputed Domain Names as he is neither licensed by nor affiliated with the Complainant, the owner of the ALTAFIBER mark. There is no contractual relationship allowing the Respondent to distribute any services under the Disputed Domain Names, nor is there a bona fide offering of goods and services associated with them. The registration and use of the Disputed Domain Names in bad faith, intending to profit from the confusion created, further underscores the lack of a legitimate right or interests.

The Respondent has not responded at all to the Complaint. It has, therefore, not rebutted the Complainant's prima facie showing nor come forward with any relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Names, such as those enumerated in the Policy or otherwise.

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.

The Panel finds that the Respondent has engaged in bad faith registration and use of the Disputed Domain Names. The Respondent has intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's mark in breach of paragraph 4(b)(iv) of the Policy. The use of the Disputed Domain Names for to display PPC links constitutes bad faith conduct. The Respondent's actions were designed to mislead consumers and profit from misusing the Complainant's ALTAFIBER mark. Further the records shows that the Respondent is a serial cybersquatter.

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 Names <aaltafiber.com> and <altaafiber.com> be transferred to the Complainant.

*/Douglas Clark/*

**Douglas Clark**

Sole Panelist

Date: March 22, 2024