



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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Decision Submission

English Print

Decision ID DE-0500058
Case ID HK-0500072
Disputed Domain Name www.changiairport.com
Case Administrator Dennis CAI
Submitted By Ho Hyun Nahm
Participated Panelist

Date of Decision 10-11-2005

The Parties Information

Claimant Civil Aviation Authority of Singapore
Respondent Sinkyu Park

Procedural History

On 29 August 2005, the Claimant submitted its Complaint to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (the "ADNDRC" or the "Centre"), in accordance with the Uniform Domain Name Dispute Resolution Policy (the "Policy") adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN") on 24 October 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"). The Claimant sought a one-person Administrative Panel. On 7 September 2005, the Centre received the required filing fee from the Claimant and confirmed the receipt of the Complaint and on the same day the Centre notified the Respondent as well as the Registrar of the domain name in dispute, Hangang Systems, Inc., at 17th Floor, Specialty Construction Center, 395-70, Shindaebang-Dong, Dongjak-Gu, Seoul, Korea of the receipt of the Complaint. On 16 September 2005, the Centre sent the Notification of Commencement of Proceedings to the Respondent. On 7 October 2005, the Centre notified the parties that no Response from the Respondent had been received by the Centre within the required period of time.

Having received on 19 October 2005, a Declaration of Impartiality and Independence and a Statement of Acceptance from Mr. Nahm Ho-Hyun, on 19 October 2005, the Centre informed the Claimant and the Respondent that Mr. Nahm Ho-Hyun was appointed as the sole Panelist in this matter. On 19 October 2005, the Centre transferred the case file to the Panelist by post. The Panelist finds that the Administrative Panel was properly constituted and appointed in accordance with the Rules and the Supplemental Rules.

The Panelist has not received any further requests from the Claimant or the Respondent regarding other submissions, waivers or extensions of deadlines. There is no need, as an exceptional matter, to hold any in-person hearings as necessary for deciding the Complaint, as provided for in Paragraphs 12 and 13 of the Rules.

The language of the proceeding is English, it being the language of the Domain Name Registration and Service Agreement, pursuant to Paragraph 11(a) of the Rules, and there being no express agreement to the contrary by the parties.

Factual Background

For Claimant

The Claimant asserted, and provided evidence in support of, the following facts, which the Panel finds established: The Claimant, the Civil Aviation Authority of Singapore is a statutory board in Singapore under the Ministry of Transport. It

was formed in 1984. It represents the government in the negotiation of air services agreements, advises the government on matters related to civil aviation, and regulates and promotes the development of air transport in Singapore. The Claimant is also the owner, manager and operator of Singapore's two international civil airports, Seletar Airport and Changi Airport. With regard to Changi Airport, one of the Claimant's key roles is to ensure smooth and efficient airport operations, as well as to develop and manage Changi Airport, which was built in 1975 in accordance with the Singapore government's decision to meet the increased demand for air travel and transport. Changi Airport is a major global air hub served by more than 80 airlines flying to more than 175 cities over 50 countries. Since commencing operations on 1 July 1981, it has won numerous Best Airport awards and accolades. In 2004, Changi Airport handled over 30 million passengers, over 1.7 million tonnes of airfreight and over 184,000 aircraft movements. Changi Airport enjoys an international reputation and a worldwide recognition due to extensive use, marketing, advertising and promotion of Changi Airport. The Claimant also has the website www.changiairport.com.sg which is available for the world to see and recognize "Changi Airport" as Singapore's international airport. The Claimant enjoys service mark rights in the name "Changi Airport" due to goodwill and reputation accumulated through extensive use, advertising and promotion through since 1981 of their service mark and name "Changi Airport" as Singapore's international airport. The Claimant is therefore the owner of the service mark "Changi Airport". In November 2000, it came to the Claimant's attention that the Respondent had registered the disputed domain name www.changiairport.com. The Claimant sent an email to the Respondent on 7th November 2000 asking the Respondent to release the domain name to the Claimant for their use as they were the government body operating Changi Airport in Singapore since 1981.

For Respondent

The Respondent replied to the Claimant via email on or about 16 November 2000 stating that he had registered the disputed domain name for his "internet business" and that he was unable to accede to Claimant's request as he had his "plan with it". The disputed domain name at the time of filing this complaint directed users to a website that is "under construction" and this has been the situation since November 2000.

Parties' Contentions

Claimant

The Claimant contends that: - The disputed domain name is confusingly similar to a trademark or service mark in which the Claimant has rights;- The Respondent has no rights or legitimate interests in respect of the domain name;- The domain name has been registered and is being used in bad faith; and- The domain name <changiairport.com> should be transferred to the Claimant.

Respondent

The Respondent did not reply to the Claimant's contentions.

Findings

Identical / Confusingly Similar

Paragraph 4(a) of the Policy directs that the Claimant must prove each of the following:(i) that the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Claimant has rights; and(ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and(iii) that the disputed domain name has been registered and is being used in bad faith. The domain name at issue is <changiairport.com>. The Panel finds the Claimant established that the name "Changi Airport" was and is well known enough to function as a service mark to distinguish the source of the services. As such, the Panel recognizes the Claimant's common law service mark rights to the name 'Changi Airport.' The disputed domain name contains the Claimant's well-known service mark "Changi Airport." The relevant part of the disputed domain name is identical to the service mark "Changi Airport" to which the Claimant has rights. In conclusion, the Panel finds that the Claimant has proven that the disputed domain name and the trademark of the Claimant are confusingly similar. The domain name must therefore be considered confusingly similar to the service mark "Changi Airport." The Panel holds that the Claimant has established element (i) of the Policy's paragraph 4(a).

