

ADMINISTRATIVE PANEL DECISION

NinjaOne, LLC v. Yang Zhi Chao (杨智超)
Case No. D2022-2577

1. The Parties

The Complainant is NinjaOne, LLC, United States of America (“United States”), represented by Kendall Pfeifer, United States.

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

2. The Domain Name and Registrar

The disputed domain name <ninarmm.com> is 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 July 14, 2022. On July 15, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 18, 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 August 18, 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 July 19, 2022.

On July 18, 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 July 19, 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 July 25, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 14, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 15, 2022.

The Center appointed Douglas Clark as the sole panelist in this matter on August 23, 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 company specializing in providing remote monitoring and management (RMM) software and software-as-a-service (SaaS). It is headquartered in the United States and has offices in Berlin, London, and Sydney.

The Complainant owns several trade mark registrations for NINJARMM in the United States, European Union, Australia, and New Zealand, including the following:

Jurisdiction	Registration No.	Registration Date
United States	6038690	April 21, 2020
European Union	018154324	March 13, 2020
Australia	2065991	September 8, 2020
New Zealand	1139825	January 31, 2020

The disputed domain name <ninarmm.com> was registered on May 16, 2022. At the date of the Complaint, the disputed domain name resolved to a webpage containing pay-per-click-links to third party websites for “RMM Software”, “RMM Tools”, and “Patch Management”.

The Respondent is an individual based in China.

5. Parties' Contentions

A. Complainant

The Complainant contends that:

- (a) The disputed domain name is confusingly similar to its trade mark on the basis that it is an intentional misspelling of NINJARMM by the mere omission of the letter “j”;
- (b) The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not affiliated with the Complainant in any way and the Complainant has never granted any authorization or license to the Respondent to use the Complainant’s trade mark. The Respondent is not commonly known by the disputed domain name, and has not made a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name. The disputed domain name is being used to provide links to products competitive with the Complainant’s products; and
- (c) The disputed domain name was registered and is being used in bad faith. The Respondent has registered the disputed domain name that is confusingly similar to the NINJARMM trade mark primarily to attract Internet users for commercial gain by the deliberate misspelling of the Complainant’s trade mark. The Respondent has registered the disputed domain name to prevent the Complainant from reflecting its trade mark in a domain name. The Respondent is a serial cybersquatter who has registered numerous domain names of well-known brands.

The Complainant requests the cancellation of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Issues – Language of the Proceeding

According to paragraph 11(a) of the Rules, 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.

In this case, the language of the Registration Agreement for the disputed domain name is Chinese. There is no agreement between the Complainant and the Respondent regarding the language of the proceeding. The Respondent did not respond as to the language of the proceeding. The Complainant has filed its Complaint in English and has requested that English be the language for the proceeding under the following grounds:

- (a) The language/script of the disputed domain name is the same as that of the Complainant's mark (English);
- (b) The content of the webpages under the disputed domain name is in English;
- (c) The content of the Privacy Policy provided on the webpage is in English;
- (d) The Respondent has been the respondent in 15 other UDRP cases conducted in English; and
- (e) Translation of the Complaint would be expensive and delay the proceedings.

In accordance with paragraph 11(a) of the Rules and taking into consideration paragraph 10(b) and (c) of the Rules, the Panel hereby determines that the language of the proceeding shall be in English after considering the grounds cited by the Complainant.

Further, this Panel decided in *Zappos.com, Inc. v. Zufu aka Huahaotrade*, WIPO Case No. [D2008-1191](#), that a respondent's failure to respond to a preliminary determination by the Center as to the language of the proceeding "should, in general, be a strong factor to allow the Panel to decide to proceed in favour of the language of the Complaint".

6.2 Substantive Issues

The Complainant must satisfy all three elements of paragraph 4(a) of the Policy in order to succeed in its action:

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

A. Identical or Confusingly Similar

The Panel finds that the disputed domain name <ninarmm.com> is confusingly similar to the Complainant's trade mark. The disputed domain name reproduces the NINJARM trade mark in its entirety save for the removal of the letter "j". The misspelling of the Complainant's trade mark does not prevent a finding of confusing similarity. The generic Top-Level Domain ("gTLD") ".com" is generally disregarded when considering the first element. (See section 1.11.1 of WIPO Overview of WIPO Panel Views on Selected

UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#))).

The Panel notes that the Complainant did not rely on any registered trade marks in China where the Respondent is located. The ownership of a trade mark is generally considered to be a threshold standing issue. The location of the trade mark, its date of registration (or first use) and the goods and/or services for which it is registered, are all irrelevant for the purpose of finding rights in a trade mark under the first element of the UDRP. These factors may however bear on a panel’s further substantive determination under the second and third elements. (See section 1.1.2 of [WIPO Overview 3.0](#))).

The Complainant has therefore satisfied the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

The Complainant asserts that the Respondent has no business with and is in no way affiliated with the Complainant. The Respondent is not authorized nor licensed to use the Complainant’s NINJARMM trade mark or to apply for registration of the disputed domain name. There is no evidence that the Respondent is commonly known by the name “ninarmm”.

There is also no other evidence that the Respondent has used or is planning to use the disputed domain name for a *bona fide* offering of goods or services. Instead, it is providing click through links to pages of the Complainant’s competitors.

The Respondent has not asserted any rights or legitimate interests in relation to the disputed domain name.

Section 2.1 of the [WIPO Overview 3.0](#) provides:

“While 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 often impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.”

The Panel finds that the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests, which has not been rebutted by the Respondent. Accordingly, the Respondent has no rights or legitimate interests in regard to the disputed domain name.

The Complainant has therefore satisfied the second element under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Based on the given evidence, the disputed domain name was registered and is being used in bad faith.

The disputed domain name was registered long after the Complainant has registered the NINJARMM trade mark. Given the click through links to competitors of the Complainant, the use of a domain name very similar the Complainant’s NINJARMM trade mark cannot be a coincidence. The Panel is satisfied that the Respondent was aware of the Complainant and its NINJARMM trade mark when it registered the disputed domain name.

It also appears to the Panel that the Respondent has registered the disputed domain name for commercial gain in accordance with paragraph 4(b)(iv) of the Policy. The disputed domain name directs to a webpage containing pay-per-click links which generate revenue or commission for the Respondent.

Finally, the Respondent registered numerous domain names incorporating famous brands and has been named as a respondent in numerous previous UDRP cases. In all the previous cases, the domain name at issue was transferred to the complainant. The Respondent's past pattern of conduct shows bad faith on the part of the Respondent in this proceeding.

For the above reasons, the Panel finds that the disputed domain name was registered and is being used in bad faith.

The Complainant has therefore 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 <ninarmm.com> be cancelled.

/Douglas Clark/

Douglas Clark

Sole Panelist

Date: September 8, 2022