

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

(Beijing Office)

ADMINISTRATIVE PANEL DECISION

Case No. CN-1100433

Complainant: TRENDY INTERNATIONAL INVESTMENT LIMITED

(赫基国际投资有限公司)

Respondent: pri

Domain Name: e-ochirly.com

Registrar: GoDaddy.com, Inc.

1. Procedural History

On 27 January 2011, the Complainant submitted its Complaint to the Beijing Office of the Asian Domain Name Dispute Resolution Centre (the “ADNDRC Beijing Office”), in accordance with the Uniform Domain Name Dispute Resolution Policy (the “Policy”) adopted by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on August 26, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the “Rules”), and ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the “ADNDRC Supplemental Rules”).

On 28 January 2011, the ADNDRC Beijing Office confirmed the receipt of the Complaint and forwarded a request for verification of registration information to ICANN and the Registrar of the domain name in dispute, GoDaddy.com, Inc.

On 29 January 2011, the ADNDRC Beijing Office received the Registrar’s confirmation of registration information of the domain name in dispute.

On March 25, 2011, the ADNDRC Beijing Office transmitted the Complaint to the Respondent by email.

On March 30, 2011, the ADNDRC Beijing Office notified the Complainant by email that the Complaint was reviewed and forwarded to the Respondent and

confirmed with the parties and Registrar by email that the captioned case was formally commenced. The ADNDRC Beijing Office also requested the Respondent to file a Response within 20 calendar days scheduled time.

On April 22, 2011, the ADNDRC Beijing Office confirmed that No Response was received from the Respondent.

On May 5, 2011, the ADNDRC Beijing Office gave notice to the potential candidate of the Panelist Mr. Gao Lulin, requesting him to confirm whether he would accept the appointment as a Panelist for this case, and if so, whether he could maintain impartiality and independence between the parties in this case.

On May 9, 2011, the ADNDRC Beijing Office received a declaration of impartiality and independence and a statement of acceptance from Mr. Gao Lulin.

On May 9, 2011, the ADNDRC Beijing Office informed by email the Parties that Mr. Gao Lulin would be the sole Panelist of this case and transferred the files of this case to the Panel formally on the same day. The Panel should render the Decision within 14 days, i.e. on or before May 23, 2011.

In order to better review the case, the Panel, through the ADNDRC Beijing Office, requests the Complainant to further provide evidence. For the situation above mentioned, the ADNDRC Beijing Office decides to extend the deadline of rendering the decision to June 7, 2011.

2. Factual Background

For the Complainant

The Complainant of this case is TRENDY INTERNATIONAL INVESTMENT LIMITED (赫基国际投资有限公司). Its address is UNIT C 17/F SILVERCORP INT' L TOWER 713 NATHAN ROAD KL HK. Its authorized representative is HYLANDS LAW FIRM (北京市浩天信和律师事务所) LianYunze (廉运泽)、DuanZhiyong (段志勇).

For the Respondent

The Respondent of this case is pri with the address at bj China. According to the

record in the Whois database, the domain name in dispute “e-ochirly.com” was registered on 1 July 2010.

3. Parties’ Contentions

The Complainant

The Complaint is based on the “ochirly” trademarks that the Complainant has registered in mainland of China and other rights arising from using the “ochirly” trademarks (the “Trademarks”).

The Complainant enjoyed registered trademark rights in respect of the main part of the disputed domain name “OCHIRLY” in mainland of China, before the disputed domain name had been registered.

The disputed domain name was registered on July 1, 2010. In China, the trademark “**OCHIRLY**” was first registered on June 7, 2000 in Class 25. The Complainant has registered “**OCHIRLY**” trademarks in Class 25, Class 26, Class 24, Class 14, Class 3, Class 35. All of the trademarks mentioned above are in the term of validity, and were approved for registration before the registration date of the disputed domain name.

Hereunder is a list of the registration information of some trademarks registered in mainland of China.

The registrant: TRENDY INTERNATIONAL INVESTMENT LIMITED (赫基国际投资有限公司).

Trademark	Registration Date	Class	Registration No.
OCHIRLY	2004-09-07	3	3396327
OCHIRLY	2004-08-21	14	3396325
OCHIRLY	2004-06-07	24	3396323
OCHIRLY	2004-11-14	25	3396321
OCHIRLY	2004-10-14	26	3396319

OCHIRLY	2004-07-14	35	3397212
OCHIRLY	2000-06-07	25	1405051

(1) Background of the Complainant and its “OCHIRLY” brand

The Complainant TRENDY INTERNATIONAL INVESTMENT LIMITED is a large international investment company, under which there are still Guangzhou TRENDIANO CO., LTD, Guangzhou Ding Shang Co., Ltd. The main business of the Complainant and its subsidiaries is fashion design, production and sales. The “OCHIRLY” which has experienced a sharply growth was firstly introduced to China market in 1999 by the Guangzhou Ding Shang Co., Ltd. After ten years of operation, the Complainant has established hundreds of “OCHIRLY” stores and self-counters in major cities, such as in Beijing, Shanghai, Guangzhou, Shenzhen, Dalian, Chengdu, Chongqing, Hangzhou, Wuhan, Xi’an, Changsha, and so on. The sales of the “OCHIRLY” are among the bests and the brand falls swoop become the leader in women’s fashion.

