

ADMINISTRATIVE PANEL DECISION

Yardi v. 杨智超 (Zhi Chao Yang)

Case No. D2023-0707

1. The Parties

Complainant is Yardi, United States of America (“USA” or “U.S.”), represented by ZeroFox, USA.

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

2. The Domain Names and Registrars

The disputed domain names <yardibreezr.com>, <yardibreze.com>, and <yardiibreeze.com> are registered with Chengdu West Dimension Digital Technology Co., Ltd.; and the disputed domain names <comyardibreeze.com>, <myyardibreeze.com>, <wwwyardibreeze.com>, <yardibreeze.com>, <yardibeeze.com>, <yardibereze.com>, <yardibreeez.com>, <yardibreeeze.com>, <yardibreese.com>, <yardibreexe.com>, <yardibreezee.com>, <yardibreezes.com>, <yardibreezw.com>, <yardibreezze.com>, <yardibrerze.com>, <yardibrewze.com>, <yardibrezee.com>, <yardibreeze.com>, <yardibrweze.com>, <yardibteeze.com>, <yardirbeeze.com>, <yardireeze.com>, <yardivreeze.com>, <yardlbreeze.com>, and <yyardibreeze.com> are registered with Cloud Yuqu LLC (collectively the “Registrars”).

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 15, 2023. On February 16, 2023, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On February 20, 2023, the Registrars transmitted by email to the Center the verification responses disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to Complainant on February 20, 2023 providing the registrant and contact information disclosed by the Registrars, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint in English on March 2, 2023.

On February 20, 2023, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. Complainant requested that English be the language of the proceeding on March 2, 2023. 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 Respondent in English and Chinese of the Complaint, and the proceedings commenced on March 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 26, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on March 27, 2023.

The Center appointed Yijun Tian as the sole panelist in this matter on April 18, 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

A. Complainant

Complainant, Yardi, is a multinational company incorporated in California, USA. It specializes in developing software for the real estate industry. It is an international organization, with a presence in more than thirty countries throughout North America, the Middle East, Europe and Oceania.

Complainant is the owner of numerous YARDI and YARDI BREEZE trademarks (hereinafter collectively YARDI mark) in 41 countries, including the U.S. Trademark YARDI registered on March 11, 1997 (the U.S. Trademark registration number 2042681), the Chinese Trademark YARDI registered on March 21, 2014 (the Chinese Trademark registration number 11608123), the International Trademark YARDI registered on October 28, 2019 (the international registration number 1518881), and the European Union ("EU") Trade Mark YARDI BREEZE registered on April 19, 2021 (the EU registration number 18336348) (Annex 3 to the Complaint).

B. Respondent

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

The disputed domain names <yardibreezr.com>, <yardibreze.com>, <yardiibreeze.com>, <comyardibreeze.com>, <myyardibreeze.com>, <wwwyardibreeze.com>, <yardibbreeze.com>, <yardibeeze.com>, <yardibereze.com>, <yardibreeez.com>, <yardibreeeze.com>, <yardibreese.com>, <yardibreexe.com>, <yardibreezee.com>, <yardibreezes.com>, <yardibreezw.com>, <yardibreeze.com>, <yardibrerze.com>, <yardibrewze.com>, <yardibrezee.com>, <yardibreeze.com>, <yardibrweze.com>, <yardibteeze.com>, <yardirbeeze.com>, <yardireeze.com>, <yardivreeze.com>, <yardibreeze.com>, and <yyardibreeze.com> were registered by Respondent on October 17, 2022.

All the disputed domain names resolve to a parking page with pay-per-click ("PPC") links. All the associated parking pages display similar webpage contents and similar PPC links to various third-party goods and services.

5. Parties' Contentions

A. Complainant

Complainant contends that all the disputed domain names are confusingly similar to Complainant's YARDI BREEZE trademark. All the disputed domain names incorporate the YARDI BREEZE mark or the misspelling of Complainant's YARDI BREEZE mark in its entirety or with the addition of the terms "com", "my", "www" or "w" under the generic Top-Level Domain ("gTLD") ".com". The variations of Complainant's YARDI BREEZE mark or the addition of the terms are not sufficient to eliminate the confusing similarity. The gTLD ".com" is irrelevant when assessing whether a domain name is identical or confusingly similar to a mark as it is a functional element.

Complainant contends that Respondent has no rights or legitimate interests in the disputed domain names.

Complainant contends that the disputed domain names were registered and are being used in bad faith.

