



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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Decision Submission

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| Decision ID | DE-0700091 |
| Case ID | HK-0600107 |
| Disputed Domain Name | www.marrybrown.com |
| Case Administrator | Dennis CAI |
| Submitted By | Loke Khoon Tan |
| Participated Panelist | |

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| Date of Decision | 09-02-2007 |
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The Parties Information

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|-------------------|--------------------------|
| Claimant | Marrybrown Fried Chicken |
| Respondent | Rare Domain DotCom |

Procedural History

The Complainant is Marrybrown Fried Chicken Sdn. Bhd., a private limited company organized under the laws of Malaysia, with its principal place of business at No. 111A-B, Jalan Sri Pelangi, Taman Pelangi, 80400 Johor Bahru, Johor, Malaysia.

The Complainant is represented by Pintas Consulting Group Sdn. Bhd. of Suite 603, 6th Floor, Wisma Mirama, Jalan Wisma Putra, 50460 Kuala Lumpur, Malaysia.

The Respondent is Rare Domain DotCom of Jalan 4/154D, Cheras, 56000 Kuala Lumpur, Malaysia.

The Respondent has not participated in the proceedings and is not represented by counsel.

The Disputed Domain Name is “MARRYBROWN.COM” (“the Disputed Domain Name”).

The Registrar is eNom, Inc. of 15801 NE 24th St., Bellevue, WA 98008 USA. The Registrar was notified of the Complaint on November 19, 2006. The Registrar was requested to confirm that the Disputed Domain Name was registered by the Respondent with them. On November 23, 2006, eNom, Inc confirmed that the disputed domain name was registered with it by the Respondent.

The Complaint was received by the Asian Domain Name Dispute Resolution Centre (Hong Kong Office) (“ADNDRC”) in hard copy form on 20 November, 2006. A Receipt of Complaint was issued by ADNDRC on November 20, 2006. ADNDRC was satisfied that the Complaint meets the formal requirements of the Uniform Domain Name Dispute Resolution Policy, adopted by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on August 26, 1999 (“the Policy”), the Rules for Uniform Domain Name Dispute Resolution Policy, approved by ICANN on October 24, 1999 (“the Rules”) and the ADNDRC Supplemental Rules to the Policy and the Rules (“the Supplemental Rules”), and that payment was properly made. The Administrative Panel (“the Panel”) is satisfied that this is the case.

The Complaint was properly filed and notified in accordance with paragraph 2(a) of the Rules.

ADNDRC notified the Respondent of the Complaint by courier on November 23, 2006 and by email on December 2, 2006, in the usual manner, and informed the Respondent that it had twenty (20) calendar days from December 2, 2006 to submit a Response to the Complainant and to ADNDRC.

There was no Response from the Respondent within the time limit prescribed by ADNDRC.

The undersigned Panelist was contacted by ADNDRC on January 2, 2007, and was officially confirmed by ADNDRC on January 22, 2007. The Panelist finds that the Panel was properly constituted in accordance with the Policy, the Rules and the Supplemental Rules.

Factual Background

For Claimant

The Complainant is the operator and owner of a fast food chain and restaurants under the “Marrybrown” trademark. Since its inception in 1981, the Complainant has been using “Marrybrown” as its corporate name as well as its brand name. The Complainant has developed an extensive franchise chain under the Marrybrown trade mark and franchise over the years, covering Malaysia, Singapore, China, Brunei, Indonesia, India, United Arab Emirates, Myanmar, Bangladesh and Cambodia, and has established more than 100 outlets in Asia to date.

The Complainant has also applied for and/or obtained trademark registrations for, inter alia, the marks “Marrybrown” and “Marrybrown & Mb (Device)” in various classes in several countries such as Malaysia, Singapore, China, Brunei, Indonesia, India, United Arab Emirates, Myanmar, Bangladesh and Cambodia. All these trademark registrations were filed and/or obtained before the Complainant first became aware of the registration of the Disputed Domain Name in 2006.

