



Asian Domain Name Dispute Resolution Centre

beijing

## ADMINISTRATIVE PANEL DECISION

Case No. CN-2301528

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**Complainant:** DIGITAL TRADING SCIENCE & TECHNOLOGY (BEIJING) CO. LTD.

**Respondent:** Dainya Brooks

**Domain Name:** dhgatefinds85.com

**Registrar:** ENOM, INC.

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### 1. Procedural History

On 21 February 2023, the Complainant submitted a Complaint to the Beijing Office of the Asian Domain Name Dispute Resolution Center (the ADNDRC Beijing Office) and elected this case to be dealt with by a one-person Panel, in accordance with the Uniform Domain Name Dispute Resolution Policy (the Policy) and the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules) approved by the Internet Corporation for Assigned Names and Numbers (ICANN), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the ADNDRC Supplemental Rules) approved by the ADNDRC.

On 24 February 2023, the ADNDRC Beijing Office sent to the Complainant by email an acknowledgement of the receipt of the Complaint and transmitted by email to ICANN and the Registrar, ENOM, INC., a request for Registrar verification in connection with the Disputed Domain Name.

On 24 February 2023, the Registrar transmitted by email to the ADNDRC Beijing Office its verification response, confirming that the language of the Registration Agreement is English and the Respondent is listed as the registrant and providing the contact details.

On 27 February 2023, the ADNDRC Beijing Office notified the Complainant to revise their submission based on the information provided by the Registrar. On 28 February 2023, the Complainant submitted a revised Complaint to the ADNDRC Beijing Office.

On 1 March 2023, the ADNDRC Beijing Office notified the Complainant that the Complaint has been confirmed and transmitted to the Respondent, and that the case officially commenced. On the same day, the ADNDRC Beijing Office transmitted the

Written Notice of the Complaint to the Respondent, which informed that the Complainant had filed a Complaint against the Disputed Domain Name and the ADNDRC Beijing Office had sent the complaint and its attachments through email according to the Rules and the Supplemental Rules. On the same day, the ADNDRC Beijing Office notified ICANN and the Registrar, ENOM, INC., of the commencement of the proceedings.

The Respondent submitted a Response to the ADNDRC Beijing Office on 3 March 2023. The ADNDRC Beijing Office transmitted the Response to the Complainant on 29 March 2023. Since the Respondent did not mention the formation of the Panel while the Complainant elected a one-person Panel, the ADNDRC Beijing Office appointed a Panelist to proceed to render the decision according to the Rules, the ADNDRC Supplemental Rules, and the Notification.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Ms. Hongbo ZHONG on 30 March 2023, the ADNDRC Beijing Office notified the parties on 3 April 2023 that the Panel in this case had been selected, with Ms. Hongbo ZHONG acting as the sole Panelist. The Panel determined that the appointment was made in accordance with Paragraph 6 of the Rules and Articles 8 and 9 of the Supplemental Rules.

On 3 April 2023, the Panel received the file from the ADNDRC Beijing Office and should render the Decision within 14 days, i.e., on or before 17 April 2023.

Pursuant to Paragraph 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 current Disputed Domain Name Registration Agreement is English, thus the Panel determines English as the language of the proceedings.

## **2. Factual Background**

### **A. The Complainant**

The Complainant in this case is DIGITAL TRADING SCIENCE & TECHNOLOGY (BEIJING) CO. LTD. The registered address is 1-701-1, Floor 7, 28 Chengfu Road, Haidian District, Beijing, China. The authorized representative in this case is Chen Bojun.

### **B. The Respondent**

The Respondent in this case is Dainya Brooks, an individual. The registered address is 317 Stratford Dr., Fort Worth, Texas, 76126-2463, United States.

The Respondent is the current registrant of the Disputed Domain Name “dhgatefinds85.com”, which was registered on 29 April 2021 according to WHOIS information. The Registrar of the Disputed Domain Name is ENOM, INC.

### **3. Parties' Contentions**

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

The Complainant's contentions may be summarized as follows:

- 1) The Complainant is a subsidiary of DHgate Group established in 1999.
- 2) “dhgate.com” is the Complainant's official website which was registered in 2004, providing one-stop solutions for online procurement, from international logistics and payment to internet finance and customer service. It has become one of the world's largest online wholesale markets.
- 3) The Complainant has registered “DHgate” and “DHgate.com” trademarks in several classes in many countries and regions.
- 4) The Complainant and its related companies have registered multiple top-level domain names started with “dhgate” and “dh”.
- 5) The Disputed Domain Name “dhgatefinds85.com” starts with the Complainant's “DHgate” trademark and followed by “finds85” which means “look for 85”. The combination of the “dhgate” trademark and “finds85” in the domain name is very easy to cause confusion with the Complainant's trademark.
- 6) The Complainant has never authorized the Respondent to use its trademark to register the Disputed Domain Name. The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.
- 7) The Respondent uses the word starting with "dhgate" at the top of the website of the Disputed Domain Name and also in its email address as contact information.
- 8) The product links displayed on the Respondent's website are directly linked to the products in the Complainant's website. The Complainant considers the Respondent's registration and use of the Disputed Domain Name is in bad faith.

