

## **ADMINISTRATIVE PANEL DECISION**

Artemis Marketing Corp. v. 杨智超 (Zhi Chao Yang)

Case No. D2022-4398

### **1. The Parties**

The Complainant is Artemis Marketing Corp., United States of America (“United States”), represented by Bryan Cave Leighton Paisner LLP, United States.

The Respondent is 杨智超 (Zhi Chao Yang), China.

### **2. The Domain Names and Registrars**

The disputed domain names <doomstogo.com>, <roomastogo.com>, <roomkstogo.com>, <roommtogo.com>, <roomstago.com>, <roomstlgo.com>, <roomstobo.com>, <roomstoco.com>, <roomstogol.com>, <roomstogor.com>, <roomstomgo.com>, <roomstoto.com>, <roomstogo.com>, <roomswtogo.com>, and <roomtsogo.com> are registered with eName Technology Co., Ltd. (the “Registrar”).

The disputed domain name <eoomstogo.com> is registered with Chengdu West Dimension Digital Technology Co., Ltd. (the “Registrar”).

The disputed domain name <froomstogo.com> is registered with Alibaba Cloud Computing (Beijing) Co., Ltd. (the “Registrar”).

The disputed domain name <roimstogo.com> 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 November 17, 2022. On November 18, 2022, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On November 21 and November 22, 2022, the Registrars transmitted by email to the Center their verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on November 25, 2022, providing the registrant and contact information disclosed by the Registrars, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint in English on November 28, 2022.

On November 25, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On November 28, 2022, the Complainant submitted 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 December 5, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 25, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 27, 2022.

The Center appointed Jonathan Agmon as the sole panelist in this matter on January 6, 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 furniture retail company based in Florida, United States. It sells furniture on its official Rooms To Go website as well as through licensees in both online and physical retail furniture shops. The Complainant has been in operation since 1991, has some 150 showrooms and is one of the largest furniture retailers in the United States.

The Complainant is the owner of the ROOMS TO GO word and figurative trademarks in the United States, including but not limited to:

- United States Patent and Trademark Office ("USPTO") Registration No. 1756239 for ROOMS TO GO, registered on March 2 1993;
- USPTO Registration No. 2396055 for ROOMS TO GO, registered on October 17, 2000;
- USPTO Registration No. 1801702 for  , registered on October 26, 1993;
- USPTO Registration No. 3587032 for  , registered on March 10, 2009;
- USPTO Registration No. 5872290 for ROOMS TO GO  , registered on October 1, 2019; and
- USPTO Registration No. 6223871 for  , registered on December 15, 2020.

The Complainant also states it has owned the registered domain name <roomstogo.com> since 1996.

The disputed domain names <doomstogo.com>, <roomastogo.com>, <roomkstogo.com>, <roommtogo.com>, <roomstago.com>, <roomstlgo.com>, <roomstobo.com>, <roomstoco.com>, <roomstogol.com>, <roomstogor.com>, <roomstomgo.com>, <roomstoto.com>, <roomstrogo.com>, <roomswtogo.com>, and <roomtsogo.com> were registered on June 21, 2022. The disputed domain name <roimstogo.com> was registered on December 7, 2022. The disputed domain name <eoomstogo.com> was registered on August 26, 2022. The disputed domain name <fromstogo.com> was registered on July 30, 2020.

## 5. Parties' Contentions

### A. Complainant

The Complainant argues that the disputed domain names are confusingly similar to the Complainant's registered ROOMS TO GO mark as the Respondent has intentionally registered 18 confusingly similar domain names that incorporate the Complainant's marks in their entirety and either have a single letter typo, add a single letter, or transpose two letters in relation to its mark.

The Complainant also argues that the Respondent lacks any rights or legitimate interests in the marks or domain names as it has not licensed or permitted the Respondent to use any of its trademarks or register the disputed domain names and that the Respondent registered and continues to use the disputed domain names 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

Paragraph 11 of the Rules provides that:

"(a) Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding."

The language of the Registration Agreement for all the disputed domain names is Chinese.

The Complainant requested that the language of the proceeding be English for the following main reasons:

- (i) the Complainant and its representative are unable to communicate in the Chinese language;
- (ii) translating the Complaint into Chinese would cause an undue burden on the Complainant and unnecessarily delay the proceeding;
- (iii) the disputed domain names and the websites to which the disputed domain names resolve are in the English language; and
- (iv) the Respondent has been determined to be familiar with English by previous UDRP panelists.

The Respondent did not comment on the language of the proceeding.

The Panel cites the following with approval: "Thus, the general rule is that the parties may agree on the language of the administrative proceeding. In the absence of this agreement, the language of the Registration Agreement shall dictate the language of the proceeding. However, the Panel has the discretion to decide otherwise having regard to the circumstances of the case. The Panel's discretion must be exercised judicially in the spirit of fairness and justice to both parties taking into consideration matters such as command of the language, time, and costs. It is important that the language finally decided by the Panel for the proceeding is not prejudicial to either one of the parties in his or her abilities to articulate the arguments for the case". (See *Groupe Auchan v. xmxzl*, WIPO Case No. [DCC2006-0004](#)).