The Complainant has been accorded with the following awards in recognition of its achievements in promoting the “Marrybrown” franchise and brand :-

- Malaysia International Homegrown Franchise of The Year 1998;
- Malaysia International Homegrown Franchise of The Year 1999/2000;
- India Most Promising Franchise of the Year 2001;
- Malaysia International Homegrown Franchise of the Year 2000/2001;
- Malaysia Franchise of The Year 2000/2001; and
- Malaysia Franchise of The Year 2002/2003.

For Respondent

The Respondent registered the Disputed Domain Name on August 11, 2005.

The Respondent did not respond to the Complaint or participate in these proceedings save for one email dated January 22, 2007 regarding the appointment of the sole Panelist.

Parties' Contentions

Claimant

The Complainant contends that the Disputed Domain Name is identical to its trademarks in which it has rights. The Complainant is the registered owner of, inter alia, the marks “Marrybrown” and “Marrybrown & Mb (Device)” in various classes in several countries such as Malaysia, Singapore, China, Brunei, Indonesia, India, United Arab Emirates, Myanmar, Bangladesh and Cambodia. The Complainant has also established substantial goodwill and reputation associated with the Marrybrown trademarks through aggressive and relentless marketing effort over the years. As such, the Complainant contends that the Respondent has attempted to infringe the trademark rights of the Complainant and illegally usurp and misappropriate the Complainant’s goodwill subsisting in the Marrybrown trademarks.

The Complainant also contends that the Respondent has no rights or legitimate interests in the Disputed Domain Name on the basis that the Disputed Domain Name bears no resemblance or nexus to the Respondent’s corporate name or business, the Respondent does not provide any goods or services using the “Marrybrown” name and that the Respondent has not made preparation to use and has not used the Disputed Domain Name commercially or otherwise .

Further, the Complainant contends that the Disputed Domain Name was registered and is being used in bad faith for the following reasons :-

- The Respondent has provided false contact details to the Registrar in order to avoid detection;
- The Respondent has deliberately and unjustifiably chosen the Complainant’s trademark as its domain name despite having prior knowledge of the Complainant’s existence and reputation in Malaysia and Asia;
- The Respondent has harbored an ulterior motive and intention to attract, for commercial gain, internet users to the Respondent’s future website or other online location by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation or endorsement of the Respondent’s website, products or services by

making internet users believe that they would be visiting a website of the Complainant;

- The Respondent has registered the Disputed Domain Name in order to prevent the Complainant from promoting its trademark in a corresponding domain name; and
- The Respondent has registered the Disputed Domain Name primarily for the purpose of disrupting the business of the Complainant.

Respondent

The Respondent has not filed a Response within the time limit prescribed by ADNDRC.

Findings

The Policy applies to this dispute. By accepting the ownership of the Disputed Domain Name, the Respondent accepted the Policy adopted by the Registrar.

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- (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;
- (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.

Identical / Confusingly Similar

The Disputed Domain Name is “MARRYBROWN.COM” . The identifying part of the Disputed Domain Name is “MARRYBROWN” . The addition of the suffix “.com” does not detract from the overall impression of the identifying part of the name (see Sony Kabushiki Kaisha v Inja, Kil, WIPO Case No. D2000-1409). There is therefore no question that the Disputed Domain Name is, on its face, identical to the Complainant’s Marrybrown mark. The Complainant has affirmatively established its rights in this mark through evidence of its use and extensive registration in various countries such as Malaysia, Singapore, China, Brunei, Indonesia, India, United Arab Emirates, Myanmar, Bangladesh and Cambodia.

In light of the above, the Panel finds that the Complainant has met its burden under Paragraph 4(a)(i) of the Policy.

Rights and Legitimate Interests

Paragraph 4(c) of the Policy stipulates how a Respondent can effectively demonstrate rights or legitimate interests in the Disputed Domain Name:

“Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii):

- (i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) you (as an individual, business or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

The Complainant has alleged that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The Complainant must first make out a prima facie case in support of its allegations, and the burden then shifts to the Respondent to show that it does have rights or legitimate interests pursuant to paragraph 4(a)(ii) of the Policy (see Do The Hustle, LLC v Tropic Web, WIPO Case No. D2000-0624).

