

ADMINISTRATIVE PANEL DECISION

New Relic, Inc. v. 杨智超 (Zhi Chao Yang)

Case No. D2023-0291

1. The Parties

The Complainant is New Relic, Inc., United States of America (“United States”), represented by SafeNames Ltd., United Kingdom.

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

2. The Domain Name and Registrar

The disputed domain name <newreilc.com> (“Disputed Domain Name”) is registered with Cloud Yuqu LLC (the “Registrar”).

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 23, 2023. On January 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On January 27, 2023, the Registrar transmitted by email to the Center its verification response registrant and contact information for the Disputed Domain Name which differed from the named Respondent (Redacted For Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 27, 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 the same day.

On January 27, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On the same day, 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 of the Complaint in English and Chinese, and the proceedings commenced on February 2, 2023. In accordance

with the Rules, paragraph 5, the due date for Response was February 22, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 23, 2023.

The Center appointed Kar Liang Soh as the sole panelist in this matter on March 3, 2023. 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 leading software-as-a-service provider of application performance management tools from the United States. The Complainant started operations in 2008 under the trademark NEW RELIC and has office locations across the United States, Europe, the Middle East, Asia and Oceania. The Complainant is regarded as a top performer in its field and has received accolades in the industry. The Complainant operates online from its website at "www.newrelic.com" which advertises its commercial offerings and provides learning resources. The website averaged over 2.2 million visits a month between October and December 2022.

The Complainant owns various registrations for the trademark NEW RELIC around the world, including:

Jurisdiction	Registration No	Registration Date
United States	3626844	May 26, 2009
European Union	014798532	March 14, 2016
International	1436031	August 24, 2018

In addition, the Complainant is the holder of various domain name registrations including <newrelic.com>, <newrelic.co.uk>, <newrelic.in>, <newrelic.jp> and <newrelic.app>. The Complainant's social media platforms include "www.linkedin.com/company/new-relic-inc-", "www.twitter.com/newrelic", "www.facebook.com/NewRelic", "www.instagram.com/newrelic/" and "www.youtube.com/user/NewRelicInc".

The Respondent appears to be an individual. The Respondent's registered email address is associated with over 23,000 domain name registrations. The Respondent's name is associated with 55 other domain name registrations including <googleplay.com>, <amazonstorecreditcard.com> and <facebookk.co>. The Respondent is also the respondent of past UDRP proceedings (e.g., *Earthbound Holding, LLC v 杨智超 (Zhi Chao Yang)*, WIPO Case No. [D2022-0332](#)). Beyond the above and the Registrar's verification, little else is known about the Respondent.

The Disputed Domain Name was registered on October 17, 2022. The Disputed Domain Name resolved to a parking website featuring prominent banner links entitled "Apm Tools", "Application Performance Monitoring" and "Application Performance Management". The Complainant sent a cease and desist letter through the Registrar's domain contact form but did not receive a reply.

5. Parties' Contentions

A. Complainant

The Complainant contends that:

a) The Disputed Domain Name is confusingly similar to the Complainant's trademark NEW RELIC. The Complainant holds many registrations for the trademark NEW RELIC in multiple jurisdictions. The Disputed Domain Name is identical to the trademark NEW RELIC save for the transposition of the letters "l" and "i".

The trademark NEW RELIC remains clearly recognizable in the Disputed Domain Name;

b) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Respondent has not registered any trademarks for “newrelic”, “newreilc” or any similar term. There is no evidence that the Respondent has unregistered trademark rights in any such term. The Respondent is not known, or has ever been known, by the trademark NEW RELIC, “newreilc” or anything similar. The Respondent is not connected to or affiliated with the Complainant. The Respondent has not been licensed by the Complainant to use the trademark NEW RELIC or register domain names featuring it. The Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name. The links on the website resolved from the Disputed Domain Name relate to and capitalize on the renown of the trademark NEW RELIC by advertising competing services. The Disputed Domain Name is a typosquatting arrangement of the trademark NEW RELIC; and

c) The Disputed Domain Name was registered and is being used in bad faith. The earliest trademark registration for NEW RELIC predates the Disputed Domain Name by over 13 years. The trademark NEW RELIC can easily be found on publicly accessible trademark databases. The top results of a Google search for the trademark NEW RELIC point to the Complainant’s offerings. Searches for “newreilc” similarly points to the same results. The Respondent has used the Disputed Domain Name to intentionally divert Internet users. The Respondent has engaged in a pattern of abusive conduct by register domain names encompassing well-known brands. The Respondent is a serial cybersquatter.

