

## ADMINISTRATIVE PANEL DECISION

L'Occitane International SA v. Yang Zhi Chao (杨智超)  
Case No. D2022-4408

### 1. The Parties

The Complainant is L'Occitane International SA, Luxembourg, represented by IP Twins, France.

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

### 2. The Domain Name and Registrar

The disputed domain name <erboria.com> is registered with eName Technology Co., Ltd. (the "Registrar").

### 3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on November 18, 2022. On the same day, the Center transmitted by email to the Registrar a request for verification in connection with the disputed domain name. On November 21, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name that differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on the same day, 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 November 22, 2022.

On November 21, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On November 22, 2022, the Complainant confirmed its request that English be the language of the proceeding. 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 November 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 18, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 20, 2022.

The Center appointed Matthew Kennedy as the sole panelist in this matter on December 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 part of the L'Occitane group, which manufactures and retails cosmetics and well-being products. The L'Occitane group markets various brands, including the Erborian skin care brand, which it acquired in 2012. The term "Erborian" is derived from the French words "Herbes de l'Orient" or their English equivalent "Herbs of the Orient". The Complainant holds multiple trademark registrations, including the following:

- United States of America trademark registration number 3357694 for ERBORIAN, registered on December 18, 2007, specifying cosmetic creams and other goods in class 3;
- European Union trademark registration number 005632799 for ERBORIAN, registered on December 3, 2010, specifying cosmetics and other goods in class 3; and
- International trademark registration number 1295774 for ERBORIAN and device, registered on January 19, 2016, designating jurisdictions that include China, and specifying goods and services in classes 18, 21, 24, and 35.

The above trademark registrations remain current. The Complainant also operates Erborian social media accounts on Facebook and Instagram.

The Respondent is an individual resident in China.

The disputed domain name was registered on May 23, 2022. It is offered for sale on a domain name broker's website in English, which displays an asking price of USD 7,999 to "buy now" and also invites offers, with the minimum offer being USD 3,999. According to the evidence, at the time when the Complaint was filed, the disputed domain name resolved to a webpage displaying a single Pay-Per-Click ("PPC") link unrelated to the disputed domain name. At the time of this decision, it does not resolve to any active website; rather, it is passively held.

#### **5. Parties' Contentions**

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

The disputed domain name is confusingly similar to the Complainant's ERBORIAN mark.

The Respondent has no rights or legitimate interests with respect to the disputed domain name. The Respondent has acquired no trademark rights in Erborian or Erboria. The Respondent imitates the Complainant's prior trademark with no license or authorization from the Complainant. The disputed domain name merely resolves to a page displaying commercial PPC links.

The disputed domain name was registered and is being used in bad faith. The Complainant's ERBORIAN trademarks are so well known that it is inconceivable that the Respondent ignored the Complainant or its earlier rights. The Respondent's choice of the disputed domain name cannot have been accidental and must have been influenced by the fame of the Complainant and its earlier trademarks. The use of PPC links that trade off the goodwill of the Complainant cannot constitute a good faith use. Furthermore, the disputed domain name appears to be offered for sale. Regardless of the amount requested by the Respondent for the disputed domain name, the mere fact that he is actively trying to make commercial gain off the

reproduction of the Complainant's trademark is a contributory evidence factor to his use of the disputed domain name in bad faith. The Respondent is an experienced cybersquatter and has engaged in a pattern of behavior of reproducing registered trademarks in domain names without authorization, which is another element proving his bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

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

Paragraph 11(a) of the Rules provides that "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". The Registrar confirmed that the Registration Agreement for the disputed domain name is in Chinese.

The Complainant requests that the language of the proceeding be English. Its main arguments are that it does not understand Chinese, whereas the Respondent offered the disputed domain name for sale on a platform that is only available in English, due to which the Complainant expects that he understands English.

Paragraphs 10(b) and (c) of the Rules require the Panel to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding take place with due expedition. Prior UDRP panels have decided that the choice of language of the proceeding should not create an undue burden for the parties. See, for example, *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#); *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. ltd.*, WIPO Case No. [D2008-0293](#).

The Panel observes that the Complaint and amended Complaint in this proceeding were filed in English. Despite the Center having sent emails regarding the language of the proceeding, and the notification of Complaint and commencement of administrative proceeding, in both Chinese and English, the Respondent did not comment on the language of the proceeding or express any interest in otherwise participating in this proceeding. Therefore, the Panel considers that requiring the Complainant to translate the Complaint into Chinese would create an undue burden and delay whereas accepting the Complaint in English does not cause prejudice to either Party.

Having considered all the circumstances above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English. The Panel would have accepted a Response in Chinese, but none was filed.

