



Asian Domain Name Dispute Resolution Centre

beijing

## **ADMINISTRATIVE PANEL DECISION**

**Case No. CN-2301583**

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**Complainant: Beijing Unicorn Technology Co., Ltd.**

**Respondent: yassine hagour**

**Domain Name: xreal-ar.com**

**Registrar: NAMECHEAP INC**

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### **1. Procedural History**

On 18 October 2023, the Complainant submitted a Complaint in English 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 19 October 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, NAMECHEAP INC, a request for registrar verification in connection with the disputed domain name.

On 19 October 2023, the Registrar transmitted by email to the ADNDRC Beijing Office its verification response, confirming that the Respondent is listed as the registrant and providing the contact details. On the same day, the ADNDRC Beijing Office request the Complainant to revise the submission.

On 26 October 2023, the Complainant revised its submission. On the same day, the ADNDRC notified the Complainant that the Complaint has been confirmed and transmitted to the Respondent and 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 registrar, NAMECHEAP INC, of the commencement of the proceedings.

The Respondent failed to submit a Response within the specified time period. On 17 November 2023, the ADNDRC Beijing Office notified the Respondent's default. Since the Respondent did not mention the Panel selection in accordance with the time specified in the Rules, the ADNDRC Supplemental Rules, and the Notification, the ADNDRC Beijing Office informed the Complainant and the Respondent that the ADNDRC Beijing Office would appoint a one-person panel to proceed to render the decision.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Prof. Kun Fan, the ADNDRC Beijing Office notified the parties on 20 November 2023 that the Panel in this case had been selected, with Prof. Kun Fan acting as the sole panelist. The Panel determines that the appointment was made in accordance with Paragraph 6 of the Rules and Articles 8 and 9 of the Supplemental Rules.

On 20 November 2023, the Panel received the file from the ADNDRC Beijing Office and should render the Decision within 14 days, i.e., on or before 4 December 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 Beijing Unicorn Technology Co., Ltd. The registered address is 15th Floor, Zhonghang Plaza A2, 43 N. 3rd Ring W. Rd., Haidian District, Beijing, CHINA 100098.

### **B. The Respondent**

The Respondent in this case is yassine hagour. The registered address is 11 rue ettabari etg 4 apt 7 maarif Casablanca Morocco.

The Respondent is the current registrant of the disputed domain name "xreal-ar.com", which was registered on 15 June 2023 according to the WHOIS information. The registrar of the disputed domain name is NAMECHEAP INC.

### 3. Parties' Contentions

#### A. The Complainant

The Complainant was founded in 2017. The Complainant affirms that it is the first company that has launched consumer augmented reality (AR) glasses on a global scale and is leading the world in the revolutionary AR transformation.

The Complainant asserts that it has been maintaining two websites at "xreal.com" and "xreal.cn" as official websites for oversea and China markets respectively. These domain names were registered on the following dates:

Domain name	Registration date
xreal.com	20 June 2011
xreal.cn	17 November 2021

The Complainant owns accounts on popular social media and video platforms, such as Twitter, Facebook, Instagram, Youtube, Wechat, Sina Weibo. The Complainant received influential prizes for its products.

On 25 May 2023, the Complainant announced the re-branding from "Nreal" to "XREAL" through official websites and official accounts on influential social media platforms. The Complainant argues that its re-branding has drawn extensive attention worldwide.

The Complainant provides certificates for the following trademarks:

Trademark	Jurisdiction	Registration number	Registration date	Nice classification	
<b>xreal</b>	China	36110171	2019-09-14	9	
		68124332	2023-05-28	9	
		36101680	2019-09-21	35	
<b>XREAL</b>		70038411	2023-09-07	9	
		70033805		35	
		70053494		38	
		70042299		41	
		70048662	2023-09-14	42	
<b>XREAL</b>		Hong Kong	306201224	2023-3-22	9, 35, 38, 41, 42
<b>XREAL</b>		Macau	N/207145	2023-09-06	9
	N/207146		35		
	N/207147		38		
	N/207148		41		

		N/207149		42
<b>xreal</b>	European Union	018610301	2022-03-25	9, 35, 38, 42
<b>XREAL</b>		018858501	2023-08-24	9, 35, 38, 41, 42
<b>xreal</b>	Japan	6570642	2022-06-13	9, 35, 38, 42
<b>xreal</b>	South Korea	40-2049323	2023-07-07	9
<b>xreal</b>	United Kingdom	UK00003726182	2022-02-25	9, 35, 38, 42
<b>XREAL</b>		UK00003894197	2023-07-21	9, 35, 38, 41, 42
<b>XREAL</b>	Singapore	40202305659Q	2023-03-20	9, 35, 38, 41, 42

Finally, the Complainant also affirms that when searching with key word “XREAL” on popular search engines Google (13,700,000 results) and Bing (87,500 results), almost all the results are directing to XREAL and its products, rather than anyone else.

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

The Respondent registered the disputed domain name on 15 June 2023. The Respondent failed to submit a Response within the specified time period.

#### **4. Discussions and Findings**

Paragraph 4(a) of the Policy provides that in order to be entitled to a transfer of the 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.

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

The disputed domain name is "xreal-ar.com". This domain name is composed of four parts: "xreal"- "ar".com".

