

## **ADMINISTRATIVE PANEL DECISION**

24-7 Bright Star Healthcare, LLC v. 杨智超 (Zhichao Yang)  
Case No. D2022-2643

### **1. The Parties**

The Complainant is 24-7 Bright Star Healthcare, LLC, United States of America (“United States”), represented by DLA Piper US LLP, United States.

The Respondent is 杨智超 (Zhichao Yang), China.

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

The disputed domain names <beightstarcare.com>, <brghtstarcare.com>, <brighrstarcare.com>, <brightatarcare.com>, <brightsatrcare.com>, <brightstarcaare.com>, <brightstarcsre.com>, <brightstarvare.com>, <brightstracare.com>, <brughtstarcare.com>, and <nrightstarcare.com> are registered with Alibaba Cloud Computing (Beijing) Co., Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint was originally filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on July 20, 2022 involving 51 domain names. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On July 22, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. On the same day, the Center sent an email communication to the Complainant, 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 27, 2022.

On July 22, 2022, the Center also transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On July 27, 2022, the Complainant submitted 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 August 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 21, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 22, 2022.

40 domain names were withdrawn from this dispute on September 20, 2022, at the request of the Complainant, as they had expired during this proceeding.

The Center appointed Matthew Kennedy as the sole panelist in this matter on September 26, 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 provides medical staffing and related assistance services. It holds multiple trademark registrations for BRIGHTSTAR CARE, including the following:

- United States trademark registration number 3,608,701, registered on April 21, 2009, amended on September 8, 2015, specifying services in classes 39, 43, 44, and 45. This registration disclaims the exclusive right to use "care" apart from the mark as shown;
- United States trademark registration number 4,042,547, registered on October 18, 2011, specifying services in classes 35, 39, 43, 44, and 45, with a claim of first use in commerce in April 2011. This registration disclaims the exclusive right to use "care" apart from the mark as shown; and
- International trademark registration number 1033676, registered on December 11, 2009, specifying services in classes 35, 39, 43, 44, and 45 and designating multiple jurisdictions.

The above trademark registrations remain current. The Complainant has also registered the domain name <brightstarcare.com> that it uses in connection with a website that prominently displays the BRIGHTSTAR CARE mark and provides information about the Complainant and its services.

The Respondent is an individual resident in China.

The disputed domain names were all registered on July 22, 2021. They all resolve to virtually identical landing pages that display pay-per-click ("PPC") links for Brightstar Home Care, Brightstar Home Health, and Homecare Agencies.

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

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

The disputed domain names are confusingly similar to the BRIGHTSTAR CARE mark. They are all minor misspellings of that mark.

The Respondent has no rights or legitimate interests in respect of the disputed domain names. The Complainant has not licensed or otherwise permitted the Respondent to use its mark or to apply for or use any domain name incorporating that mark.

The disputed domain names have been registered and are being used in bad faith. The Respondent registered more than 50 domain names that all incorporate the BRIGHTSTAR CARE mark. Typosquatting is evidence of relevant bad faith registration and use.

## 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 Agreements for the disputed domain names are in Chinese.

The Complainant requests that the language of the proceeding be English. Its main arguments are that the disputed domain names reproduce the name of a United States company, including the English word “care”, and that conducting the proceeding in Chinese would force the Complainant to incur additional costs and expenses.

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 the Parties an email regarding the language of the proceeding, and the Notification of the Complaint, in both Chinese and English, the Respondent did not comment on the language of the proceeding, nor object to the choice of English, nor express any interest in 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 Substantive Issues

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following elements with respect to each disputed domain name:

- (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 BRIGHTSTAR CARE mark.

The disputed domain names all incorporate the BRIGHTSTAR CARE mark with a minor spelling mistake, variously an additional letter, an omitted letter, a substituted letter, or two inverted letters (all examples of the practice of “typosquatting”). Given that the mark, albeit misspelt, is recognizable within the disputed domain names, the disputed domain names are confusingly similar for the purposes of standing under the first element of paragraph 4(a) of the Policy. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.9.

The only additional element in the disputed domain names is a generic Top-Level Domain (“gTLD”) extension, “.com”. As a standard requirement of domain name registration, a gTLD extension may be disregarded in the comparison between the disputed domain names and the Complainant’s trademark for the purposes of the first element of paragraph 4(a) of the Policy.

Therefore, the Panel finds that the disputed domain names are 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 names resolve to landing pages displaying PPC links to websites for the Complainant and other providers of the same types of services. Traffic directed via the landing pages presumably generates a commercial gain for the Respondent. The Complainant submits that it has not licensed or otherwise permitted the Respondent to use its BRIGHTSTAR CARE mark or to apply for or use any domain name incorporating that mark. The Panel does not consider this to be a use of the disputed domain names in connection with a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use of the disputed domain names.

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

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 names. 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 fourth of these is as follows:

(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] website or location or of a product or service on [the respondent's] website or location.

With respect to registration, the disputed domain names were registered years after the Complainant registered its BRIGHTSTAR CARE mark. The disputed domain names incorporate the mark with a minor spelling mistake in each case. There appears to be no other reason to register each disputed domain name than to approximate the domain name associated with the Complainant's website, which comprises the mark and a gTLD extension. Moreover, the disputed domain names (which were all registered on the same day) form a pattern that confirms the Respondent's intention was to target the BRIGHTSTAR CARE mark. Therefore, the Panel is persuaded that the Respondent was aware of the Complainant's trademark and registered it in the disputed domain names in bad faith.

With respect to use, the Respondent uses the disputed domain names in connection with landing pages that display PPC links to websites for the Complainant and other providers of the same types of services. The disputed domain names are evidently intended to take advantage of Internet users who inadvertently mistype the domain name associated with the Complainant's website in a browser. They are designed to attract Internet users by creating a likelihood of confusion with the Complainant's BRIGHTSTAR CARE mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's landing pages. This use is intentional and evidently for the Respondent's own commercial gain. Therefore, the Panel finds that the Respondent is using the disputed domain names in bad faith.

Accordingly, the Panel finds that the disputed domain names have been registered and are 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 names <beightstarcare.com>, <brghtstarcare.com>, <brighrstarcare.com>, <brightatarcare.com>, <brightsatrcare.com>, <brightstarcaare.com>, <brightstarsre.com>, <brightstarvare.com>, <brightstracare.com>, <brughtstarcare.com>, and <nrightstarcare.com> be transferred to the Complainant.

*/Matthew Kennedy/*

**Matthew Kennedy**

Sole Panelist

Date: October 8, 2022