

# Civil Judgment of Hangzhou Internet Court of the People's Republic of China

(2022) Zhejiang 0192 Minchu 3393

Plaintiff: Feng Wenjia, male, born on January 10, 1988, Han nationality, residing in a collective household of Mei'an Police Station, No. 18-8, Mei'an 3rd Street, Xiuying District, Haikou City, Hainan

Province, the People's Republic of China. Attorneys ad litem: Sun Yulong, Liu Chang, lawyers

of Beijing Strategy Law Firm. Defendant: Motennas, LLC, domiciled at 8 0 0 0 Maryland Avenue, Clayton, Missouri, United States of America  
Room 1500.

Legal Representative: Spewak, David S, Manager. Agents ad

litem: Li Shanshan, Wei Nanjie, lawyers of Beijing Guanhequan Law Firm. The plaintiff  
Feng Wenjia

and the defendant Motennas, LLC (hereinafter referred to as Motennas, LLC) dispute over the ownership of Internet domain names, after the case was filed on May 7, 2022, ordinary procedures shall apply according to law , was heard publicly on March 16, 2023. Plaintiff Feng Wenjia entrusted attorney Liu Chang, and defendant Mortinas Company entrusted attorneys Li Shanshan and Wei Nanjie to attend the lawsuit. The case is now closed.

The plaintiff, Feng Wenjia, filed a lawsuit with this court and requested: 1. An order confirming that the plaintiff legally holds the domain name mohu.com; 2. An order not to transfer the domain name mohu.com to the defendant. Facts and reasons: The defendant, Mortinas, has objections to the domain name mohu.com (hereinafter referred to as the "disputed domain name") held by the plaintiff, and filed a complaint with the National Arbitration Forum (NAF) on March 2, 2022, requesting the transfer of the disputed domain name to the accused. On April 20, 2022, the National Arbitration Forum (NAF) of the United States made an administrative panel ruling numbered FA2203001986623, supporting the defendant's complaint and transferring the disputed domain name to the defendant. The specific reasons for the plaintiff to legally hold the disputed domain name are as follows: 1. The "Magic Fox" series of trademarks registered by the plaintiff have a corresponding relationship with the disputed domain name held by the plaintiff, and the plaintiff has rights and interests in the disputed domain name. The plaintiff established "Magic Fox Studio" in 2008, mainly engaged in website construction and website hosting services. After that, Henan Magic Fox Information Technology Co., Ltd. was established on July 17, 2015, and served as the legal representative until October 21, 2021. Due to business development needs, the plaintiff established Henan Xinyifu Technology Co., Ltd. on January 4, 2017. During the initial operation process, the plaintiff chose to use "yǐMOHULI" and its logo for publicity, and used the domain name "www.mohuli.com" as its operating website. In the process of operation, users gradually referred to the business operated by the plaintiff as well as its website and service logo/trademark as "Magic Fox", and in the subsequent use, the term "Magic Fox" and the plaintiff's business were formed in the minds of users. The Internet business has a close and one-to-one relationship. As the abbreviation of "Magic Fox", "Magic Fox" is more in line with user habits. The subject of the disputed domain name "mohu" is the pinyin of the Chinese "yǐ" that the plaintiff enjoys rights and interests in, and the plaintiff has rights and interests in the disputed domain name. On June 14, 2021, the plaintiff purchased the disputed domain name through bidding. 2. The plaintiff used "yǐ" and its corresponding pinyin "mohu" earlier than the defendant, and the defendant has no rights

Since 2008, it has operated related businesses in the name of "Magic Fox Studio", and its use of "Magic Fox" and its Chinese pinyin "mohu" is legitimate and earlier than the time when the defendant company was established (November 12, 2019 ) for ten years. The defendant obviously has no rights and interests in the disputed domain name. To sum up, the plaintiff's possession of the disputed domain name is legal and reasonable, does not constitute infringement on the defendant, nor does it constitute unfair competition,

