

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

(Beijing Office)

ADMINISTRATIVE PANEL DECISION

Case No. CN-1300665

Complainant: PACIFIC BIOSCIENCE LABORATORIES, INC.

Respondent: andows canxue

Domain Name: clarisonic8.com

Registrar: GODADDY.COM, LLC

1. Procedural History

on April 19, 2013, the Complainants submitted a Complaint in the English language 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) approved by the Internet Corporation for Assigned Names and Numbers (ICANN), the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the ADNDRC Supplemental Rules).

On April 28, 2013, the ADNDRC sent to the Complainant by email an acknowledgement of the receipt of the Complaint. On the same day, the ADNDRC Beijing Office requested the Registrar by email for the provision of information at their WHOIS database in respect of the disputed domain name, and such registration information was confirmed by the Registrar on April 30, 2013.

On May 13, 2013, the ADNDRC transmitted the Written Notice of the Complaint to the Respondent, which informed that the Complainant had filed a Complaint against the Respondent over the disputed domain name and the ADNDRC had sent the Complaint and its attachments to the Respondent through email according to the Rules and the Supplemental Rules. On the same day, the ADNDRC notified the Complainant that the Complaint has been

confirmed and transmitted to the Respondent, and notified the ICANN and the Registrar of the commencement of the proceedings.

ADNDRC Beijing Office received no response from the Respondent at the scheduled time. On June 6, 2013, ADNDRC Beijing Office entered default based on the notification of no response received and hearing.

On June 8, 2012, ADNDRC Beijing Office issued the notification of proposed Panelist. And ADNDRC Beijing Office gave notice to potential panelist candidate, 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.

Having received a declaration of impartiality and independence and a statement of acceptance from Mr. Gao Lulin, ADNDRC Beijing Office informed the parties that Mr. Gao Lulin would be the sole Panelist for this case and formally transferred the files of this case to Mr. Gao Lulin on June 17, 2013.

The Panelist should render the Decision on or before July 1, 2013.

2. Factual Background

For the Complainant

The Complainant of this case is PACIFIC BIOSCIENCE LABORATORIES, INC. Its address is at 13222 SE 30TH STREET, # A-1 BELLEVUE, WASHINGTON 98005 UNITED STATES. The authorized representative of the Complainant in this case is XU Wenhui.

For the Respondent

The Respondent of this case is andows canxue with the address at Ninghai Maoyang Gongyequ Si Tan Er Company Ningbo China. The Respondent registered the disputed domain name on September 28, 2012 through the registrar, GODADDY.COM,LLC..

3. Parties' Contentions

The Complainant

The Complainant's contentions are as follows:

I. The introduction of the Complainant and its trademark

Part I: the Complainant enjoys the exclusive trademark right of "CLARISONIC"

The Complainant, Pacific Bioscience Laboratories Inc. (hereafter as "PBL") is a leading innovator in sonic skin care and the creator of the Clarisonic Skin Cleansing System, the first professional-caliber sonic skin care system for healthy, younger-looking skin and the cleansing standard of renowned spas, and an acknowledged market leader in sonic skin care devices and technology. Established in 2001 in the United States, PBL developed its own patented technology, enabling a series of highly popular products under the CLARISONIC brand that redefined consumers' approach to skin care. These include the Clarisonic Classic, Clarisonic Mia, Clarisonic PLUS and PRO, and the Clarisonic Opal Sonic Infusion System.

PBL has grown rapidly since the Clarisonic launched in 2004. The company's broad distribution network covers six diverse and interdependent channels: dermatologists and cosmetic surgeons, spas, prestige retail, e-tail, television shopping, and clarisonic.com. Apart from domestic market in USA, PBL also developed business in UK, Australia, Mexico, Canada and Asia.