The Complainant contends that the disputed domain name is confusingly similar to the trademark. The Complainant asserts that:

(1) "The disputed domain name incorporates the entirety of the Complainant's prior XREAL mark".

(2) "The addition of the term 'ar' does not avoid confusion. In fact, since the term describes the Complainant's industry and core technology, the addition of the term 'ar' is more likely to increase confusion among the relevant public".

(3) "According to Article 1.11.1 of WIPO Overview 3.0, 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 confusing similarity test. The mere addition of the gTLD '.com', which is short for 'commercial' and commonly used by commercial entities as their official websites, is insufficient to differentiate the disputed domain name from a mark as it is a technical requirement of registration".

The Panel agrees with the Complainant that the disputed domain name is confusingly similar to the Complainant's trademarks for the following reasons:

(1) The disputed domain name incorporates the entirety of the Complainant's trademark "XREAL" regardless of the capital and lower-case of letters.

(2) The addition of the hyphen does not exclude the similarity between the domain name disputed and the Complainant's trademark.

(3) The addition of the acronym "AR", which often refers to "augmented reality", emphasizes the similarity with the trademarks since the trademarks are registered and known for products that focus on augmented reality.

(4) Finally, it is well established that, with exceptions that do not apply in this case, the top-level domain, which is a technological requirement, is not taken into account in the test consisting in verifying if the disputed domain name is confusingly similar to the

Complainant's trademark.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's "XREAL" trademarks under paragraph 4(a)(i) of the Policy.

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

The Complainant asserts that the Respondent has no rights or legitimate interest on the disputed domain name. The Complainant puts forward several arguments to contend that the Respondent has no right or legitimate interest in the disputed domain name:

- (1) The disputed domain name was registered after the registration of the trademarks.
- (2) The Complainant conducted searches on the WIPO Global Brand Database and found no trademark in relation with the Respondent.
- (3) The Complainant never authorized the Respondent to register or use the disputed domain name or the Complainant's trademarks.
- (4) "The Respondent cannot claim to be commonly known by the domain name. Nor can the Respondent claim to make a legitimate noncommercial or fair use of the domain name".

The Panel adds that the WIPO Global Brand Database includes trademarks from Morocco, the country in which the Respondent was domiciled.

Accordingly, the Panel considers that the Complainant made a prima facie evidence showing that the Respondent lacks rights or legitimate interests on the disputed domain name. Therefore, the burden of proof is switched, so that it is up to the Respondent to prove that it has a legitimate right or interest in the disputed domain name. However, the Respondent, who was duly contacted by the ADNDRC Beijing Office at the email address provided in the WHOIS record of the disputed domain name, has chosen not to participate in the present proceedings.

Consequently, the Panel considers that the Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

### **C. Bad Faith**

First, the Complainant states that the Respondent registered the disputed domain name in bad faith and is using it in bad faith for the following reasons:

- (1) The Respondent's website reproduces the stylized XREAL trademarks of the Complainant.
- (2) "The Respondent has created a fake XREAL website using the materials from the Complainant's official websites without the Complainant's authorization" to sell products at a lower price.
- (3) The Respondent created a Facebook account impersonating the Complainant.

- (4) The Respondent uses a proxy service in order not to disclose its identity.
- (5) The Respondent has established a suspicious scam website.
- (6) “The XREAL is not a dictionary word, but a coined mark created by the Complainant”.
- (7) The Respondent registered the disputed domain name only one month after the Complainant’s public re-branding from “Nreal” to “XREAL”.

The Complainant has produced a series of documents in support of the above arguments.

According to the screenshots of Complainant’s social media accounts, the Panel notes that the Complainant are followed by several tens of thousands of followers. For example, the Complainant has approximately 49,000 followers on Twitter/X. The Complainant also provided the searching result of “XREAL” on Google and Bing to prove that almost all the results are directing to “XREAL” and its products, rather than anyone else. The Panel, after having conducted such searches, agrees that a significant number of results refer to the Complainant’s trademarks. The Panel is satisfied that Complainant has established high reputation and goodwill in the trademark “XREAL”.

Paragraph 4(b)(iv) of the Policy provides:

“by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location”.

In this case, the Complainant has demonstrated that the Respondent has knowingly registered a domain name incorporating the Complainant’s new trademark in order to publish a merchant site reproducing the Complainant’s trademarks, logos and commercial communication look and feel, without the Complainant’s prior authorization, which constitutes registration and use in bad faith. The Respondent’s ultimate purpose is unclear. The Panel does not have sufficient evidence to determine whether Respondent’s purpose is to sell products manufactured by Complainant without Complainant’s authorization, to sell counterfeits of Complainant’s products, to obtain payments without consideration (which constitutes fraud) or to collect data for phishing purposes. In any case, none of these hypotheses would allow us to conclude that the Respondent is acting in good faith.

To conclude, the Panel finds that the Respondent has registered and is using the disputed domain name in bad faith under paragraph 4(a)(iii) of the Policy.

## 5. 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 “xreal-ar.com” be transferred to the Complainant Beijing Unicorn Technology Co., Ltd.

*Fan Kun*

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(Prof. Kun FAN)

Dated: 4 December 2023