



Asian Domain Name Dispute Resolution Centre

hongkong

(Hong Kong Office)

## ADMINISTRATIVE PANEL DECISION

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<b>Case No.</b>	HK-2401875
<b>Complainant:</b>	Shenzhen YouMe Information Technology Co., Ltd.
<b>Respondent:</b>	John Diegel, Wildtech
<b>Disputed Domain Name(s):</b>	<officialairbar.com>

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### 1. The Parties and Contested Domain Name

The Complainant is Shenzhen YouMe Information Technology Co., Ltd., of 201, Bldg. B, Dianlian TechBldg., NanhuanAve. Mashantou Community, Matian Street Guangming, Shenzhen China 518000 (the “**Complainant**”), c/o Fangda Partners.

The Respondent is John Diegel, Wildtech, of Santa Clara California, 95050, United States (the “**Respondent**”).

The domain name under contestation is <officialairbar.com> (the “**Disputed Domain Name**”), registered by the Respondent with NameCheap, Inc., of 4600 East Washington Street Suite 305 Phoenix, AZ 85034 USA (the “**Registrar**”).

### 2. Procedural History

The Complaint was filed with the Hong Kong office of the Asian Domain Name Dispute Resolution Centre (the “**ADNDRC**”) on 19 February 2024. The ADNDRC acknowledged receipt of the Complaint on 20 February 2024, after notifying the Registrar of the Complaint and requesting the Registrar’s verification in connection with the Disputed Domain Name on 19 February 2024. On 20 February 2024, the Registrar responded to the ADNDRC, confirming that (i) the Disputed Domain Name is registered with it, (ii) the Respondent is the registrant, (iii) the ICANN Uniform Domain Name Dispute Resolution Policy (the “**Policy**”) (adopted by the ADNDRC) applies to the present dispute, and (iv) the language of the registration agreement for the Disputed Domain Name is English.

On 4 March 2024, the ADNDRC informed the Complainant of a number of deficiencies in the Complaint relating to, *inter alia*, the Respondent’s information and requested that the Complainant file an amended Complaint Form. The Complainant submitted an amended Complaint Form on 6 March 2024. The ADNDRC duly verified that the amended Complaint was in administrative compliance with the Policy and the Rules for the Policy (the “**Rules**”) and informed the Complainant of such administrative compliance on 7 March 2024. Formal

notification of the Complaint was sent to the Respondent on the same day. This proceeding therefore commenced on 7 March 2024.

According to Article 5 of the Rules, the Respondent was required to file its response on or before 27 March 2024. The Respondent did not file a response within the required time period. On 28 March 2024, the ADNDRC notified the parties that the UDRP proceeding will proceed.

The ADNDRC appointed Dr. Stanley Lai, SC as the sole panelist for this matter on 28 March 2024. Dr. Stanley Lai, SC confirmed his availability to act as panelist and his ability to discharge his duties independently and impartially between the parties to this dispute.

The Panel has accordingly been properly constituted in accordance with the Rules and the ADNDRC Supplemental Rules to the Policy and the Rules.

In accordance with the default position under Article 11(a) of the Rules, 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 language of the registration agreement of the Disputed Domain Name is in English. The Panel therefore determines that the proceedings shall be conducted in English.

### 3. Factual background

The Complainant is a company incorporated under the laws of China, and, according to the Complainant, is an electronic cigarette company responsible for the operation and management of the “Air Bar” brand, a leading disposable vape brand known for its wide range of device types and vape flavours. The Complainant has annexed media reports about the “AIR BAR” brand and disposable vape devices, one of which describes the brand as “one of the most popular and top-selling disposable vape brands on the market”.

The Complainant was and is at all material times the owner of the following “AIR BAR” trade marks:

- (i)  (the “Air Bar Device Mark”); and
- (ii) “AIR BAR” (the “Air Bar Word Mark”)

(collectively, the “Air Bar Marks”).

The Air Bar Device Mark is registered in the US, EU, Morocco, Algeria, UK, Mozambique and China, covering goods in Class 34. On the other hand, the Air Bar Word Mark is registered in the EU and UK in Classes 34 and 35.

The Complainant also owns the domain <airbar.com> and has operated the <airbar.com> website since June 2022. The Complainant has annexed to the Complaint the domain name purchase agreement and the International Settlement Debit Advice, which states the transaction date as 17 June 2022.

The Disputed Domain Name was registered on 19 March 2023 by the Respondent. According to the Complaint, the website operated under the Disputed Domain Name (the

**“Respondent’s Website”**) sells fake counterfeit “AIR BAR” disposable vape devices in direct competition with the Complainant. The Complainant has annexed to the Complaint a screenshot of the Respondent’s Website.