(2) The mark “ochirly” has been widely used by the Complainant as trademark in mainland of China, and it is of great fame in China.

The Complainant and the “OCHIRLY” brand won the unanimous endorsement of the consumers with its high quality products and service and received many honors from communities. At the same time, the Complainant always concerns about public welfare and gets a good social assessment. In order to expand the reputation and influence of “OCHIRLY” brand, the Complainant has launched a lot of OCHIRLY brand advertising and gets a good result. The Complainant and the OCHIRLY brand enjoy a good fame in China with its high quality products and good publicity.

The Complainant is the owner of the trademark “OCHIRLY” and has used “OCHIRLY” as trademark in business field over 10 years. Owing to excellent management and extensive promotion, products and services, the “OCHIRLY” brand is in the front rank around the globe, especially in mainland of China. Moreover, in 2007, the trademark “**OCHIRLY**” (Registration No.: 3396321) owned by the Complainant was granted the well-known trademark in Guangzhou city, and in 2008, the trademark was also granted the famous trademark in Guangdong province of China.

(3) The Complainant has prior trademark rights of “OCHIRLY” trademark; the disputed domain name is confusingly similar to the Complainant’s trademark.

It is well-known that “OCHIRLY” is a worldwide famous trademark which is owned by the Complainant. The validity and fame of its trademarks are beyond dispute.

As described in the above, the Complainant has lots of registered trademarks in mainland of China, all of them are in the term of validity, including the earliest one: “**OCHIRLY**” (Registration No.: 1405051), which was registered in 2000. The registration date of all of them is much earlier than the registration date of the disputed domain name, i.e. July 1, 2010. Therefore, the Complainant has prior trademark rights of “OCHIRLY”.

The main part of the disputed domain name “e-ochirly” consists of “ochirly” and letter “e”. “ochirly” is the well-known trademark of the Complainant. The single letter “e” bears no specific meaning. Accordingly, the domain name “e-ochirly.com” is confusingly similar to the trademark “OCHIRLY” owned by the Complainant and infringes upon the Complainant’s legal rights.

Therefore, the Complainant has proven paragraph 4(a)(i) of the policy.

(4) The Respondent does not have any legitimate rights or interests on the disputed domain name.

The Respondent has no any legitimate rights on the trademark. The Complainant has searched through the online trademark search systems of the Chinese Trademark Office with the keyword of the Respondent “pri” for all types of registration. But no any trademarks that the Respondent registered were found.

The Complainant owns the trademark exclusively and never authorized, permitted the Respondent to register or use the disputed domain name, or to use the trade name or trademark for any purposes. The Complainant has never acquiesced the Respondent to register or use the disputed domain name in any way.

For these reasons, the Complainant considers that, under the policy 4(a) (ii), the Respondent has no rights or legitimate interests for the disputed domain name.

(5) The disputed domain name has been registered and used in bad faith.

The trademark has been used in the global by the Complainant. And the trademark enjoys a great reputation in the location that the disputed domain name was registered, so it is unimaginable that the Respondent didn't know the trademark when he registered the disputed domain name. For the trademark is a fancy word, it is impossible for the Respondent to think out the same word for a domain name registration. Therefore, the Respondent's actions described that the Respondent registered and used the disputed domain name in bad faith.

The Respondent established the website www.e-ochirly.com and named it as "ochirly official website" with the disputed domain name. This domain name is linked to a website selling counterfeiting ochirly brand clothes, which have infringed the business fame and trade mark right of the Complainant. The trademark "OCHIRLY" owned by the Complainant enjoys a high reputation in China, thus the Respondent knew clearly the existence of this famous trademark and still intended to confuse the consumers so as to gain improper interests. The Respondent using the disputed domain name in this way will lead the internet users to think by mistake that the website is operated by the Complainant, and will increase more clicks and awareness of the Respondent's website, and that the Respondent may gain improper interests on this ground. Therefore, the conduct of the Respondent falls under the circumstances in Paragraph 4(b)(iv), i.e. "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".

For the above reasons, the Complainant considers that according to policy section 4(a)(iii), the Respondent has registered and used the disputed domain name in bad faith.

The Complainant requests the Panel issue a decision that the Disputed Domain Name shall be transferred to the Complainant i.e. Trendy international investment limited(赫基国际投资有限公司).

The Respondent

The Respondent failed to submit a Response within the specified time period.

4. Panel's Findings

As stipulated in the Paragraph 4 (a) of the Policy, when claiming a domain name registered by Respondent, the Complainant must prove all of the followings:

- (i) that the domain name of the Respondent's is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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.

