



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (BEIJING OFFICE)

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Decision Submission

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Decision ID	DE-0200002
Case ID	CN-0200001
Disputed Domain Name	www.wuliangye.com
Case Administrator	anitaw
Submitted By	Loke Khoon Tan
Participated Panelist	Loke Khoon Tan

Date of Decision	01-07-2002
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The Parties Information

Claimant	SICHUAN YIBIN WULIANGYE GROUP
Respondent	CANADA YIBIN GOLDENNET S. T.

Procedural History

The Complainant is Sichuan Yibin Wuliangye Group Co., Ltd, a public company organized under the laws of China, with its principal place of business at 150 Minjiangxilu, Yibin City, Sichuan Province, 644007, China. The Complainant is represented by Mr. George Hoo of Beijing Chaoyang Law Firm, 5 Liulitunxili, Chaoyang District, Beijing, 100026, China.

The Respondent is Canada Yibin Goldenet Science & Technology Development Co. Ltd, a company organized under the laws of Canada, with its principal place of business at 1842 E 2nd Ave, Vancouver, British Columbia VFN 1F2, Canada.

The Respondent has not participated in the proceedings and is not represented by counsel.

The Disputed Domain Name is “WULIANGYE.COM” (“the Disputed Domain Name”).

The Registrar is Network Solutions, Inc. of 487 E. Midfield Road, Mountain View, California 94042, United States of America.

The Complaint was received by the Asian Domain Name Dispute Resolution Centre (Beijing Office) (“ADNDRC”) by email on April 25, 2002 and in hard copy form on April 26, 2002. A Receipt of Complaint was issued by ADNDRC on April 26, 2002. ADNDRC was satisfied that the Complaint meets the formal requirements of the Uniform Domain Name Dispute Resolution Policy, adopted by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on August 26, 1999 (“the Policy”), the Rules for Uniform Domain Name Dispute Resolution Policy, approved by ICANN on October 24, 1999 (“the Rules”) and the ADNDRC Supplemental Rules to the Policy and the Rules (“the Supplemental Rules”), and that payment was properly made. The Administrative Panel (“the Panel”) is satisfied that this is the case.

The Complaint was properly filed and notified in accordance with paragraph 2(a) of the Rules.

ADNDRC was satisfied that details of the Disputed Domain Name recited in the Complaint matched those in the ICANN and the Registrar WHOIS databases. Therefore, ADNDRC did not request a verification of such details from the Registrar.

ADNDRC notified the Respondent of the Complaint by email on April 27, 2002 and by courier on April 28, 2002, in the usual manner, and informed the Respondent that it had twenty (20) calendar days from April 27, 2002 to submit a Response to the Complainant and to ADNDRC.

There was no Response from the Respondent within the time limit prescribed by ADNDRC.

The undersigned Panelist was contacted by ADNDRC on May 20, 2002, and was officially confirmed by ADNDRC on May 28, 2002. The Panelist finds that the Panel was properly constituted in accordance with the Policy, the Rules and the Supplemental Rules.

The original deadline scheduled for the issuance of the Panel's Decision was June 11, 2002. The deadline was postponed to June 20, 2002 because the Panelist requested further submissions and evidentiary documents from the Complainant. The Panelist received the requested submissions and evidentiary documents by email and fax on June 17, 2002.

Factual Background

For Claimant

The Complainant is a large public company in China with a history of more than ninety (90) years. The Complainant's trademark “五糧液”, the transliteration of which is “WULIANGYE”, is famous in China and in various countries around the world.

The “五糧液” brand spirits were first introduced to the Chinese market as early as January 1909 and to the world market as early as 1915. Since then, the “五糧液” brand spirits have won many awards, including the Golden Award in the Panama Expo Commercial International in 1915, the Golden Award and the Famous Liquor Award from the State Light Industrial Ministry of China in 1964, the Golden Award from the State Economical Committee of China in 1979, and the Golden Award in the Panama Expo Commercial International in 1995. Winning the Golden Award in 1915 was significant and had a resounding impact at the time as it was the first time a Chinese product won an international award. In addition, in 1991 the “五糧液” brand was officially recognized as a famous trademark by the State Industrial and Commercial Administration Bureau of China. In 1991 it was also awarded “China Famous Trademark” in the First Public Appraisal of China Famous Trademarks Among the Consumers. Furthermore, the “五糧液” brand was ranked among the top 100 brands in China by the Commercial Information Center of the State Internal Commercial Administration Ministry of China in 1998. Additionally, the “五糧液” brand was valued at about RMB 15.67 billion dollars and ranked as the number one brand in the liquor industry in China by Beijing Famous Brand Asserts Evaluation Limited in 2001.