B. Respondent

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

6. Discussion and Findings

6.1 Language of Proceeding

The language of the Registration Agreement in this proceeding is Chinese. The default language of the proceeding is accordingly Chinese subject to the Panel’s authority under paragraph 11(a) of the Rules to determine otherwise having regard to the circumstances of the proceeding.

The Complainant has requested that English be adopted in place of Chinese as the language of proceeding. Having considered the circumstances, the Panel grants the Complainant’s request taking into consideration the following factors:

- (a) The Complainant is located in the United States and is unfamiliar with Chinese. The Complainant would have to incur additional translation expenses and delay should the language of the proceeding be Chinese;
- (b) The Disputed Domain Name resolves to an English-language website, indicating that the Respondent has an understanding of English;
- (c) The Complaint has already been submitted in English;
- (d) The Panel is bilingual and would be competent to deal with submissions from both Parties in English and/or Chinese;
- (e) Although the Respondent has been notified in English and Chinese of the language of the proceeding and the commencement of the proceeding, the Respondent has neither objected to the Complainant’s request nor participated in the proceedings by filing a Response in either Chinese or English; and
- (f) No procedural benefit would be achieved by maintaining the default language of the proceeding. On the other hand, doing so would cause undue delay to the proceeding.

6.2 Discussion

A. Identical or Confusingly Similar

In view of the Complainant's registrations for the trademark NEW RELIC, the Panel is satisfied that the Complainant has rights in it. The Panel agrees with the Complainant that the trademark NEW RELIC remains highly recognizable in the Disputed Domain Name despite its transposition of the letters "l" and "i" compared to the trademark NEW RELIC. As outlined in section 1.11.1 of the WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), the generic Top-Level Domain ("gTLD") ".com" should be disregarded in analysing the similarity between the Disputed Domain Name and the trademark NEW RELIC. The Panel does not see any special circumstances in the proceeding which warrant a departure from this consensus view. As such, the Panel holds that the first limb of paragraph 4(a) of the Policy is established.

B. Rights or Legitimate Interests

The Complainant has stated categorically that it did not license the Respondent to use the trademark NEW RELIC or register it in the Disputed Domain Name. The Complainant also denied any connection or affiliation with the Respondent. There is no evidence before the Panel to suggest that the Respondent is commonly known by the Disputed Domain Name. The Panel is persuaded that the website resolved from the Disputed Domain Name is nothing more than a mere parking page and not a legitimate noncommercial or fair use of the Disputed Domain Name. The Complainant has accordingly established a *prima facie* case that the Respondent has no rights or legitimate interests in the Disputed Domain Name. The burden of production having shifted to the Respondent to show otherwise, the Respondent has failed to discharge the burden by failing to submit any Response. The *prima facie* case stands and the second limb of paragraph 4(a) of the Policy is also established.

C. Registered and Used in Bad Faith

Paragraph 4(b)(iv) of the Policy provides an example of bad faith registration and use as follows:

"by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location."

Having considered the circumstances, the Panel agrees with the Complainant that the Respondent could not have been unaware of the Complainant or the trademark NEW RELIC. The titles of the banner links on the website resolved from the Disputed Domain Name clearly refer to services associated with the Complainant's services. It is unquestionably obvious to the Panel that the Respondent must have registered the Disputed Domain Name for the purpose of directing traffic to the Respondent's website for commercial gain by creating a likelihood of confusion with the trademark NEW RELIC as to source, sponsorship, affiliation, or endorsement within the meaning of paragraph 4(b)(iv). On these circumstances alone, the Complainant has demonstrated the Respondent's bad faith in registration and use the Disputed Domain.

The evidence of the Respondent's prolific domain name registrations is nothing short of astounding to the Panel. The globally-recognisable brand names in the registrations for <googlelplay.com>, <amazonstorecreditcard.com> and <facebookk.co> are unmistakably recognizable and indicative of bad faith signifying pattern of conduct described in paragraph 4(b)(ii) of the Policy, namely:

"you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct."

In the circumstances, the Panel holds that the Disputed Domain Name is registered and is being used in bad faith within the meaning of the third limb of 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, <newreilc.com>, be transferred to the Complainant.

/Kar Liang Soh/

Kar Liang Soh

Sole Panelist

Date: April 17, 2023