Complainant requests that the disputed domain names be transferred to it.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

6.1. Preliminary Issue: Language of the Proceeding

The language of the Registration Agreements for the disputed domain names was registered is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement. From the evidence presented on the record, no agreement appears to have been entered into between Complainant and Respondent to the effect that the language of the proceeding should be Chinese. Complainant initially filed its Complaint in English, and has requested that English be the language of the proceeding for the following reasons:

- (a) The disputed domain names are written using Latin characters rather than Chinese script. The disputed domain name also contains variations of the common English word "breeze". While this word is part of a trademark and is arbitrary in nature related to Complainant's brand name, it demonstrates knowledge in English and its typography enough to create clear variations of the same word.
- (b) Complainant, while its trademark is known and used in commerce worldwide, is headquartered in the USA, and the primary domain is written in English. Even the section of Complainant's website for Asia is written in English, requiring without external assistance working knowledge of the language to become accommodated with their services.
- (c) All disputed domain names which are live direct the consumer to a parked page with ads. These ads are all in English and lead to searches of similar services to Complainant, which are also in English. By this, Respondent is familiar with the primary language of Complainant and is knowledgeable enough to leverage it with similar ads.
- (d) Complainant's primary arguments are centered around the typographical nature of the disputed domain names, of which Chinese script differs from the facts of this case. While Respondent has demonstrated sufficient knowledge of English with the points above, Complainant is not familiar with the Chinese language and would be disadvantaged should the proceedings not be in English.

Respondent did not make any submissions with respect to the language of the proceeding and did not object to the use of English as the language of the proceeding.

Paragraph 11(a) of the Rules allows the panel to determine the language of the proceeding having regard to all the circumstances. In particular, 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 other words, it is important to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes (*Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. Ltd.*, WIPO Case No. [D2008-0293](#); *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#)). The language finally decided by the panel for the proceeding should not be prejudicial to either one of the parties in its abilities to articulate the arguments for the case (*Groupe Auchan v. xmxzl*, WIPO Case No. [DCC2006-0004](#)). Section 4.5.1 of the [WIPO Overview 3.0](#) further states:

“Noting the aim of conducting the proceedings with due expedition, paragraph 10 of the UDRP Rules vests a panel with authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case.

Against this background, panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios include (i) evidence showing that the respondent can understand the language of the complaint, (ii) the language/script of the domain name particularly where the same as that of the complainant’s mark, (iii) any content on the webpage under the disputed domain name, (iv) prior cases involving the respondent in a particular language, (v) prior correspondence between the parties, (vi) potential unfairness or unwarranted delay in ordering the complainant to translate the complaint, (vii) evidence of other respondent-controlled domain names registered, used, or corresponding to a particular language, (viii) in cases involving multiple domain names, the use of a particular language agreement for some (but not all) of the disputed domain names, (ix) currencies accepted on the webpage under the disputed domain name, or (x) other indicia tending to show that it would not be unfair to proceed in a language other than that of the registration agreement.” (See also *L’Oreal S.A. v. MUNHYUNJA*, WIPO Case No. [D2003-0585](#)).

On the record, Respondent is located in China and is thus presumably not a native English speaker. However, considering the following, the Panel has decided that English should be the language of the proceeding: (a) all the disputed domain names include Latin characters and English words, rather than Chinese scripts; (b) all the disputed domain names resolve to websites in English, rather than in Chinese; (c) the Center has notified Respondent of the proceeding in both Chinese and English; and (d) the Center informed the Parties, in English and Chinese, that it would accept a Response in either English or Chinese, but none was filed.

Accordingly, the Panel finds the choice of English as the language of the present proceeding is fair to both Parties and is not prejudicial to either one of the Parties in its ability to articulate the arguments for this case. Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that English shall be the language of the proceeding, and the decision will be rendered in English.

6.2. Substantive Issues

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that the disputed domain names should be cancelled or transferred:

- (i) the disputed domain names registered by Respondent are identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

On the basis of the evidence introduced by Complainant and in particular with regard to the content of the relevant provisions of the Policy (paragraphs 4(a)-(c)), the Panel concludes as follows:

A. Identical or Confusingly Similar

The Panel finds that Complainant has rights in the YARDI BREEZE mark acquired through registration and use. The YARDI BREEZE marks have been registered in the U.S. since 1997, and registered in China since 2014.

In relation to the disputed domain names <comyardibreeze.com>, <myyardibreeze.com>, <yardibreezee.com>, <yardibreezes.com>, <wwwyardibreeze.com>, and <yyardibreeze.com>, the Panel finds that they comprise the YARDI BREEZE mark in its entirety. They only differ from Complainant’s trademark by the extra letter(s) “com”, “my”, “e”, “s”, “www”, or “y”. This does not compromise the recognizability of Complainant’s mark within the disputed domain names, nor prevent a finding of confusing

similarity between Complainant's registered trademark and the disputed domain names (*Decathlon v. Zheng Jianmeng*, WIPO Case No. [D2019-0234](#)).