As a globally prestigious enterprise, PBL attaches significant importance to all its intellectual property rights and has been approved for registration of the marks in considerable countries and regions, including but not limited to the USA, China and so on. The aforementioned registration has covered the classification of goods and service including but not limited to 5, 35. Please refer to the following table for PBL's registration information in P.R. China:

Trademark	Date for Registration	Registration No.	Class	Designated goods or services	Expiration date
CLARISONIC	May 14,2011	8275826	5	Skin care pharmaceutical preparations; Medicines for human purposes; Pharmaceutical preparations; Disinfectants for	May 13,2021

				<p>hygiene purposes; Dietetic substances adapted for medical use; Depuratives; Chemical preparations for veterinary purposes; Insecticides; Antisepsis paper; Adhesive bands for medical purposes; Dental lacquer</p>	
CLARISONIC	September 7,2011	8514772	35	<p>On-line advertising on a computer network; Advertising; Business information; Auctioneering; Auctioneering on skin care products through a global computer network; Sales promotion [for others]; Sales Promotion on skin cares through a global computer network[for others]; Personnel management consultancy;</p>	September 6,2021

				Systemization of information into computer databases; Accounting; Rental of vending machines; Seeking sponsorship	
CLARISONIC	September 7,2011	8514771	35	On-line advertising on skin care products on a computer network; Auctioneering on skin care products through a global computer network; Sales promotion on skin care products through a global computer network[for others]	September 6,2021

Currently, the aforementioned trademarks are remaining in force.

Part II: The Complainant possesses many domain names based on “CLARISONIC” characters

The Complainant has registered a series of domain names containing “CLARISONIC” characters in the world, such as clarisonic.com, clarisonic.net, clarisonic.org, clarisonic.biz, clarisonic.tv, etc.

Part III: The series of “CLARISONIC” trademark has earned a great reputation in China and abroad

As above, the Complainant PBL was established in 2001 by scientists, engineers,

and the primary inventor of the Sonicare toothbrush, one of the best-selling sonic-based consumer products of all time. PBL feels a passion for bringing great new ideas to life. The company's mission is to develop and market technically advanced and clinically proven products that make a clear difference in skin care.

Clarisonic Skin Cleansing System officially launched in 2004, becoming the first professional-caliber sonic skin care system in the world. Clarisonic aims for healthy, younger-looking skin and the cleansing standard of renowned spas. At the 66th American Academy of Dermatology Annual Meeting in 2008, the researchers from PBL conducted several tests to further quantify and qualify the divide between the two. The results, all of which were reviewed and accepted for public display by the AAD beforehand, showed that the sonic brush system goes above and beyond manual cleansing in a host of ways.

Due to the significance of its performance, Clarisonic received titles supports continuously since it came out.

In 2007, PBL was awarded a federal Small Business Innovation Research grant from the National Institute of Diabetes and Digestive and Kidney Diseases at the National Institutes of Health (NIH). In the same year, the famous talk-show hostess Ms. OPRAH WINFREY praised Clarisonic in her show openly for its magnificent effects. In 2008, Clarisonic was awarded Women's Health magazine's Beauty All-Star Award. Women's Health highlighted the top products that solve your skin, hair and makeup problems and voted Clarisonic a must-have.

In the same year, Clarisonic was awarded the Best of Sephora Award. Over 100,000 customers voted for Clarisonic as a remarkable indicator of the product's efficacy. In 2009, Inc. Magazine gave a nod to PBL within its annual top 500 ranking of the fastest growing private companies nationwide. Clarisonic ranked No. 60 on the list with three-year sales growth of 2,197%. All these titles gave Clarisonic and PBL a great reputation. In short, Clarisonic products are remarkably popular among consumers and the Clarisonic brand receives a huge recognition worldwide.

Meanwhile, PBL developed a series of highly popular products under the Clarisonic brand that redefined consumers' approach to skin care. These include the Clarisonic Classic, Clarisonic Mia, Clarisonic PLUS and PRO, and the Clarisonic Opal Sonic Infusion System. Clarisonic family brought PBL a rapid growth each year. In 2010, Clarisonic achieved net sales of \$ 105 million.

Clarisonic also participates in social charity. In 2009, Clarisonic offered

generous donation to the 16th Annual EIF Revlon Run/Walk for Women. It was not the first time Clarisonic attended this charity event. First introduced in October 2007, Clarisonic's "Pink Ribbon" campaign has raised over \$400,000 to help fight breast cancer. With every purchase the "Pink Ribbon" Clarisonic raises funds dedicated to the fight against breast cancer.