so it appeals to the court, and it is hoped that the judgment will be as requested. The defendant, Modenas, argued that the defendant mainly engaged in the telephone, TV antenna industry, radio products, digital video equipment for TV tuners and antennas, cables, computer software, etc. Class 9 "MOHO" trademark No. 4280031. The defendant registered and used the domain name "gomohu.co m" as its official website and has been using it up to now. This website is not only a platform for the defendant to release information, promote its products and brand, but also an important platform for the relevant public to understand the defendant and its brand and communicate with the defendant. link. The plaintiff's "mohu.com" domain name contains the defendant's entire trademark logo "mohu", which is equivalent to the defendant's trademark. First of all, the plaintiff has no prior legal rights to the domain name "mohu.com". The evidence submitted by the plaintiff is the registration certificate of the Chinese word "Mohu" trademark, which is not registered in English "mohu", and "Mohu" cannot be equivalent to "mohu". "moh u" can be regarded as a fabricated English vocabulary. Even in Chinese pinyin, each syllable has four tones. Combining them can form a variety of combinations and correspond to thousands of Chinese characters. It cannot be considered that the plaintiff owns the ownership of the "Mohu" trademark, which is equivalent to owning the ownership of "mohu"; and the 31 trademark applications listed are all on June 25, 2021, June 25, 2021 and 2021 On June 29, the application time of these trademarks was later than the defendant's trademark application time, and later than the defendant's acquisition of this trademark through transfer (Janu

u" has no connection. In China, the defendant has never licensed its registered trademark logo "moh u" to the plaintiff. After searching the trademark database of the State Trademark Office, the defendant did not find any application or registration of the plaintiff in any category The trademark of "mohu". Secondly, the plaintiff used "Magic Fox" and its "fox graphics" for publicity in the initial operation process, and the domain name was also www.mohuli.com as the operating website during its operation. It can be seen that the plaintiff used it for publicity Both are "Magic Fox". The plaintiff claimed that it purchased the disputed domain name "mohu.com" through bidding on June 14, 2021, and applied for registration of the "Magic Fox" trademark after purchasing the domain name "mohu.com". , and later enjoyed the ownership of the trademark "Magic Fox". However, the plaintiff claimed that in the process of operation, the user abbreviated the business operated by the plaintiff and its website and service logo trademark as "Magic Fox", which further formed a corresponding relationship with the plaintiff. Apparently, the plaintiff has registered "Magic Fox" for less than two years, and previously used "Magic Fox" and its "fox graphics" for publicity. How do consumers claim that "Magic Fox" and its unrelated Chinese "Magic Fox" The main part of the domain name forms a unique referential relationship with the plaintiff. Third, the plaintiff claimed that its domain name was purchased through bidding on June 14, 2021, and the defendant filed a complaint on March 2, 2022. After the plaintiff purchased , during the period before the defendant's complaint, the plaintiff did not engage in any form of use of the name of the city. Among the evidence submitted by the defendant, the defendant opened the "mohu.com" website before the complaint on March 2, 2022. Obviously, At that time, the plaintiff's website could not be displayed, indicating that the plaintiff did not use the disputed domain name. The plaintiff maliciously registered and did not use the "mohu.com" domain name, and had used the domain name for sale to obtain high profits. The defendant will submit a supplementary submission to the plaintiff's website Timestamp evidence of web pages selling domain names. To sum up, we request the court to dismiss the plaintiff's claim according to law.

The parties submitted evidence according to the law around the lawsuit, and this court organized both parties to

The parties conducted evidence exchange and cross-examination.

Plaintiff Feng Wenjia submitted the following evidence to this court in accordance with the law: 1. The administrative panel decision and notice issued by the National Arbitration Forum (NAF) with the case number FA2203001986623 (English original and Chinese translation); 2. ICANN Uniform Domain Name Dispute Resolution Policy used only Used for (URDP) and rules (Rules); 3. Query the whois information of the disputed domain name through "Benmi.com"; 4. Screenshot of the corporate credit information publicity system of Zhejiang 22 Network Co., Ltd. (22net, Inc.), the registrar of the disputed domain name ;5. The email of the disputed domain name registrar Zhejiang 22 Network Ring Co., Ltd. (22net, Inc.); 6. The complaint submitted by the defendant Modenas in the domain name arbitration procedure; 7. The industrial and commercial registration information of the defendant Modenas (Chinese and English); 8. Screenshot of the web page of the "Magic Fox Self-service Website Building Platform" operated by the plaintiff; 9. The trademark certificate of "Magic Fox" which the plaintiff company enjoys the exclusive right to use; 10. The plaintiff's invoice for purchasing the disputed domain name; 11. Henan Xinyi Screenshot of the credit information company system of Fu Technology Co., Ltd.; 12. Sohu.com published the news about the transaction of the disputed domain name "Domain Name Information | Shuangpin domain name transaction over 100,000 yuan, the terminal spent 8 million yuan to acquire Meme.com"; 13. Henan Magic Screenshot of Enterprise Credit Information Publicity System of Fox Information Technology Co., Ltd.; 14. Business name authorization letter issued by Henan Magic Fox Information Technology Co., Ltd.; 15. Screenshot of Enterprise Credit Information Publicity System of Henan Magic Fox Information Technology Co., Ltd.; 16. Henan Magic Fox Information Technology 17. The domain name mohu.com "yyy" query whois information; 18. The plaintiff company has registered No. 18983414 in the 35th class "Magic Fox" trademark; 19. The plaintiff company has registered No. 22869429 No. 36 "Magic Fox" trademark; 20. Henan Xinyifu Technology Co., Ltd. authorized the plaintiff to use the "Magic Fox" trademark authorization letter; 21. The "Magic Fox" series of registered trademarks registered by the plaintiff company; 22. Henan