In view of all the above, the Complainant requests that the Disputed Domain Name be transferred to the Complainant.

## **B. The Respondent**

The Respondent's contentions are summarized as follows:

- 1) The Respondent denies their intention to deceive people that the Respondent is the Complainant. Instead, the Respondent claims that they are a sub contract employee of DHgate.
- 2) The Disputed Domain Name is registered to provide a service for internet users buying products from the website "dhgate.com". The Respondent has brought the Complainant economic interests in sales over the past 2 years.
- 3) The Respondent explains that "finds" in the Disputed Domain Name is a slang term for "product" and that "85" is the year when the Respondent was born.
- 4) The Respondent states in the Response that they will change the domain name.

## **4. Discussions and Findings**

Paragraph 4(a) of the Policy provides that in order to be entitled to a transfer of a Disputed Domain Name, the Complainant shall prove the following three elements:

- (i) The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) The registrant 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.

Paragraph 4(b) of the Policy states that the following circumstances in particular, but without limitation, shall be evidence of registration and use of a domain name in bad faith:

- (i) Circumstances indicating that the Respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name; or
- (ii) The Respondent registered the 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 the Respondent has engaged in a pattern of such conduct; or

- (iii) The Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to its 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 its website or location or of a product or service on its website or location.

As aforementioned, this administrative proceeding shall be conducted in English because the language of the current Disputed Domain Name Registration Agreement is English. The Complainant filed the Complaint in English and the Respondent made a response in English. Given that the Respondent's registered address is in the United States, the Panel will firstly give consideration to evidences in English and trademarks more relevant to that regard.

#### **A. Identity or Confusing Similarity**

Pursuant to Paragraph 4(a)(i) of the Policy, the Complainant must prove its rights on a trademark or service mark and that the Disputed Domain Name is identical or confusingly similar to its trademark and service mark.



The Complainant claimed that they have the prior trademark rights of "DHgate" and "DHgate.com" in several classes in various jurisdictions, and submitted evidence of a trademark list and copies of relevant trademark registrations in Annexes 5-1 and 5-2 of Complaint. In addition, the Complainant argued that the domain name "dhgate.com" registered on 21 September 2004 has been used as its official website. Furthermore, the Complainant and its related companies had registered multiple top-level domain names started with "dhgate" and "dh". The Complainant has continuously used its official website to provide one-stop solutions for online procurement, from international logistics and payment to internet finance and customer service since 2004. The website "dhgate.com" has become one of the world's largest online wholesale markets.


The Respondent did not make any objection to the Complainant's evidence and its claims on the Complainant's trademark rights and domain name registrations.


Having reviewed Annexes 5-1 & 5-2 of Complaint in English, the Panel finds that:

- 1) In the E.U., the Complainant holds six (6) trademarks of "DHgate.com" in Classes 9, 35 and 38, three of them registered on 11 April 2014 and three others registered on 20 June 2017.
- 2) In Hong Kong, the Complainant holds three (3) trademarks of "Dhgate.com" in Classes 9, 35 and 38 registered on 5 December 2013.
- 3) In the U.S., the Complainant holds three (3) trademarks of "DHgate.com" in Classes 9, 35 and 38 registered in 2014.

- 4) In Turkey, the Complainant holds three (3) trademarks of “DHgate.com” in Classes 35, 38 and 42 registered on 17 July 2018.

It is evident that the Complainant gained the trademark rights of “” in the E.U., Hong Kong, the U.S. and Turkey from 2013 to 2018, which are earlier than the registration date of the Disputed Domain Name, i.e., 29 April 2021. In this regard, the Panel confirmed that the Complainant has prior rights to the trademark “” in the aforementioned jurisdictions. In light of the fact that such trademark is in the form of a domain name, the Panel therefore considers that the key feature of such trademark would be “DHgate”.

The Disputed Domain Name “dhgatefinds85.com” are composed of “dhgatefinds85” and “.com”. As a generic top-level domain suffix, “.com” is technically required to create a domain name and thus should be disregarded in the determination of confusing similarity. The distinctive part of the Disputed Domain Name is “dhgatefinds85”. The Respondent explained in the Response that “finds” in the Disputed Domain Name is a slang term for “product” and “85” is the year that the Respondent was born in. The Respondent’s explanation indicates that the Respondent agrees that the distinctive part of the Disputed Domain Name is divided into three sections, e.g., “dhgate”, “finds” and “85”. For general consumers or internet users, “finds” is a commonly-used dictionary word with the meaning of “to get or to discover something by searching” instead of a slang term for “products” as explained by the Respondent; in the meantime, “85” is an ordinary number without any special meaning. In light of the fact that: ① the Complainant has held trademark rights to “DHgate.com” in several jurisdictions including the Respondent’s residence country (the U.S.) for many years, and ② the Complainant’s trademark is in the form of a domain name with the key feature “DHgate”, and ③ the Complainant has run business at the official website “dhgate.com” since 2004, and ④ the Complainant and its related companies have registered multiple top-level domain names started with “dhgate” and “dh”, the Panel discovers that, by adding the term “finds” and the number “85”, the Disputed Domain Name does not distinguish itself with “”.