Based on the relevant stipulations under the Policy, the Rules and the ADNDRC Supplemental Rules, the Panel needs to determine whether the Complainant satisfies each of the afore-said prerequisites. If the answer is yes, the Panel will make a final decision in accordance with the facts and relevant stipulations under the Policy, the Rules and the ADNDRC Supplemental Rules; if not, the Complainant's claims shall be rejected.

Identity or Confusing Similarity

Pursuant to Paragraph 4(a)(i) of the Policy, the Complainant must prove that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has right to. In order to meet this requirement, the Complainant provided evidence certifying its entitlement to the registered trademark "OCHIRLY" (Reg. Nos. 1405051/3396321) in Class 25 in China, which was registered respectively in 2000 and 2004, and remains valid at present. Just as demonstrated by the Complainant's exhibitions, the Complainant's trademark was registered well before the registration date of the disputed domain name, July 1, 2010. Thus, the Panel is of the view that the Complainant enjoys the prior trademark right to "OCHIRLY."

The Panel needs to make a conclusion on the identity or the confusing similarity between the Complainant's registered trademark "OCHIRLY" and the disputed domain name "e-ochirly.com". The Panel notices that, the majority part of the disputed domain name consists of two separate sub-parts, "e" and "ochirly". The first sub-part "e" is a single letter, and is not distinctive enough to differentiate the disputed domain name from the Complainant's registered trademark. The second sub-part of the disputed domain name is the same as the Complainant's registered trademark "OCHIRLY", except for the lowercase letters that has nearly no effect on distinguishing the disputed domain name and the Complainant's prior trademark. As for ".com", it only indicates that the domain

name is registered under the gTLD and is also non-distinctive. Thus, the only distinctive and identifying part of the disputed domain name is “ochirly”.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s registered trademark “OCHIRLY”, and the Complaint has satisfied the first element under Paragraph 4(a) of the Policy.

Rights or Legitimate Interests of the Respondent

The Panel makes the decision based on the evidence provided by both parties and in case that either party fails to meet its burden of proof, such party shall undertake the risk of the possible unfavorable result against it.

The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Panel finds that the Complainant has already fulfilled the burden of proof required by the second element under Paragraph 4(a) of the Policy. Thus the burden of proof regarding “rights or legitimate interests” is generally on the defending party in the dispute resolution of a domain name, the Respondent.

The Respondent has failed to show that it has any rights or legitimate interest in respect of the disputed domain name. The act of registering the disputed domain name does not automatically award any legal rights or interests to the Respondent.

In view of the foregoing, the Panel concludes that the Respondent has no rights or any legitimate interests in respect of the disputed domain name. Accordingly, the Complaint has satisfied the second element under Paragraph 4(a) of the Policy.

Bad Faith

The Complainant needs to establish the Respondent’s bad faith as set forth under Paragraph 4(a)(iii) of the Policy. Moreover, under Paragraph 4(b) of the Policy, the following circumstances in particular shall be considered as evidence of the registration and use of a domain name in bad faith:

(i) 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; or

(ii) You have 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 you have engaged in a pattern of such conduct; or

(iii) You have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) 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.

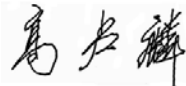
As the Panel concludes in above, there is no evidence proving that the Complainant has ever authorized or permitted the Respondent to register the disputed domain name. The evidences show that the Complainant's trademark "OCHIRLY" has gained a high reputation of the brand name through extensive use, promotion, and advertisement. The Complainant has achieved great success in the business. As a result, the public has come to recognize and associate the Complainant's trademark as originating from the Complainant and no other. The Complainant's trademark "OCHIRLY" is a coined word and is not commonly used in any other fields. These facts serve the purpose of proving that the Respondent is aware of the existence of the Complainant and its trademark. This assumption can be further verified by the fact that the web page that the disputed domain name points to sell clothes like T-shirts, coats, etc. under the name of "Ochirly". Besides, the Respondent names the website the disputed domain name points to as "Ochirly official shopping website". Obviously, the Respondent has intentionally registered and used the disputed domain name for selling the products on the website created by the Respondent under the disputed domain name.

The use of the disputed domain name has caused confusion between the Complainant and the Respondent. These findings, together with the finding aforementioned that the Respondent has no rights or any legitimate interests in the disputed domain name, lead the Panel to conclude that the disputed domain name has been registered and used by the Respondent in bad faith, as indicated by Policy 4(b)(iv).

In light of all the evidences, the Panel concludes that the Complaint has satisfied the third element under Paragraph 4(a) of the Policy.

5. Decision

For all the forgoing reasons, the Panel has decided that the Complainant has proved sufficiently all the three elements under Paragraph 4(a) of the Policy. Accordingly, the Panel supports the disputed domain name “e-ochirly.com” should be transferred to the Complainant TRENDY INTERNATIONAL INVESTMENT LIMITED (赫基国际投资有限公司).

Sole Panelist: 

Dated: June 7, 2011