In relation to the disputed domain names <yardibreezr.com>, <yardibreze.com>, <yardiibreeze.com>, <yardibbreeze.com>, <yardibeeze.com>, <yardibereze.com>, <yardibreeez.com>, <yardibreeeze.com>, <yardibreese.com>, <yardibreexe.com>, <yardibreezw.com>, <yardibrezze.com>, <yardibrerze.com>, <yardibrewze.com>, <yardibrezee.com>, <yardibrreeze.com>, <yardibrweze.com>, <yardibteeze.com>, <yardirbeeze.com>, <yardireeze.com>, <yardivreeze.com>, and <yardlbreeze.com>, the Panel finds that the essential part of disputed domain names ("YARDI BREEZE") is a merely misspelling of Complainant's trademark YARDI BREEZE. Section 1.9 of the [WIPO Overview 3.0](#) states: "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. [...] This stems from the fact that the domain name contains sufficiently recognizable aspects of the relevant mark." As the essential part of these disputed domain names ("YARDI BREEZE") is a mere misspelling of Complainant's YARDI BREEZE mark, the Panel finds that the disputed domain names must be considered a prototypical example of typosquatting and it does not prevent a finding of confusing similarity between these disputed domain names and the YARDI BREEZE mark.

Further, in relation to the gTLD suffix, [WIPO Overview 3.0](#) further states: "The applicable Top-Level Domain ('TLD') in a domain name (e.g., '.com', '.club', '.nyc') is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test." ([WIPO Overview 3.0](#), section 1.11.1.)

The Panel, therefore, holds that the Complaint fulfils the first condition of paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that Respondent has rights or legitimate interests in the disputed domain name:

- (i) before any notice to Respondent of the dispute, the use by Respondent of, or demonstrable preparations to use, the disputed domain names or a name corresponding to the disputed domain names in connection with a *bona fide* offering of goods or services; or
- (ii) Respondent has been commonly known by the disputed domain names, even if Respondent has acquired no trademark or service mark rights; or
- (iii) Respondent is making a legitimate noncommercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish Complainant's trademarks.

The overall burden of proof on this element rests with the complainant. However, it is well established by previous UDRP panel decisions that once a complainant establishes a *prima facie* case that a respondent lacks rights or legitimate interests in a domain name, the burden of production shifts to the respondent to rebut complainant's contentions. If the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. (*Danzas Holding AG, DHL Operations B.V. v. Ma Shikai*, WIPO Case No. [D2008-0441](#); [WIPO Overview 3.0](#), section 2.1, and cases cited therein).

Complainant has rights in the YARDI BREEZE marks in the U.S. since 1997 and in China since 2014, which precede Respondent's registrations of all the disputed domain names (2022). According to the Complaint, Complainant is a multinational company incorporated in California, USA. It specializes in developing software for the real estate industry. It is an international organization, with a presence in more than thirty countries throughout North America, the Middle East, Europe and Oceania.

Complainant asserts that it has not authorized Respondent to use its YARDI BREEZE marks, and Respondent is not a licensee of Complainant. Complainant has therefore established a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain names and thereby shifted the burden to Respondent to produce evidence to rebut this presumption (*The Argento Wine Company Limited*

v. Argento Beijing Trading Company, WIPO Case No. [D2009-0610](#); *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

Based on the following reasons the Panel finds that Respondent has no rights or legitimate interests in the disputed domain names:

- (a) There has been no evidence adduced to show that Respondent is using the disputed domain names in connection with a *bona fide* offering of goods or services. Respondent has not provided evidence of legitimate use of the disputed domain name or reasons to justify the choice of the term “YARDI BREEZE” or a misspelled version of the term “YARDI BREEZE” in the disputed domain names. There has been no evidence to show that Complainant has licensed or otherwise permitted Respondent to use the YARDI BREEZE marks or to apply for or use any domain names incorporating the YARDI BREEZE marks;
- (b) There has been no evidence adduced to show that Respondent has been commonly known by the disputed domain names. There has been no evidence adduced to show that Respondent has any registered trademark rights with respect to the disputed domain names. Respondent registered the disputed domain names in 2022, long after the YARDI BREEZE marks became internationally known. The disputed domain names are confusingly similar to Complainant’s YARDI BREEZE marks;
- (c) There has been no evidence adduced to show that Respondent is making a legitimate noncommercial or fair use of the disputed domain names. The disputed domain names resolve to parking pages with PPC links.