### **6.2 Analysis and Findings**

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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

Based on the evidence presented, the Panel finds that the Complainant has rights in the ERBORIAN mark and the ERBORIAN and device mark.

The disputed domain name incorporates an obvious misspelling of the ERBORIAN mark, and the textual element of the ERBORIAN and device mark, omitting only the final letter “n”. This is an example of typosquatting. The disputed domain name contains sufficient recognizable aspects of the marks to be considered confusingly similar to them. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.9.

Given that the figurative elements of the ERBORIAN and device mark cannot be reflected in a domain name, the Panel will not consider those elements further in the comparison with the disputed domain name. See [WIPO Overview 3.0](#), section 1.10.

The only additional element in the disputed domain name is a generic Top-Level Domain (“gTLD”) extension (“.com”). As a standard requirement of domain name registration, this element may be disregarded in the comparison between the Complainant’s marks and the disputed domain name for the purposes of the first element of paragraph 4(a) of the Policy. See [WIPO Overview 3.0](#), section 1.11.

Therefore, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy.

## B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the Panel, shall demonstrate that the Respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

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

As regards the first and third circumstances set out above, the disputed domain name consists of a misspelling of the ERBORIAN mark and formerly resolved to a webpage displaying a single PPC link. The link operated for the commercial gain of the Respondent, if he was paid to direct traffic to the linked website, or for the commercial gain of the operator of the linked website, or both. At the present time, the disputed domain name is passively held. In the Panel’s view, this evidence constitutes a *prima facie* case that the disputed domain name is not being used in connection with a *bona fide* offering of goods or services and that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name.

As regards the second circumstance set out above, the Respondent’s name is listed in the Registrar’s Whois database as “Yang Zhi Chao (杨智超)”, not the disputed domain name. There is no evidence indicating that the Respondent has been commonly known by the disputed domain name.

In summary, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent failed to rebut that *prima facie* case because he did not respond to the Complaint.

Therefore, based on the record of this proceeding, the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

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

Paragraph 4(b) of the Policy provides that certain circumstances shall be evidence of the registration and use of a domain name in bad faith. The first and fourth of these are as follows:

(i) circumstances indicating that [the Respondent has] registered or [the Respondent has] acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of [the Respondent's] documented out-of-pocket costs directly related to the domain name; and

(iv) by using the [disputed] domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] 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 [the respondent's] web site or location or of a product or service on [the respondent's] website or location.

With respect to registration, the disputed domain name was registered in 2022, years after the registration of the Complainant's ERBORIAN trademarks including, in the case of the ERBORIAN and device mark, in China, where the Respondent is resident. Although ERBORIAN is derived from dictionary words, it is a coined term, yet the disputed domain name incorporates it, omitting only the final "n". As far as the Panel is aware, the term "Erboria" in the disputed domain name has no meaning other than as an approximation of the ERBORIAN mark. The webpage to which the disputed domain name formerly resolved had no apparent connection to the disputed domain name. The Respondent provides no explanation for his choice of the disputed domain name. Further, according to evidence presented by the Complainant, multiple panels in previous proceedings under the Policy have found that the Respondent registered and was using in bad faith other domain names, which often incorporated misspelt versions of third party trademarks. In view of these circumstances, the Panel finds it more likely than not that the Respondent targeted the Complainant's ERBORIAN marks when he registered the disputed domain name.

With respect to use, the disputed domain name formerly resolved to a webpage displaying a single PPC link while simultaneously being advertised for sale on a broker's website for USD 7,999, although offers are invited of at least USD 3,999. The Panel considers it likely that this minimum offer exceeds the Respondent's out-of-pocket costs directly related to the disputed domain name. In any case, the Respondent does not document any such costs. In view of these circumstances, the Panel considers it likely that the Respondent has registered the disputed domain name primarily for the purpose of selling the registration to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the disputed domain name, within the terms of paragraph 4(b)(i) of the Policy.

Further, the disputed domain name appears to have been intended to attract Internet users who misspell the ERBORIAN mark in an Internet browser. Given these circumstances and the findings in Section 6.2B above, the Panel finds that the Respondent is using the disputed domain name intentionally to attract, for commercial gain, Internet users to his webpage by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of his webpage, within the terms of paragraph 4(b)(iv) of the Policy.

The Panel takes note that the use of the disputed domain name has now changed, and that it no longer resolves to an active webpage. This change in use does not alter the Panel's conclusion and may be a further indication of bad faith.

Therefore, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant has satisfied the third element in 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 <erboria.com> be transferred to the Complainant.

*/Matthew Kennedy/*

**Matthew Kennedy**

Sole Panelist

Date: January 6, 2023