

## ADMINISTRATIVE PANEL DECISION

Epic Systems Corporation v. 蒋黎 (Jiang Li)  
Case No. D2022-1374

### 1. The Parties

The Complainant is Epic Systems Corporation, United States of America (“United States”), represented by Quarles & Brady LLP, United States.

The Respondent is 蒋黎 (Jiang Li), China.

### 2. The Domain Name and Registrar

The disputed domain name <epicmychart.com> is registered with DNSPod, Inc. (the “Registrar”).

### 3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on April 15, 2022. On April 19, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 21, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on April 25, 2022, 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 April 26, 2022.

On April 25, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On April 26, 2022, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 May 2, 2022. In accordance with the

Rules, paragraph 5, the due date for Response was May 22, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 24, 2022.

The Center appointed Rachel Tan as the sole panelist in this matter on June 1, 2022. 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, Epic Systems Corporation founded in 1979 is based in the United States. It is a provider of healthcare software. Its software is branded with the house mark, EPIC. In 2000, the Complainant launched a web-based patient portal named "MyChart", which allows patients to electronically access and manage their health records.

The Complainant is the owner of trade marks incorporating the EPIC and MYCHART marks in a range of jurisdictions, including United States Trade Mark Registration No. 1791373 for EPIC, registered on September 7, 1993, in class 9; United States Trade Mark Registration No. 4206061 for EPIC, registered on September 11, 2012, in class 42; International Trade Mark Registration No. 1193307 for EPIC, registered on December 27, 2013, designating, *inter alia*, China, in class 9; United States Trade Mark Registration No. 2574214 for MYCHART, registered on May 28, 2002, in class 9; and European Union Trade Mark Registration No. 012465381 for MY CHART, registered on May 19, 2014, in classes 9, 42, and 44.

The Complainant owns and operates a website at the domain name <epic.com>, which is branded with the EPIC mark, where consumers can learn about the Complainant and its software and services. Further, the Complainant also maintains a website for MyChart at the domain name <mychart.com>, where patients can sign up for and access their accounts.

The Respondent is 蒋黎 (Jiang Li), China.

The disputed domain name was registered on January 6, 2019, and at the date of this decision, resolves to a parked page in English comprising pay-per-click advertising links that divert Internet users to various websites with different contents such as legal data management software, tracking fleet management software, medical equipment, etc.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to the Complainant's marks as it reproduces entirely both of the Complainant's EPIC and MYCHART marks.

The Complainant further alleges that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is unfairly using the disputed domain name to confuse Internet users to drive a pay-per-click revenue-making scheme, which does not represent a *bona fide* offering. The links in the resolved website compete with and capitalise on the reputation and goodwill of the Complainant's marks and mislead Internet users. The Complainant is not affiliated with the Respondent and has not licensed or otherwise permitted the Respondent to use its EPIC or MYCHART marks as a domain name. Further, there is no indication that the Respondent is commonly known by the EPIC or MYCHART marks.

The Complainant finally asserts that the Respondent registered and is using the disputed domain name in bad faith because it knowingly selected and maintained the disputed domain name to unfairly capitalise on the Complainant's trade mark rights. Based on the Complainant's use and registration of the EPIC and MYCHART marks, the Respondent was well aware of the marks when it registered the disputed domain

name. The pay-per-click scheme set up by the Respondent unfairly capitalise on the Complainant's EPIC and MYCHART brand recognition and goodwill. Further, the harm of the Respondent's bad faith pay-per-click scheme is exacerbated as some of the linked advertisements lead to competing software and services provided by unaffiliated third parties.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **6.1 Language of the Proceeding**

Initially, the Panel must address the language of the proceeding. Paragraph 11(a) of the Rules provides that the language of the administrative proceeding shall be the language of the Registration Agreement, unless otherwise agreed by the parties, subject to the authority of the panel to determine otherwise, having regard to the circumstances of the administrative proceeding. The panel may choose to write a decision in either language, or request translation of either party's submissions.

In this case, the Registrar has confirmed to the Center that the language of the Registration Agreement as used by the registrant for the disputed domain name is Chinese. However, the Complainant has requested that English be adopted as the language of the proceeding for the reasons summarized below:

- (a) the websites associated with the disputed domain name are in English;
- (b) the disputed domain name combines three English words "epic," "my," and "chart";
- (c) the content displayed on the website hosted at the disputed domain name is in English;
- (d) both parties presumably have ties to the English language because the Complainant is a Wisconsin corporation where English is commonly spoken and the Respondent's disputed domain name and website are all in English; and
- (e) the Complainant will incur substantial expenses for translation if the proceeding is not in English.

It is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding, in order to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. Language requirements should not lead to undue burdens being placed on the parties and undue delay to the proceeding.