Rights and Legitimate Interests

The Claimant has asserted that the Respondent does not have any legitimate interest in the registration of the disputed domain name. The domain name does not appear to be in use for any bona fide offering of goods or services or to be prepared for such use, and there is no indication that the Respondent was known by the name “Changi Airport” prior to the registration of the domain name. The Respondent is not authorized or licensed to use the Claimant’s mark. There is no indication for a legitimate non-commercial or fair use of the domain name. These assertions are sufficient to satisfy Claimant’s obligation of making a prima facie showing that Respondent lacks a legitimate interest; the Respondent, by virtue of its default, has failed to rebut that showing.

The Panel therefore holds that the Claimant has established element (ii) of the Policy’s paragraph 4(a).

Bad Faith

Now the Panel is going to consider whether the disputed domain name was registered and used in “bad faith” .

The service mark ‘Changi Airport’ of the Claimant is recognized as having been well-known around the world. The question is whether the Respondent has registered the domain name in bad faith, i.e. having the Claimant’s service mark in mind and registering the domain name with the bad faith intention to profit from Claimant’s service mark. Although there is no direct evidence, the circumstantial evidence is sufficient to support the inference that Respondent probably was well aware of Claimant’s service mark at the time of registration. Among other things, since commencing operations on 1 July 1981, the Claimant has won numerous Best Airport awards and accolades and it handled over 30 million passengers, over 1.7 million tonnes of airfreight and over 184,000 aircraft movements in 2004. The Panel therefore finds it established that the domain name was registered in bad faith.

Next question is whether the domain name “is being used in bad faith” by the Respondent. The disputed domain name <changiairport.com> does not resolve to a web site or other on-line presence. There is no evidence that a web site or other on-line presence is in the process of being established which will use the domain name. There is no evidence of advertising, promotion or display to the public of the domain name.

There is no evidence that the Respondent has offered to sell, rent or otherwise transfer the domain name to the Claimant, a competitor of the Claimant, or any other person. In short, there is no evidence of positive action being undertaken by the Respondent in relation to the domain name.

However, as discussed in *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003, the relevant issue is not limited to whether the Respondent is undertaking a positive action in bad faith in relation to the domain name, but instead whether, in all the circumstances of the case, it can be said that the Respondent is acting in bad faith. The distinction between undertaking a positive action in bad faith and acting in bad faith may seem a rather fine distinction, but it is an important one. The significance of the distinction is that the concept of a domain name “being used in bad faith” is not limited to positive action; inaction is within the concept. In other words, it is possible, in certain circumstances, for inactivity by the Respondent to amount to the domain name being used in bad faith.

The panel concluded in *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003:

“This understanding of paragraph 4(a)(iii) is supported by the actual provisions of the Uniform Policy. Paragraph 4(b) of the Uniform Policy identifies, without limitation, circumstances that “shall be evidence of the registration and use of a domain name in bad faith” , for the purposes of paragraph 4(a)(iii). Only one of these circumstances (paragraph 4(b)(iv)), by necessity, involves a positive action post-registration undertaken in relation to the domain name (using the name to attract custom to a web site or other on-line location). The other three circumstances contemplate either a positive action or inaction in relation to the domain name. That is to say, the circumstances identified in paragraphs 4(b)(i), (ii) and (iii) can be found in a situation involving a passive holding of the domain name registration. Of course, these three paragraphs require additional facts (an intention to sell, rent or transfer the registration, for paragraph 4(b)(i); a pattern of conduct preventing a trademark owner’s use of the registration, for paragraph 4(b)(ii); the primary purpose of disrupting the business of a competitor, for paragraph 4(b)(iii)). Nevertheless, the point is that paragraph 4(b) recognizes that inaction (e.g. passive holding) in relation to a domain name registration can, in certain circumstances, constitute a domain name being used in bad faith. Furthermore, it must be recalled that the circumstances identified in paragraph 4(b) are “without limitation” - that is, paragraph 4(b) expressly recognizes that other circumstances can be evidence that a domain name was registered and is being used in bad faith” .

“The question that then arises is what circumstances of inaction (passive holding) other than those identified in paragraphs 4(b)(i), (ii) and (iii) can constitute a domain name being used in bad faith? This question cannot be answered in the abstract; the question can only be answered in respect of the particular facts of a specific case. That is to say, in considering whether the passive holding of a domain name, following a bad faith registration of it, satisfies the requirements of paragraph 4(a)(iii), the Administrative Panel must give close attention to all the circumstances of the Respondent’s behavior. A remedy can be obtained under the Uniform Policy only if those circumstances show that the Respondent’s passive holding amounts to acting in bad faith” .

The Panel is now going to consider whether, in the circumstances of this particular Complaint, the passive holding of the

domain name by the Respondent amounts to the Respondent acting in bad faith. The particular circumstances of this case are that:

- (i) the Claimant's service mark has a strong reputation and is widely known among a numerous number of travelers around the world, as evidenced by its substantial use in Singapore and,
- (ii) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the domain name,
- (iii) the Respondent registered the domain name in 2000, and seems not to have been using the domain name,
- (iv) although the Respondent had indicated in his reply to the Claimant that he was intending to use the subject domain name for his "internet business", he has not taken any action since, and
- (v) the Respondent did not reply to the Claimant's contentions.

In light of these particular circumstances, the Panel concludes that the Respondent's passive holding of the domain name in this particular case satisfies the requirement of paragraph 4(a)(iii) that the domain name "is being used in bad faith" by the Respondent.

Status

www.changiairport.com Domain Name Transfer

Decision

The Panel decides that the Claimant has proven each of the three elements in paragraph 4(a) of the Policy. Accordingly, the Panel requires that the disputed domain name <changiairport.com> be transferred to the Claimant.

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