

## ADMINISTRATIVE PANEL DECISION

Klauber and Company Inc. v. 郭瑞媛 (Guo RuiYuan), 武汉煌行网络科技有限公司 (WuHanHuangHangWangLuoKeJiYouXianGongSi)  
Case No. D2023-5319

### 1. The Parties

The Complainant is Klauber and Company Inc., United States of America (“United States”), represented by Pollack Law, P.C, United States.

The Respondent is 郭瑞媛 (Guo RuiYuan), 武汉煌行网络科技有限公司 (WuHanHuangHangWangLuoKeJiYouXianGongSi), China.

### 2. The Domain Name and Registrar

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

### 3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on December 21, 2023. On December 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 25, 2023, 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 (John Doe) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 26, 2023, 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 December 26, 2023.

On December 26, 2023, the Center informed the parties in Chinese and English, that the language of the registration agreement for the disputed domain name is Chinese. On December 26, 2023, the Complainant confirmed its request that English 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 in English and Chinese of the Complaint, and the proceeding commenced on January 3, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 23, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 24, 2024.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on January 26, 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**

##### **A. Complainant**

The Complainant is a company incorporated in the United States and a producer of mushroom coffee dietary and nutritional products, marketed and sold under the trade mark EVERY DAY DOSE (the "Trade Mark"), including via the Complainant's website at "www.everydaydose.com".

The Complainant is the owner of United States registration No. 6181863 registered on the Supplemental Register as a standard text mark for the Trade Mark, with a registration date of October 20, 2020.

##### **B. Respondent**

The Respondent is located in China.

##### **C. The Disputed Domain Name**

The disputed domain name was registered on October 9, 2023.

##### **D. Use of the Disputed Domain Name**

The disputed domain name was previously resolved to an English language fake copy of the Complainant's website (the "Website").

As at the date of this Decision, the disputed domain name is no longer resolved to an active website.

#### **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 Respondent has engaged in typosquatting, and has used the disputed domain name in respect of the Website for unlawful and fraudulent means, including phishing. The Complainant also relies on evidence of customers being deceived by the disputed domain name and by the Website, and contacting the Complainant for clarification, and to request the Complainant to take action against the Respondent and the Website.

##### **B. Respondent**

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

## **6. Discussion and Findings**

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

The language of the Registration Agreement for the disputed domain name 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 several reasons, including the fact that the English language content of the Website demonstrates that the Respondent speaks English.

The Respondent did not comment on the Complainant's language request, did not file any response, and has taken no part in this 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 Elements of the Policy**

#### **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 trade mark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. The Panel notes the Complainant's Trade Mark is listed on the United States Supplemental Register. Based on the evidence submitted in the Complaint, the Panel finds that the Complainant has shown the secondary meaning in its Trade Mark, and established its rights in the Trade Mark under the Policy. [WIPO Overview 3.0](#), section 1.2.2. The fact that the Respondent is shown to have been targeting the Complainant's Trade Mark (hosting fraudulent content) further supports that the Complainant's Trade Mark has achieved significance as a source identifier. [WIPO Overview 3.0](#), sections 1.3 and 1.15.

The entirety of the mark is reproduced within the disputed domain name and adds an "s" which is a clear attempt at typosquatting. Accordingly, the disputed domain name is confusingly similar to the 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.

Having reviewed the available 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.

Panels have held that the use of a domain name for illegal activity (here, claimed as phishing or impersonation), or other types of fraud, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

Panels have held that the use of a domain name for illegal activity (here, claimed as phishing or impersonation), or other types of fraud, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration – the mark plus an "s" which is a clear attempt at typosquatting and seeks to confuse users – and use of the disputed domain name constitutes bad faith under the Policy.

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 name <everydaydoses.com> be transferred to the Complainant.

*/Sebastian M.W. Hughes/*

**Sebastian M.W. Hughes**

Sole Panelist

Date: February 9, 2024