Xinyifu Technology Co., Ltd. authorizes the plaintiff to use the "Magic Fox" trademark authorization letter; 23.

Screenshot of the disputed domain name auction details page; 24. Screenshot of the disputed domain name auction transaction record page; ; 26. Screenshots of the records of the plaintiff's circle of friends after the transaction of the disputed domain name; 27. Historical records of the disputed domain name; 28. Screenshots of the background of the plaintiff's domain name; Search results on the WIPO official website; 31. WHOIS information of the domain name of the web page submitted by the defendant; 32. Tencent.com article "Domestic companies lose mohu.com due to arbitration, causing strong dissatisfaction in domain name circles at home and abroad!" .

The defendant Modenas issued cross-examination opinions as follows: it approves the authenticity of evidence 1-7; it does not approve the authenticity of evidence 8, and believes that the use of the "Magic Fox" related logo has nothing to do with the disputed domain name in this case; it approves the authenticity of evidence 9 The authenticity of evidence 10 is recognized, but it is believed to be irrelevant to the domain name involved in this case; the authenticity of evidence 10 is not recognized, and it is impossible to verify whether the invoice was generated by the purchase of the disputed domain name; the authenticity of evidence 11 is recognized, but the company's Behaviors cannot be confused with legal persons; the authenticity of the content of evidence 12 is not recognized, and the information of the buyer and the seller is not shown, which cannot be verified; evidence 13-14 believes that the company's behavior cannot be confused with the individual behavior of legal persons, and cannot prove that the plaintiff has disputes Prior rights of the domain name; Evidence 15-16 holds that the plaintiff has no prior rights; Evidence 17 believes that the domain name "mohu li.com" has nothing to do with this case; Evidence 18-20 believes that the trademark "Magic Fox" is not equivalent to "mohu", the corporate behavior of Henan Xinyifu Technology Co., Ltd. cannot be confused with the legal person; for evidence 21-22, it is believed that the trademark registered as "jǐ" is a Chinese character trademark, which does not correspond to the "mohu" in the disputed domain name, and The trademark registration occurred after the defendant complained, which was obviously specially prepared for this case.

If any information of the seller and the buyer is shown, the authenticity is not recognized; if the evidence 25 is considered to be a copy, the authenticity cannot be recognized if the transaction record does not show the information of the transaction person, and there is no copy. Verification; Evidence 27-28 is considered to be a copy, and the authenticity cannot be proved; Evidence 29-30 is considered to have nothing to do with the ownership of the trademark No. It is a photocopy, which cannot prove that the plaintiff has prior rights and is in good faith.

For the evidence that both parties have no objection to the authenticity, this court will confirm and provide evidence on file. Regarding the evidence that both parties have objections to, this court has determined as follows after review. Evidence 8 is a screenshot of the "Magic Fox" website, which corresponds to the relevant information of Henan Magic Fox Information Technology Co., Ltd. submitted by the plaintiff. This court confirms it, but its probative force It will be comprehensively identified in light of the facts of the case; Evidence 10 is the value-added tax invoice issued by Jinmi Network Technology Co., Ltd., and the content is relevant to the facts of the case. This court will confirm it, but its probative force will be determined in combination with other facts; Evidence 12 It is a screenshot of an online news report, its authenticity cannot be verified, and this court will not recognize it; Evidence 15-16 is related to the registration and authorization of Henan Magic Fox Information Technology Co., Ltd., and this court will recognize its authenticity, but its probative force will be Combined with other facts to make a comprehensive determination; Evidence 18-22 is related to the registration of the relevant trademark, which is relevant to the facts of this case, and this court shall affirm it; It will be determined comprehensively in combination with other facts; Evidence 26 is a screenshot of the plaintiff's circle of friends, whose authenticity cannot be verified, and this court will not affirm it; Evidence 27-31, whose content is related to the facts of this case, will be affirmed by this court, but it is proved that The effectiveness will be comprehensively determined in combination with other facts; the evidence 32 is a screenshot of a webpage, whose authenticity cannot be verified, and this court will not determine

The defendant, Modenas, submitted the following evidence to this court in accordance with the law: 1. Basic information on the disputed domain name; 2. Arbitration rules; 3. Actual usage of the webpage; 4. Screenshots of domain name sales at high prices; 5. Screenshots of malicious communications with domain names at high prices; 6. page does not exist picture.

