

ADMINISTRATIVE PANEL DECISION

Allergy Partners, P.L.L.C. v. 杨智超 (Yang Zhi Chao)
Case No. D2022-2043

1. The Parties

The Complainant is Allergy Partners, P.L.L.C., United States of America (“United States”), represented by Nelson Mullins Riley & Scarborough, LLP, United States.

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

2. The Domain Names and Registrar

The disputed domain names <aallergypartners.com>, <allergypartnera.com>, <allergypartnerd.com>, <allergypartnerrr.com>, <allergypartnerss.com>, <allergypartnerts.com>, <allergyppartners.com>, <allergyypartners.com>, <comallergypartners.com>, <myallergypartners.com>, and <wwwallergypartners.com> (together, the “Domain Names”) are each registered with eName Technology Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 6, 2022. On June 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On June 10, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on June 10, 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 June 10, 2022.

On June 10, 2022, 2022, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant requested that English be the language of the proceeding on June 10, 2022. 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 June 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 7, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 8, 2022.

The Center appointed Karen Fong as the sole panelist in this matter on July 13, 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 is a medical specialty practice in allergy, asthma, and immunology with multiple locations in the United States. It has a current network of 173 providers with over 125 offices across 20 states. Since 1994, the Complainant and its predecessors in title have provided services under the trade mark ALLERGY PARTNERS. The ALLERGY PARTNERS trade mark is registered in the United States including under United States Registration No. 4955397, registered on May 10, 2016 (the "Trade Mark").

The Complainant's website is connected to the domain name <allergypartners.com>.

The Respondent, who is based in China, registered 10 Domain Names on May 18, 2022, and the Domain Name <allergypartnerst.com> on June 2, 2022. The Domain Names all resolve to pay-per-click webpages with link headings such as: "Allergy Doctor", "Allergy Specialist", and "Allergy & Immunology Doctor Near Me". Some of these links then resolve to third party companies which provide competing services to those of the Complainant (the "Websites").

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Names are confusingly similar to the Trade Mark, that the Respondent has no rights or legitimate interests with respect to the Domain Names, and that the Domain Names were registered and are being used in bad faith. The Complainant requests transfer of the Domain Names.

B. Respondent

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

6. Discussion and Findings

A. General

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the Domain Names, the Complainant must prove each of the following, namely that:

- (i) The Domain Names are identical or confusingly similar to the trade marks or service marks in which the Complainant has rights; and
- (ii) The Respondent has no rights or legitimate interests in respect of the Domain Names; and
- (iii) The Domain Names were registered and are being used in bad faith.

B. Language of the Proceeding

The Rules, paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement, the language of the 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. According to the information received from the Registrar, the language of the Registration Agreement for the Domain Names is Chinese.

The Complainant submits that the language of the proceeding should be English for the following reasons:

- the Domain Names are in Latin alphabet;
- the Trade Mark is in English;
- the Websites' sponsored links are in English;
- the Respondent has been named in previous UDRP proceedings, most of which have been conducted in English; and
- the Complainant, based in the United States, is unable to communicate in Chinese and would be put to great expense and inconvenience to have to translate the Complaint and its evidence in Chinese, which would cause undue delay.

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.

The Panel accepts the Complainant's submissions regarding the language of the proceeding. The Respondent has not challenged the Complainant's language request and in fact has failed to file a response. The Panel is also mindful of the need to ensure the proceeding is conducted in a timely and cost effective manner. In this case, the Complainant may be unduly disadvantaged by having to conduct the proceeding in Chinese. The Panel notes that all of the communications from the Center to the Parties were transmitted in both Chinese and English. In all the circumstances, the Panel determines that English be the language of the proceeding.

C. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has established that it has registered rights to the Trade Mark.

The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the trade mark and the domain name to determine whether the domain name is confusingly similar to the trade mark. The test involves a side-by-side comparison of the domain name and the textual components of the relevant trade mark to assess whether the mark is recognizable within the domain name.

In this case, some of the Domain Names comprise of various misspellings of the Trade Mark, and some of the Domain Names incorporate the Trade Mark in its entirety with additional letters or terms. It is well established that domain names which consist of a common, obvious, or intentional misspelling of a trade mark is considered to be confusingly similar to the relevant mark for the purposes of the first element. This stems from the fact that the domain name contains sufficiently recognizable aspects of the relevant mark (see section 1.9 of the [WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition \("WIPO Overview 3.0"\)](#)). Moreover, as the Trade Mark is clearly recognizable in the Domain Names where it is wholly incorporated, the addition of letters or terms does not prevent a finding of confusing similarity (section 1.8 of the [WIPO Overview 3.0](#)).