The Respondent did not reply to the Complaint and therefore has not refuted any of the facts as stated above.

#### **4. Parties’ Contentions**

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

The Complainant’s contentions may be summarized as follows:

- i. The Disputed Domain Name is identical or confusingly similar to trade marks in which the Complainant has rights:
  - (a) In the Disputed Domain Name, “.com” is a generic Top-Level Domain and ought to be disregarded when determining confusing similarity;
  - (b) The Disputed Domain Name incorporates the Complainant’s trade mark(s) in its entirety with the addition of the word “official”;
  - (c) The addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) to a mark does not prevent a finding of confusing similarity;
  - (d) In particular, prior UDRP decisions have established that the addition of generic terms to a widely known trademark in its entirety will not only fail to eliminate a likelihood of confusion but may even reinforce the impression of an affiliation between the disputed domain name and the complainant;
  - (e) As the Air Bar Marks enjoy reputation around the world, the addition of the generic term “official”, which merely indicates that the website operated under the Disputed Domain Name is owned and operated by the Complainant or has some specific relationship with the Complainant, does not serve to prevent confusing similarity and may even reinforce the impression of an affiliation between the Disputed Domain Name and the Complainant.
- ii. The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name:
  - (a) The Complainant is the legitimate rightsholder of the “AIR BAR” brand and registered trade marks worldwide;
  - (b) The Complainant has consistently used the <airbar.com> domain name for selling its “AIR BAR” disposable vape devices before the Disputed Domain Name was registered;
  - (c) The Complainant’s trade marks and domain name have acquired a high degree of fame and connection with the Complainant through extensive use in commerce by the Complainant;

- (d) The Complainant has never licensed, consented to or otherwise authorised the Respondent's use of the Air Bar Marks and Disputed Domain Name;
  - (e) The Complainant has made out a prima facie case that the Respondent lacks rights or legitimate interests, and the burden should be shifted to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name, which the Respondent has failed to do;
  - (f) The Respondent is selling fake counterfeit "AIR BAR" disposable vape devices under the website accessed through the Disputed Domain Name in direct competition with the Complainant, which the Complainant submits cannot possibly give rise to any rights or legitimate interests in respect of the Disputed Domain Name.
- iii. The Disputed Domain Name has been registered and is being used in bad faith:
- (a) The Air Bar Marks have gained a high reputation among consumers worldwide before the registration of the Disputed Domain Name and it was therefore unlikely that the Respondent was unaware of the Air Bar Marks when it registered the Disputed Domain Name;
  - (b) The Respondent is proactively seeking consumer confusion by registering the Disputed Domain Name that is identical or confusingly similar to the Air Bar Marks without the Complainant's knowledge or consent;
  - (c) The Respondent is intentionally attempting, for commercial gain, to attract users to its website by selling fake counterfeit "AIR BAR" disposable vape devices under the website accessed through the Disputed Domain Name in direct competition with the Complainant.
  - (d) Given the widespread reputation of the Air Bar Marks, the Respondent intends to ride on the goodwill of the Air Bar Marks in an attempt to exploit, for commercial gain, Internet traffic destined for the Complainant.

B. Respondent

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

**5. Findings**

Since no response was received from the Respondent within the time specified (27 March 2024) or at all, the Panel shall proceed, under Paragraph 15(a) of the Rules, to decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable and on the basis of the Complaint.

The Panel concludes that the Complainant has sufficiently made its case to warrant a transfer of the Disputed Domain Name from the Respondent to the Complainant. The reasoned grounds are set out below.

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent's domain name 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 domain name; and
- iii. Respondent's domain name has been registered and is being used in bad faith.

#### **A) Identical / Confusingly Similar**

The Panel notes that the Complainant has annexed documentation evidencing the registrations of the Air Bar Marks owned by the Complainant. The Panel also takes notice of the media reviews annexed to the Complaint and accepts the Complainant's contention that it enjoys a certain degree of reputation arising out of its commercialisation of the Air Bar Marks, in the absence of any response from the Respondent. The Panel concludes that the Complainant has rights in the Air Bar Marks.

The Panel also accepts that the Complainant has owned and operated the domain <airbar.com> since on or around June 2022, which is when the Complainant had purchased the domain name.

The Panel notes that the Complainant's registration of the Air Bar Marks and its use and commercialisation of its products under the <airbar.com> domain all began before the Respondent's registration of the Disputed Domain Name on 19 March 2023.

The Panel also recognises that the Disputed Domain Name is confusingly similar to the Air Bar Word Mark. The Panel agrees with the Complainant that the Disputed Domain Name contains "airbar" in its entirety, which is the dominant and distinctive component of the Disputed Domain Name. The insertion of the word "official" in the Disputed Domain Name does not contribute any distinctiveness that would sufficiently distinguish the Disputed Domain Name from the Air Bar Word Mark that is owned by the Complainant.

