

## ADMINISTRATIVE PANEL DECISION

Dewberry Engineers Inc. v. 杨智超 (Zhi Chao Yang)  
Case No. D2022-5001

### 1. The Parties

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

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

### 2. The Domain Name and Registrar

The disputed domain name <dewberr.com> 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 December 27, 2022. On December 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 30, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (An Hui)<sup>1</sup> and contact information in the Complaint. The Center sent an email communication to Complainant on January 3, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint in English on January 5, 2023.

On January 3, 2023, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. Complainant requested that English be the language of the proceeding on January 5, 2023. 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”).

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<sup>1</sup> The Panel notes that the Complainant read the WHOIS report incorrectly; this is the entry in the registrant “state” field, but that in any event the Registrant Name was listed as “REDACTED FOR PRIVACY”.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent in English and Chinese of the Complaint, and the proceedings commenced on January 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 30, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on January 31, 2023.

The Center appointed Yijun Tian as the sole panelist in this matter on February 2, 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**

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

Complainant, Dewberry Engineers Inc., is a company incorporated in the U.S. Complainant is an engineering, architecture, real estate services, and emergency management firm which offers a wide variety of additional services and has more than fifty locations in the U.S.

Complainant has exclusive rights in DEWBERRY marks. Complainant is the exclusive owner of numerous DEWBERRY marks, including U.S. trademark registration for DEWBERRY as a literal term (typed drawing), registered on September 6, 2005 (registration number 2991043); and U.S. trademark registration for DEWBERRY (& design), registered September 6, 2005 (registration number 2991044) (Annexes 12-13 to the Complaint).

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

Respondent is 杨智超 (Zhi Chao Yang), China. The disputed domain name was registered on October 13, 2022, long after the DEWBERRY marks were registered. At the time of this decision, the disputed domain name resolves to a pay-per-click ("PPC") website in English, which contains links for services that compete with Complainant, including links labelled in English, such as "Structural Engineer Near Me", "Structural Engineer", and "Civil Engineering".

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

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

Complainant contends that the disputed domain name is confusingly similar to the DEWBERRY trademark. It omits only the letter "y" to form the operative portion of the disputed domain name "dewberr", rather than "dewberry". It does not sufficiently alter the overall impression of the two terms and therefore renders them to be confusingly similar in appearance.

Complainant contends that Respondent does not have any rights or legitimate interests in the disputed domain name.

Complainant contends that Respondent has registered and used the disputed domain name in bad faith.

Complainant requests that the disputed domain name be transferred to Complainant.

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

Respondent did not reply to Complainant's contentions.

## 6. Discussion and Findings

### 6.1. 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 specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement. From the evidence presented on the record, no agreement appears to have been entered into between Complainant and Respondent to the effect that the language of the proceeding should be English. Complainant filed initially its Complaint in English, and has requested that English be the language of the proceeding for the following main reasons:

- (a) The disputed domain name is an English language domain name.
- (b) Complainant is located in the U.S. and has no knowledge of Chinese and proceeding in Chinese would result in undue burden on Complainant.
- (c) It may also cause undue delay because Complainant would be required to hire a translator.

Respondent did not make any submissions with respect to the language of the proceeding and did not object to the use of English as the language of the 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 other words, it is important to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes (*Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. ltd.*, WIPO Case No. [D2008-0293](#); *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#)). The language finally decided by the panel for the proceeding should not be prejudicial to either one of the parties in its abilities to articulate the arguments for the case (*Groupe Auchan v. xmxzl*, WIPO Case No. [DCC2006-0004](#)). Section 4.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") further states:

"Noting the aim of conducting the proceedings with due expedition, paragraph 10 of the UDRP Rules vests a panel with authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case.

Against this background, panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios include (i) evidence showing that the respondent can understand the language of the complaint, (ii) the language/script of the domain name particularly where the same as that of the complainant's mark, (iii) any content on the webpage under the disputed domain name, (iv) prior cases involving the respondent in a particular language, (v) prior correspondence between the parties, (vi) potential unfairness or unwarranted delay in ordering the complainant to translate the complaint, (vii) evidence of other respondent-controlled domain names registered, used, or corresponding to a particular language, (viii) in cases involving multiple domain names, the use of a particular language agreement for some (but not all) of the disputed domain names, (ix) currencies accepted on the webpage under the disputed domain name, or (x) other indicia tending to show that it would not be unfair to proceed in a language other than that of the registration agreement." (See also *L'Oreal S.A. v. MUNHYUNJA*, WIPO Case No. [D2003-0585](#)).

The Panel has taken into consideration the facts that Complainant is a company from the U.S., and Complainant will be spared the burden of working in Chinese as the language of the proceeding. The Panel has also taken into consideration the fact that the disputed domain name consists of all Latin characters, and particularly a misspelled English word "dewberr" (a misspelling of "dewberry"), and is registered in the generic Top-Level Domain ("gTLD") space comprising of the Latin characters ".com" (*Compagnie Gervais*

*Danone v. Xiaole Zhang*, WIPO Case No. [D2008-1047](#)). The Panel also notes that the page at the disputed domain name is in English.