The Complainant and its predecessor/subsidiary have obtained local/national trademark registrations for the marks “五糧液 (Stylized)”, “五糧液 AND DESIGN”, “WULIANGYE 五糧液 (Stylized)”, and/or “WULIANGYE 五糧液 AND DESIGN” for various goods including “spirits” in International Class 33 in China, Japan, Macao, Taiwan, United States of America, and international trademark registrations in France, Germany, Democratic People's Republic of Korea, Mongolia, Switzerland and Soviet Union through the World Intellectual Property Organization. The first trademark registration was obtained in 1982. Most of these trademark registrations were obtained before the Complainant and its predecessor/subsidiary first became aware of the registration of the Disputed Domain Name in 1997.

The Complainant and its predecessor/subsidiary have won awards such as the State Quality Administration Award from the State Technology Administration Ministry of China in 1990, and the China Liquor King Award from the National Bureau of Statistic of China in 1995. In 2001 the Complainant was ranked number ninety-four (94) among the top 1000 companies in China by the National Bureau of Statistics of China.

Today, the Complainant's “五糧液” brand products are sold in 150 countries. In 2001, the Complainant had a revenue of RMB 8 billion dollars and spent RMB 400 million dollars in advertising.

For Respondent

As stated above, the Respondent is Canada Yibin Goldennet Science & Technology Development Co., Ltd of Vancouver, Canada. The Respondent is not the original registrant of the Disputed Domain Name. The original registrant was China Sichuan Yibin Goldennet Science & Technology Development Co., Ltd of Yibin City, China, which registered the Disputed Domain Name with the Registrar on May 23, 1997, transferring it to the Respondent in 2001. The Respondent does not have any connection with the Complainant. The business names of the Respondent and the original registrant are very similar as they share the wording of “YIBIN GOLDENNET SCIENCE & TECHNOLOGY DEVELOPMENT CO., LTD.”

On June 8, 2002, an Internet search of the Disputed Domain Name did not lead to any website. On the other hand, a Google search of the wording “WULIANGYE” on the Internet led to the active website of the Complainant's predecessor/subsidiary.

Parties' Contentions

Claimant

The Complainant contends that through extensive sales and promotions, it has acquired substantial reputation and goodwill in the trademark “WULIANGYE” and that the trademark “WULIANGYE” became a famous mark long before the Disputed Domain Name was registered. The Complainant further contends that the Disputed Domain Name is identical to its trademark. As such, the Complainant contends that the relevant Internet-using public will likely associate the disputed Domain Name with the Complainant.

Additionally, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and that the Disputed Domain Name was registered and subsequently used in bad faith.

Respondent

The Respondent has not filed a Response within the time limit prescribed by the ADNDRC.

Findings

Identical / Confusingly Similar

The Policy applies to this dispute. By accepting the ownership of the Disputed Domain Name, the Respondent accepted the Policy adopted by the Registrar.

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

(i) That the domain name of the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

(ii) That the Respondent has no rights or legitimate interests in respect of the domain name; and

(iii) That the domain name has been registered and is being used in bad faith.

Identical or Confusing Similarity

The Complainant contends and has provided supporting evidence that the Complainant has rights in the trademarks “五粮液”, “五粮液 (Stylized)”, “五粮液 AND DESIGN”, “WULIANGYE 五粮液 (Stylized)”, and “WULIANGYE 五粮液 AND DESIGN” within the meaning of subparagraph 4(a)(i) of the Policy, and that the trademark “五粮液” is a famous mark. As discussed earlier, the transliteration of “五粮液” is “WULIANGYE”. In other words, “WULIANGYE” and “五粮液” are phonetically equivalent. As a result, when the relevant Internet-using public see or hear “WULIANGYE”, they would most likely associate it with the famous trademark “五粮液”. Furthermore, the original Registrant expressly acknowledged that “WULIANGYE” in the Disputed Domain Name referred to the famous trademark “五粮液” owned by the Complainant, which eliminates the possibility that the original Registrant intended to use “WULIANGYE” to identify different Chinese characters having a different meaning than the one conveyed by “五粮液”. The Complainant’s ownership of the trademarks “五粮液”, “五粮液 (Stylized)”, “五粮液 AND DESIGN”, “WULIANGYE 五粮液 (Stylized)”, and “WULIANGYE 五粮液 AND DESIGN” in several countries, the fame of the trademark “五粮液” and the long history and the world-wide sales of the “五粮液” brand products of the Complainant and its predecessor/subsidiary support the contention that the relevant Internet-using public are likely to be confused by the Respondent’s use of the word “WULIANGYE” in the Disputed Domain Name.

Thus, the Panel finds that the Respondent’s Disputed Domain Name is confusingly similar to the trademarks “五粮液”, “五粮液 (Stylized)”, “五粮液 AND DESIGN”, “WULIANGYE 五粮液 (Stylized)”, and “WULIANGYE 五粮液 AND DESIGN” in which the Complainant has prior rights.

Rights and Legitimate Interests

Paragraph 4(c) of the Policy stipulates how a Respondent can effectively demonstrate rights or legitimate interests in the Disputed Domain Name:

“Any of 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 your rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii):

- (i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) you (as an individual, business or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

There is no evidence from the Respondent that relates to paragraphs 4(c)(i), (ii) and/or (iii) of the Policy because the Respondent has chosen not to participate in the current proceedings. Subsection 5(e) of the Rules states that:

‘if a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint’ .