Plaintiff Feng Wenjia issued cross-examination opinions as follows, accepting the authenticity of evidence 1-2, but not approving the relevance and purpose of the proof; not approving the three natures of evidence 3, arguing that the defendant's registered trademark is invalid within the scope of China, and arguing that the defendant Based on the trademark claim, there is no basis for rights to the disputed domain name; it does not recognize the three aspects of evidence 4, and believes that the registrant of the "gomohu.com" domain name is not the defendant; it does not recognize the three aspects of evidence 5, and believes that the authenticity cannot be verified; Sanxing disagreed, thinking that it could not prove that the plaintiff had malicious intentions; Sanxing did not approve of evidence 7, thinking that the sale of the disputed domain name by the plaintiff in this case was not the case when the defendant made an inquiry on February 27, 2020.

After examination, this court finds as follows: Evidence 1-2 is related to the facts of this case, and this court affirms it; Evidence 3 is the registration and use of the defendant's registered trademark, which is related to the facts of this case, and this court affirms it; Evidence 4 is related to the facts of this case. The screenshot of the webpage, the content and the facts claimed by the defendant in this case can be confirmed, and this court will confirm it, but its proof effect will be comprehensively determined in combination with other facts; Evidence 5-6 is a screenshot of the webpage, but its content can be corroborated with other evidence in this case, this court will affirm the authenticity, but its probative effect will be comprehensively affirmed in combination with other facts.

According to the statements of the parties and the evidence confirmed after examination, the court finds the facts as follows:

1. Arbitration of the disputed domain name



On March 2, 2022, Modenas submitted a complaint to the National Arbitration Forum, requesting that the domain name "mohu.com" involved in the case be transferred to Modenas. Mortinas submitted a complaint to the National Arbitration Forum of the United States, claiming that: Mortnas operates a TV antenna business and has registered the mohu trademark with the United States Patent and Trademark Office (USPTO) and enjoys rights. Feng Wenjia's <mohu.com> domain name contains the entire mohu logo, and only the generic top-level domain (gTLD) such as ".com" is added, and the two are similar. Feng Wenjia has no right or legal interest in the <mohu.com> domain name, nor has he been authorized or licensed by Modenas to use the mohu logo. In addition, Feng Wenjia's use of the disputed domain name neither provided goods or services in good faith, nor was it a legitimate non-commercial or fair use, because the domain name was not active and could be used to spread malware. Feng Wenjia once offered to sell the domain name, and used the disputed domain name to attract users to make profits. Feng Wenjia also passively holds the domain name, which may be used to spread malware. On March 30,

2022, Feng Wenjia submitted a statement of defense to the National Arbitration Forum of the United States, stating: Feng Wenjia established Henan Xinyifu (transliteration) Technology Co., Ltd. and Henan Mohu (transliteration) Information Technology Co., Ltd. to provide website development and promotion services. It is registered with the China National Intellectual Property Administration (CNIPA) and owns the rights to the logo "Magic Fox", and the Chinese pinyin of the logo is MO HU. The <mohu.com> domain name is a general term, and since Mortinas and its business areas are different, there will be no confusing similarities. Feng Wenjia has rights and legitimate interests in the domain name <mohu.com>. In addition, Feng Wenjia's use of the <mohu.com> domain name is related to his legitimate business services, and there is no intention to mislead the complainant's consumers. Feng Wenjia obtained the disputed domain name in good faith in an auction, and offered to sell the disputed