The Panel therefore holds that the Disputed Domain Name “dhgatefinds85.com” is confusingly similar to the Complainant’s trademark “”. Accordingly, the Complainant has proven the element required by Paragraph 4(a)(i) of the Policy.

## **B. Rights or Legitimate Interests of the Respondent**

Paragraph 4(c) of the Policy states that the following circumstances in particular, but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate the rights or legitimate interests to the domain

name:

- (i) Before any notice to the Respondent of a dispute, the use of, or demonstrable preparations to use, a domain name or a name corresponding to said 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 domain name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) The Respondent has made legitimate noncommercial or fair use of a domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Complainant contends that the Respondent has no rights or legitimate interests in respect to the Disputed Domain Name because: ① the Respondent does not have any trademark right for “dhgate” or “dhgatefinds85” or other words starting with “dhgate” according to a search by the Complainant; and ② the Complainant never authorized the Respondent to use “DHGATE” as a trademark or gave its authorization to the Respondent to register any domain name. The Complainant has submitted prima facie evidence required by Paragraph 4(a)(ii) of the Policy and the burden of proof was transferred to the Respondent.

The Respondent neither submitted evidence to prove its rights to the Disputed Domain Name nor produced evidence to prove that the Respondent has been commonly known by the Disputed Domain Name for the purposes of Policy 4(c)(ii). The Respondent claims to be an employee of DHgate but failed to provide any evidence. The Respondent further claims that the Disputed Domain Name has been used for selling the Complainant’s products and the Complainant has obtained profits from their sales. In light of the fact that the Respondent’s use of the Disputed Domain Name is for commercial purpose without the Complainant’s authorization, such acts cannot be defined as a bona fide action or noncommercial or fair use according to Policy 4(c)(i)(iii) whether the Complainant gains profit from it or not, or whether they are employees or not.

The Respondent failed to prove its rights and legitimate interests under Paragraph 4(c) of the Policy. Accordingly, the Panel finds that the Complainant has satisfied the second element as provided under Paragraph 4(a) of the Policy.

### **C. Bad Faith**

The Complainant alleges that the Respondent has acted in bad faith by registering and using the Disputed Domain Name on the following grounds: ① the website of the Disputed Domain Name features the word starting with “dhgate” at the top of website; ② the Respondent uses the word starting with “dhgate” as a contact email for products purchased on the Disputed website; and ③ the products displayed on the

Respondent's website are directly linked to the same product page on the Complainant's official website "dhgate.com" .

The Respondent did not respond to the Complainant's evidence but argued that: ① they are a sub contact employee of DHgate, ② they have no intention to deceive people, and ③ they have brought economic interests to the Complainant by using the Disputed Domain Name to sell products from "dhgate.com", i.e. the Complainant's website.

Upon weighing all the relevant and special circumstances of the Parties, the Panel finds that the Respondent was aware of the existence of the Complainant and its trademark "DHgate.com" and its official website "dhgate.com" at the time of registering the Disputed Domain Name. Whether the Respondent is the Complainant's employee or not, or whether the Complainant gains profit from it or not, the Respondent has intentionally attempted to gain commercial benefit by using the Disputed Domain Name with the information in connection with the Complainant without authorization. The Panel is of the view that the Disputed Domain Name was used in bad faith.

Given that the Respondent has failed to prove any right to or legitimate interest in the word "dhgatefinds85" but chose a word that is confusingly similar to the Complainant's trademark "DHgate.com" to register the Disputed Domain Name, the Panel is of the view that the Disputed Domain Name was registered in bad faith.

In light of the above, the Panel holds that this is sufficient to establish bad faith under Paragraph 4(b) of the Policy. Accordingly, the third element as provided under Paragraph 4(a) of the Policy is satisfied.

## 5. Decision

For all the foregoing reasons, in accordance with Paragraphs 4(a) of the Policy and 15 of the Rules, and also considering that the Respondent expressed the willingness to change the domain name in the Response, the Panel decides that the Disputed Domain Name "dhgatefinds85.com" should be transferred to the Complainant DIGITAL TRADING SCIENCE & TECHNOLOGY (BEIJING) CO. LTD.



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(Hongbo ZHONG)

Dated: 17 April 2023