

## **ADMINISTRATIVE PANEL DECISION**

Dewberry Engineers Inc. v. Yang Zhi Chao (杨智超)  
Case No. D2022-2857

### **1. The Parties**

The Complainant is Dewberry Engineers Inc., United States of America (“United States”), represented by McCandlish Lillard, P.C., United States.

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

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

The disputed domain name <dewberryfar.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 August 3, 2022. On August 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 4, 2022, the Registrar transmitted by email to the Center its verification response disclosing the 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 5, 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 August 8, 2022.

On August 5, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On August 8, 2022, the Complainant submitted a 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 proceeding commenced on August 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 31, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 1, 2022.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on September 6, 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**

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

The Complainant is a company headquartered in the State of Virginia in the United States, providing engineering, architecture, and real estate services in the United States under the trade mark DEWBERRY (the "Trade Mark"), with more than 2,000 employees operating out of more than 50 locations, and annual revenue in 2021 of USD 488 million.

The Complainant is the owner of registrations in the United States for the Trade Mark, including United States registration No. 2,991,043, registered on September 6, 2005.

The Complainant promotes its services under the Trade Mark via its website at "www.dewberry.com".

##### **B. Respondent**

The Respondent is apparently an individual resident in China.

##### **C. The Disputed Domain Name**

The disputed domain name was registered on June 13, 2022.

##### **D. Use of the Disputed Domain Name**

The disputed domain name is resolved to an English language parking page with sponsored links relating to Christmas trees.

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

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

The Complainant contends that the disputed domain name is identical or confusingly similar to the Trade Mark; the Respondent has no rights or legitimate interests in respect of the disputed domain name; and the disputed domain name has been registered and is being used in bad faith.

##### **B. Respondent**

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

## 6. Discussion and Findings

### 6.1 Preliminary Issue: Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the Parties, or unless 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.

Paragraph 11(a) of the Rules allows the Panel to determine the language of the proceeding having regard to all the circumstances. In particular, it is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding, in order to ensure fairness to the Parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. Language requirements should not lead to an undue burden being placed on the Parties and undue delay to the proceeding (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

The Complainant has requested that the language of the proceeding be English for the following reasons:

- (i) the Registrar has an English language name;
- (ii) the Registration Agreement is available in both Chinese and English;
- (iii) the Complainant has communicated with the Registrar in English.

The Respondent did not file a response and did not file any submissions with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the Registration Agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both Parties, taking into account all relevant circumstances of the case, including matters such as the Parties' ability to understand and use the proposed language, time, and costs (see [WIPO Overview 3.0](#), section 4.5.1).

The factors relied upon by the Complainant in support of its language request do not address any of the relevant factors set out in [WIPO Overview 3.0](#), section 4.5.1.

Although there is insufficient evidence before the Panel to support a conclusion that the Respondent is conversant in English, the Panel notes that the Website is an English language website with English language sponsored links; that the Respondent has taken no part in this proceeding; and that all of the Center's communications with the Parties have been sent in English and Chinese.

The Panel is also mindful of the need to ensure the proceeding is conducted in a timely and cost effective manner.

In all the circumstances, the Panel, therefore, finds it is not foreseeable that the Respondent would be prejudiced, should English be adopted as the language of the proceeding.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

### 6.2 Substantive Elements of the Policy

The Complainant must prove each of the three elements in paragraph 4(a) of the Policy in order to prevail.

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

The Panel finds that the Complainant has rights in the Trade Mark acquired through use and registration.

The disputed domain name incorporates the entirety of the Trade Mark (see [WIPO Overview 3.0](#), section 1.7), followed by the word “far”.

Where a relevant trademark is recognizable within a disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless or otherwise) does not prevent a finding of confusing similarity under the first element (see [WIPO Overview 3.0](#), section 1.8).

The Panel, therefore, finds that the disputed domain name is confusingly similar to the Trade Mark.

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

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a disputed domain name:

- (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.

The Complainant has not authorized, licensed, or permitted the Respondent to register or use the disputed domain name or to use the Trade Mark. The Panel finds on the record that there is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and the burden is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that he has acquired any trademark rights in respect of the disputed domain name or that the disputed domain name has been used in connection with a *bona fide* offering of goods or services. On the contrary, the disputed domain name has been resolved, for commercial gain, to a parking page with sponsored links.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain name; and there has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

The Panel finds that the Respondent has failed to produce any evidence to rebut the Complainant’s *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Panel, therefore, finds that the Respondent lacks rights or legitimate interests in the disputed domain name and that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

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

Given the notoriety of the Complainant and its Trade Mark in particular in the engineering, architecture, and real estate fields; and the manner of the Respondent’s use of the disputed domain name referred to above; the Panel finds, in all the circumstances, that the requisite element of bad faith has been made out pursuant to paragraph 4(b)(iv) of the Policy.

The evidence suggests that the Respondent has targeted the Complainant in registering and using the disputed domain name; and that there cannot be any actual or contemplated good faith use of the disputed domain name by the Respondent.

For all the foregoing reasons, the Panel concludes that the disputed domain name has been registered and is being used in bad faith.

## **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 <dewberryfar.com> be transferred to the Complainant.

*/Sebastian M.W. Hughes/*

**Sebastian M.W. Hughes**

Sole Panelist

Dated: September 20, 2022