

## **ADMINISTRATIVE PANEL DECISION**

ChannelAdvisor Corporation v. Chen Gang  
Case No. D2022-4014

### **1. The Parties**

The Complainant is Channel Advisor Corporation, United States of America (the “US”), represented by Hutchison PLLC, US.

The Respondent is Chen Gang, Singapore.

### **2. The Domain Name and Registrar**

The disputed domain name <hk-channeladvisor-agency.com> is registered with Name.com, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 26, 2022. On October 27, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 31, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 of the Complaint, and the proceedings commenced on November 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 24, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 25, 2022.

The Center appointed Taras Kyslyy as the sole panelist in this matter on December 5, 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 US company, which provides cloud-based e-commerce software. The Complainant owns a number of registrations for its CHANNELADVISOR trademark in various jurisdictions, including, for instance, US registration No. 2,602,395, registered on July 30, 2002. The Complainant runs its website at “https://www.channeladvisor.com”.

The disputed domain name was registered on September 23, 2022, and resolves to a webpage in Chinese language prominently featuring the Complainant’s trademark and suggesting Internet users to login or register new account requiring personal information of a user.

#### 5. Parties’ Contentions

##### A. Complainant

The disputed domain name is identical or confusingly similar to the Complainant’s trademark. The disputed domain name subsumes the whole of the Complainant’s trademark adding only the geographic indicator “hk” to the beginning, and the descriptive term “agency” to the end of the disputed domain name. The use of the “hk” geographic indicator and the descriptive term “agency” in the disputed domain name does nothing to distinguish it from the Complainant’s trademark. The Complainant’s trademark is even highlighted within the disputed domain name because it is offset by the internal “-”, which further heightens the similarities between the uses.

The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent’s use of the disputed domain name has no connection with a *bona fide* offering of goods or services. Users are asked to pay the Respondent a certain amount of money with the expectation that this money will be refundable, and the user will have an opportunity to earn commissions based on completing certain task for the Respondent. However, the Respondent does not pay out any of the “earned commissions” or refund amounts paid by users. The Complainant has been unable to identify any legitimate product or service offerings by the Respondent. The Complainant has been contacted by multiple individuals who mistakenly believe the Complainant is responsible for the website at the disputed domain name. From these complaints, the Complainant has learned of at least one individual who was defrauded out of 400,000 HKD by the Respondent. The Respondent’s only business interest is attempting to create an association with the Complainant and the Complainant’s registered trademarks and using that association to defraud users of money. This is evidenced through the confusing similarity between the disputed domain name and the Complainant’s trademark and the Respondent’s use of the Complainant’s logo mark within its webpage.

The disputed domain name was registered and is being used in bad faith. The Respondent registered the disputed domain name in bad faith with the express intent to trade-off the goodwill associated with the Complainant’s well-known trademark. The disputed domain name was registered well after the Complainant had widely used and established broad consumer recognition in its trademark. The Respondent has demonstrated its awareness of the Complainant and its trademark rights mark prior to its registration of the disputed domain name. From its inception, the Respondent has used the Complainant’s trademark and logo on the website associated with the disputed domain name without authorization. There is no legitimate need for the Respondent to adopt and use the Complainant’s trademark as part of the disputed domain name, except to trade off the goodwill associated with the Complainant. The Complainant’s trademark is not phrasing that would typically be used by an entity as an adjective in the ordinary course of business. While one could be a “channel advisor” there is no such thing in common usage as a “HK ChannelAdvisor Agency.” The use of the unitary phrase “channeladvisor”, with a geographic indicator and descriptive term can only signify an intent to create an association with the Complainant and its trademark. The disputed domain name is not affiliated with any potential or ongoing legitimate business and is being used as part of an effort by the Respondent to fraudulently collect money from unsuspecting users. The disputed domain name is intended to disrupt Complainant’s business and lead to personal gain of the Respondent misleading and misdirecting web traffic intended for the Complainant. The Respondent is intentionally attempting to

trade-off the goodwill the Complainant has created in its trademark in an effort to get users to trust the website associated with the disputed domain name and sign up for the Respondent's fraudulent program. The Respondent, through its use of the Complainant's trademark and logo, is creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the Respondent and the Respondent's website. The Complainant has already been contacted by multiple individuals assuming the Complainant is responsible for the websites associated with the disputed domain name.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **A. Identical or Confusingly Similar**

According to section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the "[WIPO Overview 3.0](#)") the applicable gTLD 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. Thus, the Panel disregards gTLD ".app" for the purposes of the confusing similarity test.