In 2010, PBL was recognized by Allied Waste, a leading disposal and recycling company, for company's exceptional recycling efforts. Clarisonic has the highest ratio of recycled material to waste of any mid-sized company in the Bellevue area, recycling an impressive 83% of their refuse.

Clarisonic also believes in making a positive impact on the lives of women fighting cancer and is proud to support Look Good...Feel Better. This national public service program helps put the power to be beautiful back in the hands of cancer patients. Since 2010, Clarisonic has raised more than \$2million for Look Good...Feel Better, providing growth funding to increase awareness and patient participation.

After continuous use and propagation, CLARISONIC brand earned a great reputation all over the world and should be granted more extensive protection.

II. The factual and legal grounds

Part I: the disputed domain name "clarisonic8.com" contains the word "clarisonic" which is identical with the Complainant's registered trademark.

The disputed domain name "clarisonic8.com" contains the word "clarisonic" which is identical with the Complainant's registered trademark. Furthermore, "8" is a common figure that doesn't acquire significance. Thus, the disputed domain name was distinguished by the word "clarisonic" that shall easily mislead the consumers in misunderstanding the website has some commercial connections with PBL.

Part II: the Respondent has no rights or legitimate interests in respect of the domain name "clarisonic8.com"

1. The Respondent is not the trademark owner of "CLARISONIC";
2. The Complainant have never authorized the Respondent to use the aforementioned trademark and never transferred the said trademark to the Respondent. In addition, the Respondent have never acquired authorization from other legitimate channel in using the "CLARISONIC" trademark;

3. Based on further investigation, the Respondent was not the employee or agent of PBL who has been authorized to complete the registration of the disputed domain name.

Therefore, the Respondent has no rights or legitimate interests in respect of the domain name “clarisonic8.com”.

Part III: the disputed domain name has been registered and used in bad faith

According to (ii) and (iv) 4B of the Policy: Evidence of Registration and Use in Bad Faith, the respondent registered and used the disputed domain name in bad faith, the reasoning is briefed as below:

For the purposes of Paragraph 4(a) (iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(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;

The registered trademark “CLARISONIC” has become famous through continuous use, registration and propagation, you can find CLARISONIC product in most countries. The Respondent registered the disputed domain name and made CLARISONIC as the distinctive part of the domain name under the awareness of PBL is the registrant of CLARISONIC trademark. The Respondent has intentionally prevented PBL, who is the owner of the trademark from reflecting the mark in a corresponding domain name.

(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.

The Complainant considered the Respondent have no rights or legitimate interests in respect of the distinctive part of the disputed domain name CLARISONIC. The Respondent has registered the disputed domain name to seek the improper benefits and made confusion among the relevant consumers by claiming itself to be the Chinese official website of Clarisonic products and presenting similar products. For the relevant public, the distinctive part of the disputed domain name will easily lead them in misunderstanding the origin of

the products or confuse the consumer that the Respondent had some commercial connections with PBL. Finding that the website was cyber squatted, the Complainant has sent Cease & Desist Letter to the Respondent, however, the Complainant did not receive any reply from the Respondent.

The website is currently observed as invalid website, and the website is not effectively used.

All the above facts would verify that the Respondent has registered the disputed domain name in bad faith which has been set forth in the(ii) and (iv) 4B of the Policy: 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; (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.

the Complainant requests the Panel to issue a decision to transfer the Disputed Domain Name to the Complainant.

The Respondent

The Respondent did not make any response by the scheduled time.

4. Panelist's Findings

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

- (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 to; and
- (ii) that the Respondent has no rights to 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 ADNDRC Supplemental Rules, the Panelist must determine whether the Complainant satisfies each of the elements under the Policy. If satisfied, the Panelist 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 satisfied, 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 rights to. The Panelist notes that the Complainant mainly argues based on the trademark right regarding "CLARISONIC" and claims the disputed domain name is identical or confusingly similar to its trademarks. Therefore, the Panelist must, first, analyze and determine whether the Complainant owns prior trademark rights.

According to the registration certificate provided by the Complainant, the Complainant has registered "CLARISONIC" trademarks covering the classification of goods/services including Class 5 and 35. Specifically, on May 14, 2011, the Complainant has registered "CLARISONIC" trademark on designed goods "Skin care (Pharmaceutical preparations for —); Medicines for human purposes, etc." in Class 5 (Reg. No.: 8275826); on September 7, 2011, the Complainant registered "CLARISONIC" on designed services "On-line advertising through communication network" in Class 35 (Reg. No.: 8514771) and "Advertising; Business information, etc." in Class 35 (Reg. No.: 8514772).

