



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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Decision Submission

English Print

Decision ID	DE-0300010
Case ID	HK-0300024
Disputed Domain Name	www.irgroup.com
Case Administrator	Iris Wong
Submitted By	Peter Bullock
Participated Panelist	Peter Bullock

Date of Decision	05-05-2003
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The Parties Information

Claimant	IR Group Ltd.
Respondent	Young il Kim

Procedural History

A Complaint in this matter was filed with the Hong Kong Office of Asian Domain Name Dispute Resolution Centre (ADNDRC) dated 13 March 2003. A Response from the Respondent was not received by the ADNDRC within the required period of time, although e-mail correspondence between ADNDRC and the Respondent shows that the Respondent (on 18 March 2003) acknowledged receipt of the Complaint but took issue as to the proper language of the proceedings.

On the same day the ADNDRC e-mailed the Respondent with the suggestion that he submitted a complaint in both Korean and English, pending determination of the language issue. He submitted neither. Although the Respondent complained of being unable to understand the Complaint (written in English), he was able at short notice to produce e-mails in reasonable English and manipulating procedural points of some complexity.

With regard to the question of the language of these proceedings, in relation to Clause 11(a) of the Rules, and having regard to the following circumstances:

- 2.1 the aforesaid e-mail correspondence with the Respondent;
- 2.2 the fact that the current presentation of the Respondent's website, such as it is, uses English at least in part;
- 2.3 the strength of the Complainant's case,

I find that:

- 2.4 the Panel has jurisdiction in this matter;
- 2.5 the Respondent has no excuse for failing to submit a Response; and
- 2.6 the Respondent having shown no good reason why the administrative proceedings should not be conducted in English, that the language of the proceedings should be English.

Factual Background

For Claimant

The Complainant is a communications consultancy specialising in corporate websites and has used IR Group as its trading name since June 1997. Owing to the unavailability of www.irgroup.com (held by the Respondent), the Complainant uses www.ir-group.com at which address it presents an impressive website consistent with its claimed business. IR Group lists accolades including gold, silver and bronze awards at 15th Annual Mercury Awards, a US on-

line communication competition won by its clients including Kingfisher plc, Six Continents plc, and Aviva plc.

For Respondent

The Respondent's site, as currently depicted, is an insubstantial presence purportedly offering 'Art'.

Parties' Contentions

Claimant

The Complainant contends (1) the domain name registered by the Respondent is confusingly similar to a trademark or service mark in which the Complainant has rights, (2) the domain name has been registered in bad faith and (3) the Respondent has no legitimate interests in the domain at issue.

Respondent

The Respondent has not filed any Response to the allegations in the Complaint.

Findings

Identical / Confusingly Similar

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: "A Panel shall decide a Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable". The Panel shall apply the rules and principles set out in decisions of the Courts of Hong Kong, the independent jurisdiction of the Hong Kong Office of ADNDRC through which this Complaint is being administered.

Paragraph 3(b)(ix) of the Rules directs that the Complainant must demonstrate each of the following:

- (i) that the domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- (ii) why the Respondent (domain-name holder) should be considered as having no rights or legitimate interests in respect of the domain name that is the subject of the Complaint; and
- (iii) why the domain name should be considered as having been registered and being used in bad faith.

On the basis of the papers submitted herein the Panel finds that:

(1) the disputed domain name is identical to the trade mark in which the Complainant has rights. It is noted that the Complainant does not provide evidence of a registered trade mark. However, the uncontested evidence shows that it has used the name since 1997 and as such, whilst the mark remains vulnerable to other registrants in England & Wales, the Complainant does have rights to the unregistered mark "IRGROUP" in England & Wales. At this juncture I should, perhaps, distinguish the decision in the case of County Bookshops Limited - v- Guy Loveday, WIPO Case D2000-0655 (at <http://arbiter.wipo.int/domains/decisions/html/2000/d2000-0655.html>). In that case a Complainant, who was legally advised, failed to obtain a decision in his favour, notwithstanding that the Respondent had failed to submit a Response, because the Complainant had failed to provide sufficient evidence to support its claim to have protectable rights in the "County Bookshops" mark.

In the case at hand the Complainant - IR Group Limited has produced little evidence in support of its common law trademark rights in "IR Group". However, two things point in IR Group's favour, namely (1) although "IR Group" is not a strong mark (in terms of ease of registrability) it does not suffer from the weakness of the "County Bookshops" mark picked up by the Panelist in that it is ... "prima facie directly descriptive of bookshops in a county" ... and (2) unlike County Bookshops Limited (which had a site 'under construction'), IR Group Limited's website is available for the world, including the Panelist, to see. I find that the IR Group mark is not unregistrable and given the use of it claimed by the Complainant, the Complainant has sufficient rights in the mark to be worthy of protection hereunder. Without the availability of the www.ir-group.com website I would have been unable to make an award in the Complainant's favour.

Rights and Legitimate Interests

The Complainant has alleged and the Respondent has failed to deny that the Respondent has no legitimate interests in respect of the domain name at issue. In addition, the Panel has been unable to independently discern any legitimate interest in respect of the domain name at issue.

Bad Faith

The Respondent has failed to deny the Complainant's allegation that the domain name was registered in bad faith. The Panel accepts the Complainant's contentions that

- up until 9 August 2002, the Respondent used the URL to point to a holding page for an 'internet business'
- that this was changed, only upon the intervention of the Complainant
- that the Respondent has previously offered the domain name for sale (as referenced in paragraph 7 of the Complaint) (an indicia of bad faith).

Status

www.irgroup.com Domain Name Transfer

Decision

Where a Complainant is not legally represented but the required evidence in support of the existence of the Complainant's intellectual property rights can be readily obtained by the Panelist, it does not appear to the Panel that its function is to be overly legalistic about the form in which the evidence is made available. This is analogous to the approach of Courts in the U.K. and Hong Kong dealing with claimants who are not legally represented.

For all the foregoing reasons, the Panel decides that the domain name irgroup.com registered by the Respondent is confusingly similar to the mark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the domain name at issue, and that the Respondent's domain name has been registered and has been used in bad faith. Accordingly, pursuant to paragraph 4(i) of the Policy, the Panel requires that the registration of the domain name: irgroup.com be transferred to the Complainant.

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