The behavior was not done by him, and it happened before Feng Wenjia obtained the disputed domain name. In addition, Feng Wenjia did not use the disputed domain

name for malware. On April 20, 2022, the National Arbitration Forum of the United States issued a ruling No. FA2203001986623 in accordance with the Uniform Domain Name Dispute Resolution Policy, holding that: 1. The disputed domain name <mohu.com> constitutes the same as the mohu logo claimed by Modenas; 2. Feng Wenjia is not widely known because of the disputed domain name, nor has he obtained the permission of Modenas to use the mohu logo, and Feng Wenjia has not used the domain name to provide goods or services in good faith in accordance with relevant regulations, nor has he carried out legal non-commercial use or Fair use, did not apply for a trademark containing the mohu logo until June 29, 2021, and believed that Feng Wenjia had no rights and legitimate interests in the disputed domain name. 3. The copy of the email shows that the previous holder of a domain name sold the domain name to Modenas for \$25,000, which is malicious. Based on the above three conditions, the ruling: The domain name <mohu.com> was transferred from Feng Wenjia

to Mortinas. On April 21, 2022, Zhejiang Erer Online Game Company sent an email to Feng Wenjia, "Domain Name Mohu.com Judgment Notice", stating that "Our company has received your ruling notice for the following domain names, and the result of the ruling is to transfer the domain name to the winning Party. The award issued by the arbitration institution is hereby forwarded to you. If our company does not receive your effective litigation documents in court before the expiration of 10 working days, our company will execute the domain

name on May 9, 2022 2. Feng Wenjia's claims on the auction of the domain name

involved in the case and the use of the logo are based on the screenshot of

"Benmi.com" (www.benmi.com) on April 26, 2022 provided by Feng Wenjia: the registration of the

disputed domain name <mohu.com> The business is 22net.In c, the domain name was registered by others as early as Janua

Feng Wenjia, the registration date is July 1, 2021, the renewal date is March 4, 2022, and the expiration date is January 12, 2032.

Feng Wenjia claimed that he established "Magic Fox Studio" in 2008, mainly engaged in website construction and website hosting services. On July 17, 2015, Henan Magic Fox Information Technology Co., Ltd. was established. The industrial and commercial change registration information shows that Feng Wenjia will serve as the legal representative until October 12, 2021. Business scope: technical services, technical development, technical consultation; information system integration services; data processing and storage support services; corporate image planning; marketing planning; graphic design and production; sales of electronic products; sales of communication

equipment, etc. Henan Xinyifu Technology Co., Ltd. was established on January 4, 2017. The legal representative is Feng Wenjia. Business scope: network technology development; computer software development; computer system integration; business information consulting; sales of electronic products, office supplies, handicrafts; real estate agency services; business management consulting, etc.

On March 7, 2017, Henan Xinyifu Technology Co., Ltd. applied for the registration of the "Magic Fox" word trademark through the State Intellectual Property Office. . Valid from March 7, 2017 to March 6, 2027. On February 28, 2018, Henan Xinyifu Technology Co., Ltd. applied for the registration of the "Magic Fox" word trademark through the State Intellectual Property Office, and the service category is the 36th category: financial analysis; financial management; financial consulting; debit card payment processing; Internet Banking etc. The validity period is from February 28, 2018 to February 27, 2028. The screenshot of the "Benmi.com" webpage provided by Feng Wenjia shows that the registrar of the domain name "mohul i.com" is: 22net.Inc, and the registration agency

and registrant are: Feng Wenjia .

The screenshot of Jinmi.com (www.jinmi.com) provided by Feng Wenjia shows: Log in to "My Account" and the domain name "mohu.com", leader "I", The "leading price" is 101900, the end time is June 14, 2021, and the "status" is leading. Combining the existing evidence, Feng Wenjia stated that he obtained the disputed domain name "mohu.com" through auction on "Jinmi.com" on June 14, 2021, and obtained the disputed domain name "mohu.com" through the bank on June 14 and 15, 2021 respectively. The advance payment to Hefei Jinmi Network Technology Co., Ltd. by way of transfer totaled 96,973.24 yuan. On June 21, 2021, Hefei Jinmi Network Technology Co., Ltd. issued a value-added tax invoice totaling 100,890 yuan to Henan Xinyifu Technology Co., Ltd. Feng Wenjia provided a screenshot showing that, in "Jinmi.com", click "My Account" to view "Domain Name Management" and it shows: the domain name "mohu.com", the registrar is a liyun, the type is transfer to the original registrar, the account name is fengwenjia,

The expiration date is January 11, 2023, and the transfer date is July 1, 2021. That is to say, the disputed domain name involved in the case was transferred and registered under Feng Wenjia's name on July 1, 2021.

From January to February 2022, Henan Xinyifu Technology Co., Ltd. applied for the registration of the "Magic Fox" series of word trademarks through the State Intellectual Property Office, and the approved use of goods and services involved items 45, 2, 4, 9, 11, Classes 20, 22, 30, 31, etc.