These trademarks are valid and the registration dates are earlier than the registration date of the disputed domain name, September 28, 2012. Thus, the Panelist is of the view that the Complainant enjoys prior trademark rights.

The Panelist needs to determine whether the domain name is confusingly similar between the Complainant's registered trademarks and the disputed domain name.

The identifying part, "clarisonic8" of the disputed domain name consists of "clarisonic" and "8." The Panelist concludes that the domain name consists of the Complainant's trademark "CLARISONIC," with the addition of the number "8," which is a common figure that doesn't acquire significance. The Panelist is of the view that the addition of a common figure does not necessarily distinguish a domain name from a trademark.

Therefore, the Panelist finds that the disputed domain name is identical or

confusingly similar to the Complainant's trademarks; and the Complainant has satisfied the first condition under Paragraph 4(a) of the Policy.

Rights or Legitimate Interests of the Respondent

The Complainant argues that the Respondent has no rights or legitimate interests in respect to "CLARISONIC" trademark. The Complainant has never authorized or licensed the Respondent to use "CLARISONIC" trademark, and has never transferred the said trademark to the Respondent. The Respondent has never acquired authorization from other legitimate channel that uses the "CLARISONIC" trademark. In addition, the Respondent was not an employee or agent of the Complainant who has been authorized to register the disputed domain name. Therefore, the Complainant holds the view that the Respondent has no rights or legitimate interests in respect to the disputed domain name. The Panelist finds that the Complainant satisfied the burden of proof under the second condition of Paragraph 4(a) of the Policy, thus shifted the burden of proof to the Respondent.

The Respondent did not make any response within the scheduled time, nor did it make any explanation or provide any evidence to prove its trademark rights, legitimate interests, or any other legal rights to the disputed domain name.

Accordingly, the Panelist concludes that the Complainant has provided preliminary evidence required by Paragraph 4(a)(ii) of the Policy and the burden of proof is transferred to the Respondent, who must overcome the burden of proof by showing its rights or legitimate interests of the disputed domain name. However, the Respondent failed to respond to the Panelist and failed to submit any evidence in support of its contention. Hence, the Panelist cannot come to a conclusion that the Respondent has rights or legitimate interests in respect of the disputed domain name based on the evidence in hand.

Accordingly, the Panelist finds the Complainant has satisfied the second condition under Paragraph 4(a) of the Policy.

Bad Faith

The Complainant also needs to establish the Respondent's bad faith under Paragraph 4(a)(iii) of the Policy, where the 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.

Considering the distinctiveness of the Complainant's trademark of prior registration, the confusing similarity between the domain name and the Complainant's trademark and the absence of Respondent's rights and legitimate interests on disputed domain name, at the same time, the Respondent filed no response against the arguments submitted by the Complainant, it is reasonable for the Panelist to believe that the registration of the disputed domain name is in bad faith.

Furthermore, as demonstrated by Annex 6 of the evidence submitted by the Complainant, the Respondent has used the disputed domain name to set up a website www.clarisonic8.com titled with "Chinese Official Website of Clarisonic," where numerous Clarisonic Skin Cleansing products are listed and offered for sale. The Panelist is of the view that such conduct of the Respondent is likely to confuse the relevant consumers that there is a commercial affiliation between the Respondent and the Complainant. Therefore, the Respondent has violated Paragraph 4(b) (iv) of the Policy, where by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to its 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 the website or location or of a product or service on the website or location.

To conclude, the Panelist holds that the Complainant has satisfied the third

condition under Paragraph 4(a) of the policy and the Respondent register and use the disputed domain name in bad faith.

5. Decision

According to the analysis of the Panelist, the Complainant has satisfied the three elements of Paragraph 4(a) of the Policy. The Panelist supports the Complainant's request that the disputed domain name "clarisonic8.com" shall be transferred to the Complainant, PACIFIC BIOSCIENCE LABORATORIES, INC.

Panelist: 

Dated: Jul 1, 2013