



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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Decision Submission

English Print

Decision ID DE-0500046
 Case ID HK-0500061
 Disputed Domain Name www.smartone-vodafone.com
 Case Administrator Dennis CAI
 Submitted By M Scott Donahey
 Participated Panelist

Date of Decision 13-07-2005

The Parties Information

Claimant SmarTone Mobile Communications Ltd. and Vodafone Group plc
Respondent Ho S

Procedural History

The complainants in this case are SmarTone Mobile Communications Limited, a corporation organized under the laws of Hong Kong, whose address is 31/F, JOS Tower, Millennium City 2, 38 Kwun Tong Road, Kwun Tong, Hong Kong ("SmarTone"), and Vodafone Group PLC, a corporation organized under the laws of the United Kingdom, whose address is Vodafone House, The Connection, Newbury, Berkshire RG14 2FN, United Kingdom ("Vodafone"). Their authorized representative in these proceedings is So Keung Yip & Sin.

The respondent is Ho S, Siu Sai Wan, Chai Wan, Hong Kong. Respondent has not appointed any representative in these proceedings.

The domain name in dispute is <smartone-vodaphone.com>. The Registrar of the domain name is Enom, Inc., the address of which is 2002 156th Ave. NE, Suite #300, Unigard Park, McKinley Building, Bellevue, Washington, United States of America.

On 13 May 2005, pursuant to the Uniform Domain Name Dispute Resolution Policy ("the Policy"), the Rules for the Uniform Domain Name Dispute Resolution Policy ("the Rules") and Hong Kong International Arbitration Centre Supplemental Rules ("the HKIAC Supplemental Rules"), the Complainant submitted a complaint in the English language to the Hong Kong International Arbitration Centre (the "HKIAC"), an office of the Asian Domain Name Dispute Resolution Centre and elected this case to be dealt with by a one-person panel. On 14 May 2005, Hong Kong International Arbitration Centre sent to the complainant by email an acknowledgement of the receipt of the complaint and reviewed the format of the complaint for compliance with the Policy, the Rules and the HKIAC Supplemental Rules. All correspondence to and from the HKIAC described herein was in the English language.

On 23 May 2005 the HKIAC notified the Respondent of the commencement of the action.

On 14 June 2005, the HKIAC notified the Complainant that the Respondent had failed to submit a Response.

Since the Respondent did not file a response in accordance with the time specified in the Rules the HKIAC Supplemental Rules, and the Notification, the HKIAC informed Complainant and Respondent by email about the default, stating that, as Respondent did not file a response within the required time, the HKIAC would appoint the panelist to proceed to render the decision, in the absence of a response by Respondent.

The HKIAC notified the parties that the Panel in this case had been selected, with M. Scott Donahey acting as the sole panelist. The Panel determines that the appointment was made in accordance with Rules 6 and Articles 8 and 9 of the Supplemental Rules.

On 27 June 2005, the Panel received the file from HKIAC.

Factual Background

For Claimant

Complainant SmarTone has been using the SMARTONE mark since 1992 and holds numerous Hong Kong trade mark registrations dating back to that year. Complaint, Annex D. Complainant SmarTone also holds numerous registrations under the law of Macau. Complaint, Annex E. SmarTone is Hong Kong's leading mobile network operator in voice and data services. Complainant Vodafone is the registrant of numerous marks in the European Community which consist of or include its well-known VODAFONE mark. Complaint, Annex G. Complainant Vodafone has registered other similar marks in countries throughout the world. Complaint, Annex H. Vodafone, formed in 1984, is the world's largest mobile telecommunications company, providing voice and data communications services.

On 15 December 2004, Complainants entered into various agreements including a Cooperation Agreement and Dual Branding Agreement, pursuant to which SmarTone is in the process of re-branding its business as "SmarTone-Vodafone." SmarTone has been given an exclusive license to use Vodafone as a mark in Hong Kong and in combination with its SmarTone mark. SmarTone placed full-page advertisements in Hong Kong newspapers and magazines, and issued a press release dated 27 April 2005 announcing this dual branding. Complaint, Annexes K and L.

On 15 December 2004, the day on which the referenced agreements between Complainants were signed and joint press releases announcing the new partnership were issued, Respondent registered the domain name at issue. Complaint, Annex N.

On 19 March 2005, Complainants' attorneys sent Respondent an email requesting transfer of the registration of the domain name at issue. Complaint, Annex P. No response was ever received. Respondent has made no use of the domain name at issue.

For Respondent

Respondent has failed to file a response in this matter.

Parties' Contentions

Claimant

Complainants asserts that the domain name at issue is identical or confusingly similar to Complainants' marks and combined marks, in that the domain name at issue is comprised of the SMARTONE mark and the VODAFONE mark connected by a hyphen.

Complainant further alleges that Respondent has no rights or legitimate interests in respect of the domain name, and that Respondent's domain name has been registered in bad faith and is being passively used in bad faith.

Respondent

The respondent did not file a response within the stipulated time.

Findings

Identical / Confusingly Similar

The Panel finds that the domain name <smartone-vodafone> is confusingly similar to the combined marks SMARTONE and VODAFONE in which Complainants have respective rights, since domain name incorporates Complainants' marks. The Hain Food Group and Celestial Seasonings, Inc. v. MIC, NAF Case No. FA94729 (in which the Panel held that the combined marks of two merging companies in a domain name made that domain name confusingly similar to the marks held by each of the companies).

Rights and Legitimate Interests

Complainant has in a credible way alleged that Respondent has no rights or legitimate interests in respect of the domain name at issue. Respondent has failed to show that Respondent has any rights or legitimate interests in respect of the domain name at issue. This entitles the Panel to infer that Respondent has no rights or legitimate interests in respect of the domain name at issue. *Alcoholics Anonymous World Services, Inc. v. Lauren Raymond*, WIPO Case No. D2000 0007; *Ronson Plc v. Unimetal Sanayi ve Tic. A.S.*, WIPO Case No. D2000 0011. Accordingly, the Panel finds that Respondent has no rights or legitimate interests in respect of the domain name.

Bad Faith

In the case of the Hain Food Group and Celestial Seasonings, Inc., NAF Case No. FA94729, the respondent registered a domain name combining the marks of two merging companies on the same day that the merger was announced. This is almost precisely the facts in the present case. In Hain Food Group, the Panel held that this fact alone was sufficient to support a finding of bad faith.

In the present case we also have the facts that Respondent provided an incomplete name and address when registering the domain name at issue. Respondent failed to respond to an email from complainant. Respondent failed to respond to the complaint in this matter. Respondent has made no use of the domain name at issue. Under these facts and the reasoning of the Panel in *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003, the Panel finds that Respondent has registered and is using the domain name at issue in bad faith.

Status

www.smartone-vodafone.com Domain Name Transfer

Decision

For all of the foregoing reasons, the Panel decides that the domain name registered by Respondent is confusingly similar to the marks in which the Complainants have 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 is being used in bad faith. Accordingly, pursuant to Paragraph 4(i) of the Policy, the Panel requires that the registration of the domain name <smarone-vodafone.com> be transferred to the Complainant.

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