On the record, Respondent appears to be a Chinese resident and is thus presumably not a native English speaker. However, considering the following, the Panel has decided that English should be the language of the proceeding: (a) the disputed domain name consists of all Latin characters, and particularly a misspelled English word “dewberr” (whereby the letter “y” is omitted from the term “dewberry”), rather than Chinese script; (b) the gTLD of the disputed domain name is “.com”, so the disputed domain name seems to be prepared for users worldwide, particularly English speaking countries; (c) the disputed domain name resolves to an English website, which contains links labelled in English, such as “Structural Engineer Near Me”, “Structural Engineer”, and “Civil Engineering”; (d) the Center has notified Respondent of the proceeding in both Chinese and English, and Respondent has indicated no objection to Complainant’s request that English be the language of the proceeding; and (e) the Center informed the Parties, in English and Chinese, that it would accept a Response in either English or Chinese. The Panel would have accepted a response in Chinese, but none was filed.

Accordingly, the Panel finds the choice of English as the language of the present proceeding is fair to both Parties and is not prejudicial to either one of the Parties in its ability to articulate the arguments for this case. Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that English shall be the language of the proceeding, and the decision will be rendered in English.

## 6.2. Substantial Issues

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that the disputed domain name should be cancelled or transferred:

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

On the basis of the evidence introduced by Complainant and in particular with regard to the content of the relevant provisions of the Policy (paragraphs 4(a)-(c)), the Panel concludes as follows:

### A. Identical or Confusingly Similar

The Panel finds that Complainant has rights in the DEWBERRY marks. The DEWBERRY marks have been registered, see Section 4.A. above.

The Panel finds that the essential part of the disputed domain name “dewberr” differs from Complainant’s trademark DEWBERRY by only one letter – the letter “y” is omitted from the term “dewberry”. This does not prevent a finding of confusing similarity between Complainant’s registered trademarks and the disputed domain name (*Walgreen Co. v. Lin yanxiao / Linyanxiao*, WIPO Case No. [D2016-1605](#)).

Previous UDRP panels have consistently held that a domain name is identical or confusingly similar to a trademark for purposes of the Policy “when the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name”. (*Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale*, WIPO Case No. [D2000-0662](#)).

Moreover, as to “typosquatting”, section 1.9 of [WIPO Overview 3.0](#) states: “A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element.”

As the essential part of the disputed domain name “dewberr” is a one-letter typographical error of Complainant’s DEWBERRY marks, the Panel finds the disputed domain name must be considered a prototypical example of typosquatting (*Accenture Global Services Limited v. 石磊 (Lei Shi)*, WIPO Case No. [D2020-1568](#)).

Thus, the Panel finds that the one-letter typographical error of Complainant’s DEWBERRY marks does not prevent a finding of confusing similarity between the disputed domain name and Complainant’s DEWBERRY marks.

Further, in relation to the gTLD suffix, section 1.11 of [WIPO Overview 3.0](#) further states: “The applicable Top Level Domain (“TLD”) 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.”

The Panel therefore holds that the Complaint fulfils the first condition of paragraph 4(a) of the Policy.

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

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

- (i) before any notice to Respondent of the dispute, the use by Respondent 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) Respondent has been commonly known by the disputed domain name, even if Respondent has acquired no trademark or service mark rights; or
- (iii) 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 Complainant’s trademarks or service marks at issue.

The overall burden of proof on this element rests with Complainant. However, it is well established by previous UDRP panel decisions that once a complainant establishes a *prima facie* case that a respondent lacks rights or legitimate interests in a domain name, the burden of production shifts to respondent to rebut complainant’s contentions. If respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. (*Danzas Holding AG, DHL Operations B.V. v. Ma Shikai*, WIPO Case No. [D2008-0441](#); [WIPO Overview 3.0](#), section 2.1 and cases cited therein).

The DEWBERRY marks have been registered in the U.S. since September 2005, which long precede Respondent’s registration of the disputed domain name (in October 2022).

Moreover, Respondent is not authorized by Complainant to use its DEWBERRY marks in any manner. Complainant has therefore established a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name and thereby shifted the burden to Respondent to produce evidence to rebut this presumption (*The Argento Wine Company Limited v. Argento Beijing Trading Company*, WIPO Case No. [D2009-0610](#); *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

Based on the following reasons the Panel finds that Respondent has no rights or legitimate interests in the disputed domain name:

- (a) There has been no evidence adduced to show that Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services. Respondent has not provided evidence of a legitimate or fair use of the disputed domain name, or reasons to justify the choice of the term “dewberr” (misspelled “dewberry”) in the disputed domain name and in his/her business operation.