There is no evidence from the Respondent that relates to paragraphs 4(c)(i), (ii) and/or (iii) of the Policy because the Respondent has not participated in the current proceedings. Subsection 5(e) of the Rules states that:

‘if a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint’ .

The Complainant alleges that the Disputed Domain Name bears no resemblance or nexus to the Respondent’s corporate

name or business, and that the Respondent does not provide any goods or services using the “Marrybrown” name. The Panel finds that the Respondent’s failure to counter the Complainant’s allegations in the Complaint amounts to adoptive admission of the allegations.

In addition, the Complainant contends that the Respondent has not made preparation to use or has not used the Disputed Domain Name commercially or otherwise. At Section 7 of the Complaint, the Complainant has alleged that at the time of filing the Complaint, the Disputed Domain Name is not active. In the absence of any evidence to the contrary, the Panel accepts the Complainant’s contention.

On these grounds, the Panel concludes that the Respondent lacks any rights or legitimate interests in any of the disputed domain names and deems paragraph 4(a)(ii) to have been satisfied.

Bad Faith

Paragraph 4(a)(iii) of the Policy requires that the Complainant establish that Respondent both registered and is using the disputed domain names in bad faith. Paragraph 4(b) of the Policy offers the following non-exclusive set of different circumstances, any one of which would suffice to prove bad faith registration and use :-

- (i) circumstances indicating that the Respondent has registered or has 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) that the Respondent has 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 the Respondent has engaged in a pattern of such conduct; or
- (iii) that the Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's 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 Respondent's web site or location or of a product or service on the Respondent's web site or location.

The Complainant has alleged that that the Respondent has registered the Disputed Domain Name in order to prevent the owner Complainant from reflecting the mark in a corresponding domain name. However, the Panel notes that the Complainant has not adduced any evidence to show that the Respondent has engaged in a pattern of conduct of registering domain names to prevent trademark owners from using domain names that reflect their trademarks. The Complainant has likewise not adduced any evidence to show that the Respondent had registered the Disputed Domain Name primarily to disrupt the business of a competitor. Additionally, the Complainant’s allegation that the Respondent has provided false contact details to the Registrar in order to avoid detection solely on the basis that their letter was undeliverable to the Respondent’s address as stated in the WHOIS search is unsustainable.

The Complainant was established in 1981 and since then, has business presence and has registered the Marrybrown trademark in several countries including Malaysia, where the Respondent is located. The Respondent nevertheless incorporated the Complainant’s registered trademark in its entirety in the Disputed Domain Name and this is likely to cause confusion with the Complainant’s “Marrybrown” mark. This, coupled with the fact that the Disputed Domain Name has not been in use since the date of registration, leads to the inference that the Disputed Domain Name was registered and used in bad faith.

Therefore, the Panel finds that the Disputed Domain Name was registered and subsequently used in bad faith pursuant to sub-paragraph 4(a)(iii) of the Policy.

Status

www.marrybrown.com Domain Name Transfer

Decision

In light of the above-mentioned findings, the Panel decides:

- a) that the “MARRYBROWN.COM” domain name of the Respondent is identical to the trademarks in which the Complainant has rights;
- b) that the Respondent has no rights or legitimate interests in respect of the “MARRYBROWN.COM” domain name; and
- c) that the Respondent’s “MARRYBROWN.COM” domain name was registered and subsequently used in bad faith.

As such the Panel requires that the registration of the “MARRYBROWN.COM” domain name be transferred to the Complainant.

The Panel also notes that the Complainant has asked for the costs of this present proceedings to be borne by the Respondent. However, this is not a remedy available under Paragraph 4(i) of the Policy and accordingly, the Panel will not award costs in favour of the Complainant.

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