The Complainant contends that the Respondent is not commonly known by the Disputed Domain Name. In addition, the Complainant contends that the Respondent is not licensed or otherwise authorized to use the transliteration of the Complainant’s famous trademark “五糧液”. The Panel accepts the Complainant’s contentions and finds that they are also applicable to the original registrant of the Disputed Domain Name.

Furthermore, the Complainant contends and its evidence supports that the original Registrant did not use the Disputed Domain Name in connection with a bona fide offering of goods or services. Instead, the original Registrant mainly used the Disputed Domain Name to blackmail the Complainant, trying to achieve substantial financial gains by auctioning off the Disputed Domain Name to the public, and after these attempts failed, to tarnish the reputation of the Complainant and its senior management team. The fact that the Respondent did not engage in this kind of conduct itself is immaterial. As noted earlier, it appears that the original registrant and the Respondent are related entities as they share the same company name barring the different country and/or province identifiers. Furthermore, the Complainant contends that the original registrant transferred the Disputed Domain Name to the Respondent in an effort to avoid liability. After considering the circumstances surrounding the dispute, the Panel accepts the Complainant’s contention.

Moreover, the Complainant contends that the Disputed Domain Name has not been used since 1999. As mentioned above, an Internet search of the Disputed Domain Name on June 8, 2002, did not lead to any website, while a Google search of the wording “WULIANGYE” on the Internet led to the active website of the Complainant’s predecessor/subsidiary. The logical conclusion is that the Respondent is passively holding the Disputed Domain Name.

In view of the foregoing, the Panel finds that the Respondent has no rights or legitimate interests in the domain name of “WULIANGYE.COM” .

Bad Faith

The Complainant also has to establish bad faith on the part of the Respondent as set out in paragraph 4(a)(iii) of the Policy described above. Under paragraph 4(b)(i) of the Policy, the following circumstances, in particular but without limitation, shall be considered evidence of the registration and use of a domain name in bad faith: Circumstances indicating that you have registered or you have 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 your documented out-of-pocket costs directly related to the domain name.

The Panel in *Telstra Corporation Limited v Nuclear Marshmallows* [WIPO case No D2000-0003] held that, for the purposes of paragraph 4(a)(iii) of the Policy, the Complainant needs to establish bad faith both at registration and thereafter. The Panel finds that the Complainant has established the requisite bad faith.

The Complainant contends and has provided supporting evidence that the original Registrant engaged in activities very similar to those described in paragraph 4(b)(i) of the Policy. The original registrant first registered the Disputed Domain Name without the permission of the Complainant, and used it for its website. The original registrant then offered to transfer the Disputed Domain Name back to the Complainant in exchange of either a cash payment or a contract to manage the information technology services of the Complainant, both of which far exceeded the original registrant’s documented out-of-pocket costs directly relating to the Disputed Domain Name. The Complainant refused both offers. The original registrant subsequently offered to auction off the Disputed Domain Name, claiming that the Disputed Domain Name could be sold for at least a few million U.S. dollars. The original registrant also set up an auction bulletin to tarnish the reputation of the Complainant and its senior management team. As noted above, the Disputed Domain Name has not been used since 1999.

Moreover, the evidence supports the fact that the original registrant, whose main business included registering domain

names for others, knew that the trademark “五糧液” was famous, that it belonged to the Complainant and expressly acknowledged that “WULIANGYE” referred to the famous trademark “五糧液”. Thus, the original registrant was clearly aware that registration of the Disputed Domain Name would infringe upon or violate the rights of the Complainant and its predecessor/subsidiary. Nevertheless, the original registrant went ahead and registered the Disputed Domain Name. This is a clear violation of Section 2 of the Policy.

All of these points described above support the Complainant’s contention that the Disputed Domain Name was registered and subsequently used in bad faith. The fact that the Respondent did not itself engage in the above activities is immaterial.

Therefore, the Panel finds that the Disputed Domain Name was registered and subsequently used in bad faith pursuant to sub-paragraph 4(a)(iii) of the Policy.

Status

www.wuliangye.com Domain Name Transfer

Decision

In light of the above-mentioned findings, the Panel decides:

a) that the “WULIANGYE.COM” domain name of the Respondent is confusingly similar to the trademarks “五糧液”, “五糧液 (Stylized)”, “五糧液 AND DESIGN”, “WULIANGYE 五糧液 (Stylized)”, and “WULIANGYE 五糧液 AND DESIGN” in which the Complainant has rights;

b) that the Respondent has no rights or legitimate interests in respect of the “WULIANGYE.COM” domain name; and

c) that the Respondent’s “WULIANGYE.COM” domain name was registered and subsequently used in bad faith.

As such the Panel requires that the registration of the “WULIANGYE.COM” domain name be transferred to the Complainant.

Tan Loke-Khoon
Sole Panelist

Dated: June 19, 2002