On April 8, 2022, Henan Mohu Technology Co., Ltd. was established, with the legal representative Li Hongyan, business scope: technical consulting, technology development, advertising production, etc.

During the trial, Feng Wenjia argued that after he registered the disputed domain name, he did not sell it at a high price. Due to reasons such as arbitration and litigation, the disputed domain name has not been put into commercial use.

Regarding the defendant's trademark involved in the case, it provided a screenshot of the query on the website of the State Intellectual Property Office, which shows that it is a registered trademark similar to the word "mohu", and the applicant is GRE

ENWAVE SCIENTIFIC, INC. The application date is August 2, 2018, the international registration date is May 16, 2018, the application registration number is G1416125, and the service category is Class 9: Antennas, preamplifiers, including TV tuners and Digital video equipment for antennas, cables, computer software for viewing and storing television programs, etc. Feng Wenjia also submitted information about the defendant's website domain name "gomohu.com" that he queried on "Benmi.com" (www.benmi.com), which shows that the domain name registration agency is antennas direct, and the registrant is richard schneider.

Trader is GoDaddy.com, LLC.

### 3. Relevant defenses of Mortinas Inc. Mortinas Inc. claims

that the registrant GREENWAVE SCIENTIFIC, INC applied for the registration of the No. 4280031 "MOHO" trademark in the United States Patent and Trademark Office on August 30, 2012, and the registration date was January 22, 2013. The service category is Class 9: Antennas, preamplifiers, digital video equipment including television tuners and antennas, cables, computer software for viewing and storing television programmes, computer software for generating, displaying and manipulating visual media. On January 9, 2020, GREENWAVE SCIENTIFIC, INC transferred the above trademark, and the assignee was Modenas Corporation

manage.

Mortinas claimed that it used the No. 4280031 "MOHO" trademark for the company's actual operations and product sales, and owned a commodity sales website with the domain name "gomohu.com". Combined with the existing evidence, according to the inquiry of Mortinas, during the period from May 23, 2002 to January 26, 2021, there was information on the sale of the disputed domain name "mohu.com" on the Internet, and it was passed on February 27, 2020. E-mailed it to Go Daddy domain name agency to inquire about the sale price of the disputed domain name. On April 1, 2020, the staff of the other party replied by e-mail that the price of the disputed domain name "mohu.com" was 25,000 US do

Yuan. The screenshot of the webpage provided by Mortinas shows that when the domain name "mohu.com" is entered on the Internet, prompts such as failure to open or spelling errors appear on the webpage. Modenas believes that, combined with the above circumstances, Feng Wenjia's registration of the disputed domain name violated its legal prior rights, and Feng Wenjia did not use the disputed domain name for actual business operations and sold it, which is subjective malice.

This court holds that Modenas is an American company, and this case is a foreign-related civil dispute. Both Feng Wenjia and Modenas agreed to apply the laws of the People's Republic of China in this case. According to Article 8 of the "Law of the People's Republic of China on the Application of Laws to Foreign-Related Civil Relations", the nature of foreign-related civil relations shall be governed by the law of the place of the court, and the nature of the civil legal relations involved in this case shall be governed by the laws of the People's Republic of China.

The focus of the dispute in this case is the ownership of the rights of the domain name involved in the case. Feng Wenjia claimed that his legal purchase of the domain name involved in the case did not infringe on the legal rights and interests of Mortinas, and he challenged the transfer of the disputed domain name "mohu.com" made by the National Arbitration Institute of the United States. " Dissatisfied with the ruling result, requesting the court to confirm the ownership of the domain name. Modenas believes that it owns the trademark right of the "MOHU" trademark, and the disputed domain name is the same as the above-mentioned trademark, which is likely to cause confusion in consumption, and Feng Wenjia does not enjoy the prior legal rights and interests of the disputed domain name and has subjective malice to sell the domain name , so the domain name involved should be owned and used by Modenas.

In this case, the disputed domain name "mohu.com" is currently purchased and registered by Feng Wenjia, and it is still within the validity period. According to the principle of "first application, first registration" of online domain name registration, once registered, the domain name holder can enjoy legal and valid rights and interests in the domain name within the validity period of the domain name registration, unless the registration and use of the domain name violates the legitimate rights and interests of others. Therefore, Feng Wenjia requested to confirm the

The domain name is owned by him, which is actually a request to confirm his legal rights to the disputed domain name as the domain name holder. The key to determining whether Feng Wenjia enjoys legal rights lies in judging whether his actions have violated the legal rights of Modenas

beneficial.

