

ADMINISTRATIVE PANEL DECISION

Elliott Investment Management L.P. v. 唐智建 (tang zhi jian)
Case No. D2024-1281

1. The Parties

The Complainant is Elliott Investment Management L.P., United States of America (“United States”), represented by ZwillGen PLLC, United States.

The Respondent is 唐智建 (tang zhi jian), China.

2. The Domain Name and Registrar

The disputed domain name <elliottmgmt.top> 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 March 25, 2024. On March 26, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 27, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

On March 27, 2024, the Center informed the Parties in Chinese and English, that the language of the Registration Agreement for the disputed domain name is Chinese. On March 28 and 29, 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 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 Chinese and English of the Complaint, and the proceedings commenced on April 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 25, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 1, 2024.

The Center appointed Karen Fong as the sole panelist in this matter on May 13, 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 a global investment management firm with offices in the United States and Europe. Since May 2, 2000, it or its affiliates has owned and operated the domain name <elliottmgmt.com> and maintained the domain name as point of contact for employees, investors and media. The website connected to the domain name is its primary Internet presence. The Complainant's services are provided under the brand ELLIOTT. The ELLIOTT trade mark is registered by the Complainant's affiliate, Elliott Management Corporation in the United States under the United States Trade Mark Registration No. 3250277 on June 12, 2007 (the "Trade Mark"). The Panel notes that the Trade Mark "is the middle name of applicant's President, Paul Elliott Singer", and Paul Elliott Singer is also the founder and president of the Complainant.

The Respondent appears to be based in China. The disputed domain name was registered on February 15, 2024. The disputed domain name is inactive.

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 confusingly similar to the Trade Mark, that the Respondent has no rights or legitimate interests with respect to the disputed domain name, and that 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

A. 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 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 for the following main reasons:

- The Top- Level Domain ("TLD") of the disputed domain name ".top" is administered by registrars and registered and used by registrants in many countries where English is the primary spoken and written language. The ".top" website offers services in the English language and the Registrar is also listed on this site in English;
- The Complainant operates within predominantly English speaking countries and its investor materials are currently all in the English language;

- Considering the disputed domain name is confusingly similar to the Complainant's mark and its own domain name, Respondent has the intention to target the Complainant's customers who are all predominantly English speaking.

The Respondent has not challenged the Complainant's language request and in fact has failed to file a response in either English or Chinese despite being duly notified by the Center in both English and Chinese of the language of the proceeding and of the commencement 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.

B. Identical or Confusingly Similar

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

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

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

While the addition of the other term here, "mgmt" after the Trade Mark in the disputed domain name 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 Trade 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.

C. 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.

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 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.

Moreover, the nature of the disputed domain name, which is not only confusingly similar to the Trade Mark but also identical to the Second-Level of the Complainant's domain name <elliottmgmt.com>, is inherently misleading as it effectively impersonates or suggests sponsorship or endorsement by the 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.

D. 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 the disputed domain name fully incorporates the Trade Mark and in fact is identical to the Complainant's own Second-Level domain name which includes the abbreviation of the word "management"- "mgmt", after the Trade Mark with the only difference being the TLDs, indicating that the Respondent had actual knowledge of and was targeting the Complainant and the Trade Mark when registering the disputed domain name. The Panel also notes that the disputed domain name is inactive.

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.

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available 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. Although 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, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3.

Having reviewed the available record, the Panel notes the reputation of the Trade Mark, the composition of the disputed domain name, the incomplete or false address provided by the Respondent when registering the disputed domain name (the Written Notice was not able to be sent), and lack of a response from the Respondent, 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 <elliottmgmt.top> be transferred to the Complainant.

/Karen Fong/
Karen Fong
Sole Panelist
Date: May 31, 2024