According to section 1.7 of the [WIPO Overview 3.0](#), in cases where a domain name incorporates the entirety of a trademark the domain name will normally be considered identical or confusingly similar to that mark for purposes of UDRP standing. The Panel finds that in the present case the disputed domain name incorporates the entirety of the Complainant's trademark.

According to section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The Panel finds that in the present case the addition of terms "hk", "agency", and two hyphens do not prevent finding confusing similarity of the disputed domain name and the Complainant's trademark.

Considering the above the Panel finds the disputed domain name is confusingly similar to the Complainant's trademark, therefore, the Complainant has established its case under paragraph 4(a)(i) of the Policy.

### **B. Rights or Legitimate Interests**

The Complainant has established *prima facie* that the Respondent has no rights or legitimate interests in the disputed domain name.

Furthermore, the Respondent provided no evidence that it holds rights or legitimate interests in the disputed domain name.

According to section 2.13.1 of the [WIPO Overview 3.0](#), panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. According to section 2.13.2 of the [WIPO Overview 3.0](#), panels are generally not prepared however to accept merely conclusory or wholly unsupported allegations of illegal activity, even when the respondent is in default. In the present case, the Complainant did not provide any evidence to support its statement that some user was defrauded by the Respondent, including complaints of individuals mentioned by the Complainant. Thus, the Panel have no grounds to confirm the fraud by the Respondent.

The available evidence confirm, however, that the Complainant did not license or otherwise agree for use of its prior registered trademarks by the Respondent, thus no actual or contemplated *bona fide* or legitimate use of the disputed domain name could be reasonably claimed (see, e.g., *Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. D2014-1875).

The disputed domain name resolves to a website prominently using the Complainant's trademark and logo to make the Internet users believe that they actually access the website owned or authorized by the Complainant. Past UDRP panels confirmed that such actions prove registrant has no rights or legitimate interests in a disputed domain name (see *Daniel C. Marino, Jr. v. Video Images Productions, et al.*, WIPO Case No. D2000-0598, *Houghton Mifflin Co. v. Weatherman, Inc.*, WIPO Case No. D2001-0211).

Considering the above the Panel finds the Respondent does not have rights or legitimate interests in the disputed domain name. Therefore, the Complainant has established its case under paragraph 4(a)(ii) of the Policy.

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

According to section 3.2.2 of the WIPO Overview 3.0 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. In the present case, the Respondent shortly after registration of the disputed domain name incorporating the Complainant's trademark placed a website prominently featuring the Complainant's trademark and logo. The Panel finds that the nature of the disputed domain name and its use confirms the Respondent knew or should have known of the Complainant's prior trademark rights, which confirms the bad faith.

According to paragraph 4(b)(iv) of the Policy the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith: by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location. In this case, the disputed domain name resolves to a website prominently featuring the Complainant's trademark and logo and falsely pretending to be owned or authorized by the Complainant's to intentionally attract Internet users by creating likelihood of confusion with the Complainant's trademark as to the source of the website and its services. The Panel finds the above confirms the disputed domain name was registered and used in bad faith.

According to section 3.4 of the WIPO Overview 3.0 Panels have held that the use of a domain name for purposes other than to host a website may constitute bad faith. Many such cases involve the respondent's use of the domain name to send deceptive emails, e.g., to obtain sensitive or confidential personal information from prospective job applicants, or to solicit payment of fraudulent invoices by the complainant's actual or prospective customers. The Panel finds that in the present case the use of the disputed domain name to collect users' personal information constitutes bad faith.

The Respondent ignored its invitation to comment to the contrary and provide any good explanations to prove its good faith while registering and using the disputed domain name.

Considering the above the Panel finds the disputed domain name was registered and is being used in bad faith. Therefore, the Complainant has established its case 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 name <hk-channeladvisor-agency.com> be transferred to the Complainant.

*/Taras Kyslyy/*

**Taras Kyslyy**

Sole Panelist

Date: December 19, 2022