Having considered the above factors, the Panel determines that English should be the language of the proceeding. The Panel notes that the disputed domain names resolve to websites in English, that the Respondent has not participated in this proceeding, and that all of the Center's communications with the Parties have been sent in English and Chinese. The Panel also needs to ensure the proceeding is conducted in a timely and cost-effective manner. In addition, in the absence of an objection by the Respondent, the Panel does not find it procedurally efficient to have the Complainant translate the Complaint into Chinese.

## 6.2 Substantive Issues

### A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

It is well-established that 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 (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.9). The disputed domain names which incorporate the Complainant's marks in their entirety and contain a single letter typo, add a single letter typo, or transpose two letters in relation to the Complainant's mark and are all clear misspellings of the Complainant's ROOMS TO GO mark. They are all therefore typosquatting attempts by the Respondent which do not avoid a finding of confusing similarity between the Complainant's mark and the disputed domain names.

Further, it is well established that the addition of a generic Top-Level Domain ("gTLD") ".com" does not avoid a finding of confusing similarity between the Complainant's trademark and the disputed domain names (see [WIPO Overview 3.0](#), section 1.11.1).

Consequently, the Panel finds that the Complainant has shown that the disputed domain names are confusingly similar to a trademark in which the Complainant has rights.

### B. Rights or Legitimate Interests

Once the complainant establishes a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain names, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the disputed domain names (see [WIPO Overview 3.0](#), section 2.1).

In the present case, the Complainant has demonstrated *prima facie* that the Respondent lacks rights or legitimate interests in respect of the disputed domain names and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant has provided evidence that it owns trademark registrations of the ROOMS TO GO mark long before the date that the disputed domain names were registered and that the Complainant is not affiliated with nor has it licensed or otherwise permitted the Respondent to use the Complainant's trademark (see *LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master*, WIPO Case No. [D2010-0138](#)).

The Complainant also provided evidence that the Respondent is not commonly known by any of the disputed domain names (see [WIPO Overview 3.0](#), section 2.3).

Further, the Respondent did not submit a Response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain names which would be sufficient to rebut the Complainant's *prima facie* case.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

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

The complainant must also show that the respondent registered and is using the disputed domain names in bad faith (see Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Respondent's websites under the disputed domain names resolve to parked webpages which use the Complainant's ROOMS TO GO mark and display what appears to be comprising pay-per-click ("PPC") links purporting to offer Rooms To Go locations, a Rooms To Go credit card and links to purchase competing products to those of the Complainant's. It has been held by prior UDRP panels that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users. (See [WIPO Overview 3.0](#), section 2.9).

Further, the disputed domain names incorporate typosquatting variations of the Complainant's ROOMS TO GO mark which the Panel finds is an attempt by the Respondent to confuse and/or mislead Internet users seeking or expecting the Complainant. Some of these include one letter typo, others adding one letter and in one last case transposing two letters. Previous UDRP panels ruled that in such circumstances "a likelihood of confusion is presumed, and such confusion will inevitably result in the diversion of Internet traffic from the Complainant's site to the Respondent's site" (see *Edmunds.com, Inc v. Triple E Holdings Limited*, WIPO Case No. [D2006-1095](#)). To this end, prior UDRP panels have established that attracting Internet traffic by using a domain name that is identical or confusingly similar to create a likelihood of confusion with a registered trademark may be evidence of bad faith under paragraph 4(b)(iv) of the Policy. Further, the Complainant has submitted evidence which shows that the Respondent registered the disputed domain names long after the Complainant registered the ROOMS TO GO trademark. Given the evidence presented to the Panel, the Panel finds that it is highly likely that the Respondent was aware of the Complainant and its ROOMS TO GO trademark at the time of registering the disputed domain names and specifically targeted the Complainant and its goodwill.

In addition, the Respondent did not submit a Response in this proceeding. Under the circumstances of this case, this is an additional indication of the Respondent's bad faith, which was considered by the Panel.

Accordingly, given the particular circumstances of this case, the reputation of the Complainant's trademark, and based on the evidence presented to the Panel, including the registration of the disputed domain names long after the registration of the Complainant's trademark, the typosquatting nature of the disputed domain names and confusing similarity with the Complainant's trademark, the Respondent's use of the disputed domain names and the failure of the Respondent to submit a response, and the fact that there is no plausible good faith use the Respondent can put the disputed domain names to, the Panel draws the inference that the disputed domain names were registered and are being used in bad faith.

Accordingly, having regard to the circumstances of this particular case, the Panel finds that the Complainant has met its burden under paragraph 4(a)(iii) 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, <doomstogo.com>, <eoomstogo.com>, <froomstogo.com>, <roimstogo.com>, <roomastogo.com>, <roomkstogo.com>, <roommtogo.com>, <roomstago.com>, <roomstlgo.com>, <roomstobo.com>, <roomstoco.com>, <roomstogol.com>, <roomstogor.com>, <roomstomgo.com>, <roomstoto.com>, <roomstrogo.com>, <roomswtogo.com>, and <roomtsogo.com> be transferred to the Complainant.

*/Jonathan Agmon/*

**Jonathan Agmon**

Sole Panelist

Date: January 20, 2023