Decision for dispute CAC-UDRP-107643

Case number	CAC-UDRP-107643
Time of filing	2025-06-16 09:30:20
Domain names	dayaodrink.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	Dayao Jiabin Beverage Co., Ltd.

Complainant representative

Organization	Beijing Chaocheng Law Firm

Respondent

Organization	MARTIN

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of DAYAO trademark before the China National Intellectual Property Administration, with registration number 12569035, filed May 13, 2013 and registered on March 28, 2015.

The Complainant also holds an International trademark registration for DAYAO SINCE 1983 with registration number 1747793, registered on June 13, 2023.

The Panel recognizes the distinctive and well-known character of Complainant´s DAYAO trademark.

FACTUAL BACKGROUND

The Complainant is a company whose business is focused on the beverage sector with annual sales exceeding RMB 4 billion. The Complainant was previously known by Inner Mongolia Bayi Beverage Factory.

The disputed domain name was registered on July 27, 2024 and redirects to a website which copy paste Complainant´s trademark and other of its intellectual property rights impersonating the Complainant without authorization.

PARTIES CONTENTIONS

THE COMPLAINANT

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

In particular, the Complainant contends that the disputed domain name is confusingly similar to DAYAO trademark since it is recognizable in it. By adding a word to DAYAO, in this case “drink”, the confusing similarity is met. Furthermore, the addition of a generic word as “drink” the Respondent does not achieve a secondary meaning, and the disputed domain name produces even more confusing similarity.

The Complainant also contends that that the Respondent does not meet any of the circumstances depicted in paragraph 4(a)(ii) of the UDRP. Indeed, the Respondent has not been authorized use its marks or to apply for domain name using them. Further, there is no evidence that the Respondent is the owner of a trademark for “dayaodrink”, neither the Respondent is commonly known by the disputed domain name since it differs from the Whois data provided by the Registrar.

Furthermore, Respondent´s use of the disputed domain name confirms the lack of rights or legitimate interests. It is clear for the Respondent that the disputed domain name is used in an attempt to impersonate the Complainant.

With reference to the third requirement the Complainant alleges that the Respondent was aware of the existence of the Complainant's DAYAO trademark prior to the registration of the disputed domain name based on the distinctiveness of the mark and the redirection of the disputed domain name to a web that impersonates the Complainant.

The Complainant asserts that the Respondent is using the disputed domain name intentionally to attempt to attract, for commercial gain, Internauts to his web site by creating a likelihood of confusion with Complainant's trademark as to the source, sponsorship, affiliation or endorsement of his web site in terms as set up in paragraph 4(b)(iv) of the Policy. This, says the Complainant, amounts to registration and use in bad faith.

THE RESPONDENT

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

1. Identical or Confusingly Similar

The Complainant has shown rights in respect of DAYAO trademark for the purposes of the Policy. It is apparent that the mark

DAYAO is reproduced in the disputed domain name <dayaodrink.com>. The addition of a generic term, in this case “drink” does not prevent confusing similarity.

The applicable Top Level Domain (‘TLD’) in a domain name is viewed as a standard registration requirement and as such is disregarded under the first element test.

The Panel finds the first element of the Policy has been established.

2. Rights or Legitimate Interest

Paragraph 4(c) of the Policy sets out non-exclusive examples in which the Respondent may establish rights or legitimate interests in the disputed domain name. However, while the burden of proof in UDRP proceedings rests on the complainant, panels have recognized that proving a respondent lack or rights or legitimate interests in a domain name may result in the often-impossible task of “proving a negative”. Accordingly, panels have established, since the inception of the UDRP, that it is sufficient to raise a prima facie case against the respondent and then the evidential burden of production shifts to the respondent. See CAC-UDRP-106452.

The Panel has carefully read the case file and concedes that DAYAO is a well-known trademark.

While the term “dayao” is also a county located in the north of Yunnan Province, in the south of the People's Republic of China, the Panel notes that there is no fair use of the disputed domain name connected to a geographical meaning. On the contrary, the nature of the disputed domain name, comprising the Complainant’s trademark and the additional letter “drink” and the use of DAYAO in the corresponding website, leads the Panel to conclude that the Respondent seemingly attempted to impersonate the Complainant trademark to obtain a commercial gain, and consequently is not making a bona fide offering of goods or services in accordance with paragraph 4(c)(i) of the Policy. The Panel notes the lack of disclaimer in the corresponding website.

Besides, the silence of the Respondent, once received the Complaint, has avoided the Panel to assess if any circumstances may oppose to the Complainant´s prima facie showing.

The Panel finds the second element of the Policy has been established.

3. Register and Used in Bad Faith

Noting that bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark, the Panel now looks at the third requirement of the test.

In the present case, the Panel finds that the Respondent targeted the Complainant and its trademarks. Indeed, the disputed domain name resolves to a website mimicking Complainant and purported offering for sale Complainant’s products allow the Panel to conclude that, on balance, the Respondent knew or should have known about the Complainant and its trademark at the time of the registration of the disputed domain name. Thus, the registration was made in bad faith.

As noted, the Panel accepts that the Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant’s mark. That is to say, the Respondent has not undertaken steps to avoid unfairly passing itself off as related to the Complainant, or to otherwise confuse users. Therefore, the Complaint has developed an illegal activity here, claimed impersonation/passing off. Accordingly, the registration and use of the disputed domain name was in bad faith.

The Panel finds that the Complainant has established the third element of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **dayaodrink.com**: Transferred

PANELLISTS

Name	**Manuel Moreno-Torres**

DATE OF PANEL DECISION 2025-07-16

Publish the Decision