For the purposes of assessing identity or confusing similarity under paragraph 4(a)(i) of the Policy, it is permissible for the Panel to ignore the generic Top-Level Domain (“gTLD”), which in this case is “.com”. It is viewed as a standard registration requirement (section 1.11.1 of the [WIPO Overview 3.0](#)).

The Panel finds that the Domain Names are confusingly similar to the Trade Mark in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy therefore are fulfilled.

D. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights or legitimate interests in the disputed domain name by demonstrating any of the following:

(i) before any notice to it of the dispute, the respondent’s use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) the respondent has been commonly known by the domain name, even if it has acquired no trade mark or service mark rights; or

(iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers, or to tarnish the trade mark or service mark at issue.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name, it is well established that, as it is put in section 2.1 of the [WIPO Overview 3.0](#) that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests. Once such a *prima facie* case is made, the burden of production shifts to the respondent to come forward with appropriate evidence demonstrating rights or legitimate interests in the domain name. If the respondent does come forward with some evidence of relevant rights or legitimate interests, the panel weighs all the evidence, with the burden of proof always remaining on the complainant.

The Complainant contends that the Respondent is not commonly known by the Domain Names. It has not authorised, licensed, or otherwise permitted the Respondent to use the Trade Mark in the Domain Names or for any other purpose. Further, the display of pay-per-click links on the Websites do not constitute a *bona fide* offering of goods or services or legitimate noncommercial or fair use of the Domain Names in these circumstances.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for a reply from the Respondent. The Respondent has not responded and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the Domain Names.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Names.

E. Registered and Used in Bad Faith

To succeed under the Policy, the Complainant must show that the Domain Names have been both registered and used in bad faith. It is a double requirement.

The Panel is satisfied that the Respondent must have been aware of the Trade Mark when he registered the Domain Names given the reputation of the Trade Mark, the fact that the registration of the Trade Mark predates the registration of the Domain Names, and the Domain Names are almost identical to the Complainant’s domain name of its official website.

In the [WIPO Overview 3.0](#), section 3.2.2 states as follows:

“Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant’s mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant’s mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent’s claim not to have been aware of the complainant’s mark.”

There is a clear absence of rights or legitimate interests coupled with no explanation for the Respondent’s choice of the Domain Name are also significant factors to consider (as stated in section 3.2.1 of the [WIPO Overview 3.0](#)). In light of the above, the Panel finds that the Respondent deliberately registered the Domain Names in bad faith.

The Panel also finds that the actual use of the Domain Names is in bad faith. The Websites are pay-per-click sites that include links to third party companies, providing competing services to those of the Complainant, which have been set up for the commercial benefit of the Respondent. It is highly likely that Internet users when typing the Domain Names into their browser, or finding them through a search engine would have been looking for a site operated by the Complainant rather than the Respondent. The Domain Names are likely to confuse Internet users trying to find the Complainant’s website.

The Respondent employs the reputation of the Trade Mark to mislead users into visiting the Websites instead of the Complainant’s. From the above, the Panel concludes that the Respondent intentionally attempted to attract for commercial gain, by misleading Internet users into believing that the Respondent’s Websites are that of or authorised or endorsed by the Complainant. The Panel therefore concludes that the Domain Names were registered and are being used in bad faith under paragraph 4(b)(iv) of the Policy.

The Panel also notes that a number of UDRP cases concerning other third party brand owners where the Respondent has been the named respondent and those domain names have been ordered to be transferred. These include *Syneos Health LLC v. 杨智超 (Zhichao Yang)*, WIPO Case No. [D2021-2731](#), *Granicus, LLC v. 杨智超 (Zhichao Yang)*, WIPO Case No. [D2021-2844](#), *Corning Incorporated v. 杨智超 (Zhichao Yang)*, WIPO Case No. [D2021-4227](#), *CenterPoint Energy, Inc. v. 杨智超 (Zhichao Yang)*, WIPO Case No. [D2021-4046](#). This is an indication that the Respondent is a serial cybersquatter and is engaged in a pattern of bad faith conduct (section 3.1.2 of the [WIPO Overview 3.0](#)).

The Panel finds that the Domain Names were registered and are being used in bad faith.

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 Domain Names, <aallergypartners.com>, <allergypartnera.com>, <allergypartnerd.com>, <allergypartnerrs.com>, <allergypartnerss.com>, <allergypartnerst.com>, <allergypartner.com>, <allergypartner.com>, <comallergypartners.com>, <myallergypartners.com>, and <wwwallergypartners.com>, be transferred to the Complainant.

/Karen Fong/

Karen Fong

Sole Panelist

Date: July 20, 2022