The Panel finds that Respondent has failed to produce any evidence to rebut Complainant’s *prima facie* case. The Panel, therefore, holds that the Complaint fulfils the second condition of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out four circumstances which, without limitation, shall be evidence of the registration and use of the disputed domain names in bad faith, namely:

- (i) circumstances indicating that Respondent has registered or acquired the disputed domain names primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to Complainant who is the owner of the trademark or service mark or to a competitor of Complainant, for valuable consideration in excess of Respondent’s documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) Respondent has registered the disputed domain names in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- (iii) Respondent has registered the disputed domain names primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the disputed domain names, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent’s websites or other online location, by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of Respondent’s websites or location or of a product or service on the websites or location.

The Panel concludes that the circumstances referred to in paragraph 4(b)(iv) of the Policy are applicable to the present case and upon the evidence of these circumstances and other relevant circumstances, it is adequate to conclude that Respondent has registered and used the disputed domain names in bad faith.

(a) Registered in Bad Faith

The Panel finds that Complainant has a widespread reputation in the YARDI BREEZE marks with regard to its products or services. Complainant has registered its YARDI BREEZE marks in the U.S. since 1997, and in China since 2014. As introduced above, Complainant, Yardi, is a multinational company incorporated in California, USA. It specializes in developing software for the real estate industry. It is an international organization, with a presence in more than thirty countries throughout North America, the Middle East, Europe and Oceania. All the disputed domain names were registered (in 2022) after Complainant's registration of YARDI BREEZE marks (since 1997). It is not conceivable that Respondent would not have had actual notice of Complainant's trademark rights at the time of the registration of the disputed domain names.

Moreover, Respondent has chosen not to respond to Complainant's allegations. According to the UDRP decision in *The Argento Wine Company Limited v. Argento Beijing Trading Company, supra*, "the failure of Respondent to respond to the Complaint further supports an inference of bad faith". See also *Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. [D2002-0787](#).

Thus, the Panel concludes that the disputed domain names were registered in bad faith.

(b) Used in Bad Faith

Respondent is using the website parking pages resolved by the disputed domain names to provide PPC links. All the associated parking pages displayed PPC links to various third-party goods and services. Thus, the Panel concludes that Respondent is using the confusingly similar disputed domain names with the intention to attract, for commercial gain, Internet users to Respondent's websites.

Given the reputation of the YARDI BREEZE marks, the Panel finds that the public is likely to be confused into thinking that the disputed domain names have a connection with Complainant, contrary to the fact. There is a strong likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the websites to which the disputed domain names resolve. In other words, Respondent has through the use of the confusingly similar disputed domain names created a likelihood of confusion with the YARDI and YARDI BREEZE marks.

The Panel, therefore, concludes that the disputed domain names were registered and are being used by Respondent in bad faith. Such use of the disputed domain names is also disruptive in relation to the interests of Complainant.

In summary, Respondent, by choosing to register and use the disputed domain names, which are confusingly similar to the YARDI BREEZE mark, intended to ride on the goodwill of this trademark in an attempt to exploit, for commercial gain, Internet users destined for Complainant. In the absence of evidence to the contrary and rebuttal from Respondent, the choice of the disputed domain names and the conducts of Respondent as far as the websites to which the disputed domain names resolve are indicative of registration and use of the disputed domain names in bad faith.

The Panel, therefore, holds that the Complaint fulfils the third condition of paragraph 4(a) of the Policy.

7. Decision

For all 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 <yardibreezr.com>, <yardibrreze.com>, <yardiibreeze.com>, <comyardibreeze.com>, <myyardibreeze.com>, <wwwyardibreeze.com>, <yardibbreeze.com>, <yardibeeeze.com>, <yardibereze.com>, <yardibreeez.com>, <yardibreeeze.com>, <yardibreese.com>, <yardibreexe.com>, <yardibrezee.com>, <yardibrezees.com>, <yardibreew.com>, <yardibrezee.com>, <yardibrzeze.com>, <yardibrewze.com>, <yardibrezee.com>, <yardibrezeze.com>, <yardibrweze.com>, <yardibteeze.com>, <yardirbeeze.com>, <yardireeze.com>, <yardivreeze.com>, <yardlbreeze.com>, and <yyardibreeze.com> be transferred to Complainant.

/Yijun Tian/

Yijun Tian

Sole Panelist

Dated: May 23, 2023