There has been no evidence to show that Complainant has licensed or otherwise permitted Respondent to use the DEWBERRY marks or to apply for or use any domain name incorporating the DEWBERRY marks.

- (b) There has been no evidence adduced to show that Respondent has been commonly known by the disputed domain name. There has been no evidence adduced to show that Respondent has any registered trademark rights with respect to the disputed domain name. Respondent registered the disputed domain name in 2022, after the DEWBERRY marks became widely known. The disputed domain name is confusingly similar to Complainant's DEWBERRY marks.
- (c) There has been no evidence adduced to show that Respondent is making a legitimate noncommercial or fair use of the disputed domain name. By contrast, the disputed domain name resolves to a PPC website, it seems that Respondent is making profits through the Internet traffic misled as to the links displayed on the PPC website are related to the services that compete with Complainant, such as "Structural Engineer Near Me", "Structural Engineer", and "Civil Engineering". (See *BKS Bank AG v. Jianwei Guo*, WIPO Case No. [D2017-1041](#); *BASF SE v. Hong Fu Chen, Chen Hong Fu*, WIPO Case No. [D2017-2203](#).)

The Panel notes that Respondent has not produced any evidence to establish his/her rights or legitimate interests in the disputed domain name.

Accordingly, Complainant has established that Respondent has no rights or legitimate interests in the disputed domain name. The Panel therefore holds that the Complaint fulfils the second condition of paragraph 4(a) of the Policy.

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

Paragraph 4(b) of the Policy sets out four circumstances, which, without limitation, shall be evidence of the registration and use of the disputed domain name in bad faith, namely:

- (i) circumstances indicating that Respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to Complainant who is the owner of the trademark or service mark or to a competitor of Complainant, for valuable consideration in excess of Respondent's documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) Respondent has registered the disputed 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 Respondent has engaged in a pattern of such conduct; or
- (iii) Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The Panel concludes that the circumstances referred to in paragraph 4(b)(iv) of the Policy are applicable to the present case and upon the evidence of these circumstances and other relevant circumstances, it is adequate to conclude that Respondent has registered and used the disputed domain name in bad faith.

The Panel finds that Complainant has a widespread reputation as an engineering, architecture, real estate services, and emergency management firm which offers a wide variety of additional services and has more than fifty locations in the U.S. As mentioned above, Complainant's DEWBERRY marks are registered in the

U.S. (since September 2005). The Panel also takes note that Complainant's primary domain name is <dewberry.com>, to which the disputed domain name is almost identical. It is not conceivable therefore that Respondent would have been unaware of the DEWBERRY marks at the time of the registration of the disputed domain name (in October 2022). The Panel therefore finds that the DEWBERRY mark is not one that a trader could legitimately adopt other than for the purpose of creating an impression of an association with Complainant (*The Argento Wine Company Limited v. Argento Beijing Trading Company, supra*).

Moreover, Respondent has chosen not to respond to Complainant's allegations. According to the UDRP decision in *The Argento Wine Company Limited v. Argento Beijing Trading Company, supra*, "the failure of the Respondent to respond to the Complaint further supports an inference of bad faith". See also *Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. [D2002-0787](#).

Thus, the Panel concludes that the disputed domain name was registered in bad faith.

Respondent is using the website resolved by the disputed domain name to provide links to third-party commercial websites. Thus, the Panel concludes that Respondent is currently using the confusingly similar disputed domain name with the intention to attract, for commercial gain, Internet users to Respondent's website.

Given the reputation of the DEWBERRY marks, the Panel finds that the public is likely to be confused into thinking that the disputed domain name has a connection with Complainant, contrary to the fact. There is a strong likelihood of confusion as to the source, sponsorship, affiliation or endorsement of the website to which the disputed domain name resolves. In other words, Respondent has through the use of a confusingly similar disputed domain name created a likelihood of confusion with the DEWBERRY marks.

Moreover, as mentioned above, the disputed domain name resolves to a PPC website, which contains links for services that compete with Complainant, including links labelled in English, such as "Structural Engineer Near Me", "Structural Engineer", and "Civil Engineering". The Panel therefore concludes that the disputed domain name was registered and is being used by Respondent in bad faith. Such use of the disputed domain name is also disruptive in relation to the interests of Complainant.

In summary, Respondent, by choosing to register and use the disputed domain name, which is confusingly similar to the DEWBERRY marks, intended to ride on the goodwill of this trademark in an attempt to exploit, for commercial gain, Internet users of Complainant. In the absence of evidence to the contrary and rebuttal from Respondent, the choice of the disputed domain name and the conduct of Respondent as far as the website to which the disputed domain name resolves is indicative of registration and use of the disputed domain name in bad faith.

The Panel therefore holds that the Complaint fulfils the third condition of paragraph 4(a) of the Policy.

## **7. Decision**

For all 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 <dewberr.com> be transferred to Complainant.

*/Yijun Tian/*

**Yijun Tian**

Sole Panelist

Date: February 24, 2023