The Panel's ruling is consistent with the views and findings of other Panels, which have consistently held that the mere addition of the word "official" to a domain name is generally insufficient to eliminate a likelihood of confusion, and may even increase confusion as it is suggestive of the Complainant's main business activities: *The Arsenal Football Club Public Limited Company v. Official Tickets Ltd* Case No. D2008-0842.

Likewise, the Panel agrees that the inclusion of the ".com" gTLD shall be disregarded for the purposes of determining likelihood of confusion: *Rohde & Schwarz GmbH & Co KG v Pertshire Marketing Ltd* WIPO Case No. D2006-0762.

The Panel therefore finds that the Complainant has satisfied Paragraph 4(a)(i) of the Policy.

#### **B) Rights and Legitimate Interests**

Given the portfolio of Air Bar Marks that the Complainant claims to own (which is not refuted by the Respondent), with the registrations predating the registration of the Disputed Domain Name, the onus is on the Respondent to establish that it has rights or legitimate

interests in the Disputed Domain Name: *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. Since no response was filed by the Respondent, the Panel finds that the Respondent can claim no rights and/or legitimate interests in the Disputed Domain Name.

The Panel also notes that the Disputed Domain Name resolves to a website purportedly selling “AIR BAR” products that are produced by the Complainant, and are clearly displaying marks which are identical to the Air Bar Marks. On the Complainant’s evidence, the Complainant had never licensed, consented to or authorised the Respondent to use the Air Bar Marks. These assertions were likewise not refuted by the Respondent.

Similarly, an illegal use of another proprietor’s trade marks would not constitute a bona fide offering of goods and services: *Viacom International, Inc., Paramount Pictures Corporation, and Blockbuster Inc. v. TVdot.net, Inc. f/k/a Affinity Multimedia* WIPO Case No. D2000-1253. Even if the Respondent were simply reselling original (and not counterfeit) “AIR BAR” products, this does not give the Respondent the right to register and use the Complainant’s Air Bar Marks as part of the Disputed Domain Name without the Complainant’s authorisation: *F. Hoffmann-La Roche AG v. Cheaptamiflu.net* WIPO Case No. D2005-1256.

The Panel therefore finds that the Complainant has satisfied Paragraph 4(a)(ii) of the Policy.

### **C) Bad Faith**

On the basis of the submissions and evidence before it, the Panel also finds that the Domain Name has been registered and is being used by the Respondent in bad faith.

From the palpable absence of any response from the Respondent, the Panel is entitled to infer that there is a notable absence of any rights and/or legitimate interests that the Respondent can reasonably submit to, and this inference lends to a finding that the Disputed Domain Name has been registered and is being used by the Respondent in bad faith, for the purposes of this adjudication. For completeness, the Panel is entitled to draw such an inference arising from the Respondent’s failure to file a response to the Complaint: see Paragraph 14(b) of the Rules; *BHP Billiton Innovation Pty Ltd v. Geosum* Case No. D2015-1272.

Given the fact that the Complainant’s “AIR BAR” products have obtained a degree of fame and reputation among consumers (which is unrefuted by any countervailing evidence), the fact that the Complainant’s registration of its Air Bar Marks and its use of the <airbar.com> domain began before the Respondent’s registration of the Disputed Domain Name, together with the absence of any obvious business connection between the Complainant and the Respondent, the Panel finds it reasonable to infer that the Respondent had registered the Disputed Domain Name with prior knowledge of the Complainant and the Complainant’s “AIR BAR” mark.

The Panel also notes that the website operating under the Disputed Domain Name is selling what appears to be the Complainant’s “AIR BAR” products (counterfeited or otherwise). In the absence of any credible explanation to the contrary, the Panel finds that the website which operated under the Disputed Domain Name was directed at users intending to purchase the Complainant’s products, who would perceive some form of business relationship between the website and the Complainant. It is reasonable to infer, in the absence of any credible or indeed any other explanation provided by the Respondent, that the registration and continued

use of the Disputed Domain Name was intended to mislead internet users to perceive such a legitimate business relationship: *Croatia Airlines d.d. v Modern Empire Internet Ltd*, WIPO Case No. D2003-0455.

The Panel therefore finds that the Complainant has satisfied Paragraph 4(a)(iii) of the Policy.

## **6. Decision**

For the reasons stated above, the Panel is duly satisfied that the Complainant has sufficiently fulfilled the trinity of requirements as stated in paragraph 4(a) of the Policy.

The Disputed Domain Name is ordered to be transferred to the Complainant.



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Dr. Stanley Lai, SC  
Sole Panelist

Dated: 11 April 2024