The Panel having considered the circumstances finds that English shall be the language of this proceeding. The reasons are set out below:

- (a) the Complainant is a company based in the United States. Requiring the Complainant to submit documents in Chinese would lead to delay and cause the Complainant to incur translation expenses;
- (b) the disputed domain name and the resolved website both comprise of English;
- (c) even if the Respondent does not possess a sufficient command of English to understand the Complaint, there were ample opportunities for the Respondent to raise an objection. The Center notified the Parties in English and Chinese of the Complainant's request for English to be the language of the proceeding, but the Respondent did not protest against this request;

(d) the Respondent has failed to participate in the proceeding even though the Center sent the notification of the Complaint in English and Chinese, and has been notified of its default; and

(e) the Complaint has been submitted in English. No foreseeable procedural benefit may be served by requiring Chinese to be used. On the other hand, the proceeding may proceed expeditiously in English.

## 6.2 Substantive Issues

### A. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has adduced evidence to demonstrate its established rights in the EPIC and MYCHART marks.

The Panel notes that both EPIC and MYCHART marks are wholly encompassed within the disputed domain name where each mark plays a dominant role. In cases where a domain name incorporates the entirety of a trade mark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing. See section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

It is permissible for the Panel to ignore the generic Top-Level Domain ("gTLD"), in this case ".com". See section 1.11.1 of the [WIPO Overview 3.0](#). Consequently, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trade marks.

Accordingly, the Complainant has satisfied the first element under paragraph 4(a) of the Policy.

### B. Rights or Legitimate Interests

In circumstances where the Complainant possesses exclusive rights to the EPIC and MYCHART marks, whereas the Respondent seems to have no trade mark rights, the Panel is satisfied that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, and the burden of production shifts to the Respondent. See section 2.1 of the [WIPO Overview 3.0](#).

The Respondent has not provided evidence of a legitimate noncommercial or fair use of the disputed domain name or reasons to justify the choice of the terms, "epic" and "mychart". There is no indication to show that the Respondent is commonly known by the disputed domain name or otherwise has rights or legitimate interests in it. In addition, the Complainant has not granted the Respondent a license or authorization to use the Complainant's EPIC and MYCHART marks or register the disputed domain name.

The Respondent is not making a noncommercial or fair use of the disputed domain name in the terms of paragraph 4(c)(iii) of the Policy since Internet users are directed to a website with links to third-party websites including some that are competing with the Complainant's business. Such usage may reasonably be assumed to be commercial in its intent and effect. Past UDRP panels have found that the use of a domain name to host a parked page comparing pay-per-click links does not represent a *bona fide* offering where such links compete with or capitalise on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users. See section 2.9 of the [WIPO Overview 3.0](#).

None of the circumstances in paragraph 4(c) of the Policy are present in this case. For these reasons, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

Accordingly, the Complainant has satisfied the second element under paragraph 4(a) of the Policy.

### C. Registered and Used in Bad Faith

The Complainant's EPIC and MYCHART marks were registered well before the registration of the disputed domain name. Through use and advertising, the Complainant's EPIC and MYCHART marks are known throughout the world. Moreover, "epic" and "mychart" are not merely words. Search results using the key words "epic", "mychart", "health", and "software" on the Internet search engines direct Internet users to the Complainant and its services, which indicates that an exclusive connection between the EPIC and MYCHART marks and the Complainant has been established. As such, the Respondent either knew or should have known of the Complainant's EPIC and MYCHART marks when registering the disputed domain name or has exercised "the kind of willful blindness that numerous UDRP panels have held support a finding of bad faith". See *eBay Inc. v. Renbu Bai*, WIPO Case No. [D2014-1693](#); *Barclays Bank PLC v. Andrew Barnes*, WIPO Case No. [D2011-0874](#).

Section 3.1.4 of the [WIPO Overview 3.0](#) states that "[...] mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely known trade mark by an unaffiliated entity can by itself create a presumption of bad faith." In this case, the disputed domain name is confusingly similar to the widely known EPIC and MYCHART marks, and was registered by the Respondent who has no relationship with the Complainant, which means that a presumption of bad faith can be created.

The Panel notes that the disputed domain name directs Internet users to a parking website where visitors are presented with different third parties' websites of a commercial nature, some of which are competing with the Complainant's business. The adoption by the Respondent of the "pay-per-click" business model using the Complainant's trade marks without authorization for the purpose of attracting visitors, may lead some Internet users to be confused into thinking, even if only initially, that the website is in some way endorsed by the Complainant. Such use constitutes evidence of bad faith registration and use as contemplated under paragraph 4(b)(iv) of the Policy.

Taking into account these circumstances, the Panel finds that the Respondent must have known of the Complainant before registering the disputed domain name and, considering the Respondent's lack of rights or legitimate interests, and by registering and using the disputed domain name as discussed above, the Panel is led to conclude that the disputed domain name was registered and is being used in bad faith.

Accordingly, the Panel finds that the Complainant has satisfied the third element under paragraph 4(a) 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, <epicmychart.com>, be transferred to the Complainant.

*/Rachel Tan/*

**Rachel Tan**

Sole Panelist

Date: June 15, 2022