#### 1. Whether the registration of the disputed domain name is malicious

According to Article 4 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Laws in the Trial of Civil Dispute Cases Involving Computer Network Domain Names, the people's court shall, when hearing domain name dispute cases, meet the following conditions: , it should be determined that the defendant's registration and use of domain names constitute infringement or unfair competition, (1) the civil rights and interests requested by the plaintiff are legal and valid; (2) the defendant's domain name or its main part constitutes a copy, imitation, translation or transliteration; or the same or similar to the plaintiff's registered trademark, domain name, etc., which is enough to cause the relevant public to misunderstand; (3) The defendant has no rights and interests in the domain name or its main part, and has no legitimate reason to register and use the domain name; ( 4) The defendant registered and used the domain name maliciously. Generally speaking, when hearing domain name dispute cases, the people's court shall determine that the domain name holder's registration and use of the domain name constitute infringement or unfair competition if the above four conditions are met. To judge whether the domain name holder's registration and use of the disputed domain name constitutes infringement or unfair competition, it should be judged from whether its behavior is subjectively malicious. According to the "Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Civil Dispute Cases Involving Computer Network Domain Names", Article 5, Paragraph 1, if the behavior of the domain name holder is proved to be under any of the following circumstances, the people's court shall determine that its Malicious: (1) registering others' well-known trademarks as domain names for commercial purposes; (2) registering and using others' registered trademarks, domain names, etc.

domain names, intentionally causing confusion with products, services or other websites provided by others, and misleading network users to visit their websites or other online sites; (4) not using or planning to use the domain name after registering it, but intentionally preventing the right holder from registering the domain name; (5) having other malicious circumstances. In this case, after comparison, the "mohu" in the disputed domain name is similar to the main part of the registered trademark held by Modenas. To determine whether the registration and use of the disputed domain name is legal, this court will conduct the following analysis based on the above legal provisions and in combination with the facts found in this case:

First, the registration of the disputed domain name by an outsider is not malicious. The domain name "mohu.com" involved in the case was first registered by an outsider on January 12, 2000, while Modenas was established on December 11, 2019. It was assigned No. 4280031 "MOHO" Trademark date is January 9, 2020. The time of establishment of Modenas and the transfer of the trademark were both later than the time when the disputed domain name was first registered. However, Mortinas did not provide evidence to prove that it had already enjoyed prior legal rights to the "mohu" logo when the outsider registered the disputed domain name or before. However, when the registrant of the domain name applies for the registration of the domain name, he cannot foresee the rights that others have not yet obtained. Therefore, the registration of the disputed domain name in this case does not exist in the first paragraph of Article 5 of the above-mentioned judicial interpretation. (4) The circumstances of the item, that is, registering a well-known trademark of another person as a domain name for commercial purposes, or registering a domain name that is identical or similar to another person's registered trademark for commercial purposes, or intentionally preventing the obligee from registering the domain name in

malicious circumstances. Second, after the domain name involved in the case was registered, there was no malicious circumstance of intentionally causing confusion with the products, services or websites provided by Modenas. n



Retailing of telephones, television antennas, radio products, television tuners and antennas, digital video equipment, cables, computer software, and other equipment to the public for sale to users within the United States without proof that Modenas It has the registration and use of the "mohu" trademark in China. Modenas also did not provide evidence to prove that the use of the disputed domain name would cause confusion and misidentification of Internet users. Therefore, the registration of the disputed domain name in this case does not fall under the circumstance specified in Item (2) of Article 5, Paragraph 1 of the Judicial Interpretation, that is, to use a domain name that is identical or similar to another's registered trademark for commercial purposes, intentionally causing it to Confusing products, services, or other people's websites, misleading network users to visit their websites or other online sites.

Third, the registration and use of the domain name involved in the case does not involve malicious circumstances such as offering to sell or transfer the domain name involved in the dispute at a high price to obtain illegitimate benefits. In this case, Modenas claimed that it had contacted the domain name intermediary to inquire about purchasing the domain name involved in the dispute. The staff of the domain name intermediary GoDaddy replied to the e-mail that the domain name price was 25,000 US dollars. This court believes that even if the domain name involved in the case has been sold, but for Modenas to contact a third-party domain name intermediary company to inquire about the purchase price of the domain name, the other party's quotation reply is also a normal price discussion in the domain name transaction. During the process, the quotation may be based on the seller's self-judgment of the value of the domain name, and Modenas did not provide further evidence for this claim in this case. Therefore, based on the existing evidence, it cannot be inferred that the registration and use of the disputed domain name involved in the above-mentioned Judicial Interpretation Article 5, Paragraph 1, Item (3) "has offered to sell, rent or otherwise transfer the domain name at a high price to obtain illegitimate benefits." malicious situation.

In summary, the domain name in dispute was registered as early as January 12, 2000. Judging from the time when Modenas was established and the time when the trademark was transferred, it is impossible to prove that the domain name involved in the case was maliciously registered and infringed on the trademark of Modenas. the subjective will of the right picture.

2. Whether Feng Wenjia's process of obtaining the disputed domain name was justified In this case, Feng

Wenjia won the leading ranking of the disputed domain name in the "Jinmi.com" bidding on June 14, 2021. He paid the corresponding consideration, and the disputed domain name was transferred and registered to Feng Wenjia The time under the name is July 1, 2021. Since the domain name involved in the dispute was registered as early as January 12, 2000, Feng Wenjia, as the second-hand purchaser of the domain name involved in the dispute, even though it was not put into use in time after purchasing the domain name involved in the dispute, because Modenas did not prove that it was involved in the domain name involved in the dispute. At the time of registration, he enjoyed prior legal and effective rights and interests. Therefore, it cannot be inferred that Feng Wenjia had subjective malice in purchasing the disputed domain name. Modenas claimed in the arbitration proceedings that Feng Wenjia

had maliciously offered to sell or transfer the disputed domain name at a high price in order to obtain illegitimate benefits. However, based on the evidence provided by Modenas, the reply email for the disputed domain name inquiry was on April 1, 2020, and the inquiry email was sent by Modenas on February 27, 2020, both early. At the time when Feng Wenjia acquired the disputed domain name through auction, it cannot be proved that the purpose of Feng Wenjia's participation in the auction and transfer of the disputed domain name was to sell or transfer the domain name to Modenas or other competitors to obtain additional income, let alone infer that malicious. In addition, Modenas entered the disputed domain name "moh u.com" on the Internet and displayed it as "This page cannot be accessed; spelling error", and believed that Feng Wenjia purchased the domain name involved and passively held the disputed domain name. During the trial,

Feng Wenjia denied going to

According to the above facts, it registered the disputed domain name on July 1, 2021, and received a complaint from Modenas in March 2022, so it has not been used in relevant commercial operations so far. This court believes that Feng Wenjia obtained the disputed domain name through bidding and transferred and registered the disputed domain name under his name. The evidence provided by Modenas cannot prove that Feng Wenjia has passively held the domain name, nor can it prove that Feng Wenjia has other malicious intentions situation. To sum up, the registration and use of the disputed domain

name involved in the case did not involve malicious acts, and did not meet the requirements of Article 4 and Article 5 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Civil Dispute Cases Involving Computer Network Domain Names. Under the conditions of fair competition, Feng Wenjia's process of obtaining the disputed domain name involved in the case was legal and valid. His request to the court to confirm that he enjoys the legal rights and interests of the domain name "mohu.com" involved in the case as the domain name holder is well-founded in law, and this court supports it.

Accordingly, in accordance with Articles 2, 3, and 8 of the "Law of the People's Republic of China on the Application of Laws in Foreign-Related Civil Relations", the "Interpretation of the Supreme People's Court of the People's Republic of China on Several Issues Concerning the Application of Laws in the Trial of Civil Dispute Cases Involving Computer Network Domain Names" > "Articles 4 and 5, Article 67 of the "Civil Procedure Law of the People's Republic of China", the judgment is

as follows: 1. Confirm that the plaintiff, Feng Wenjia, has domain name ownership of the domain name "mohu.com" the legal rights of the recipient;

2. The disputed domain name "mohu.com" is not transferred to the defendant Motennas, LLC. The case acceptance fee is RMB 1,000, and the defendant Company (Motennas, LLC).

If the judgment is not accepted, the plaintiff Feng Wenjia can submit an appeal to this court within 15 days from the date of service of the judgment, and the defendant Motennas, LLC can submit an appeal to this court within 30 days from the date of service of the judgment Complaints, and submit copies according to the number of opposing parties, and appeal to the Intermediate People's Court of Hangzhou City, Zhejiang Province.

Presiding Judge Sha Li  
Judge Xiang Yu People's  
Assessor Fu Xiaolian

This document is no different from the original verification

June 6, 2023

Clerk Shi Liang