



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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Decision Submission

[English](#)
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Version	
Decision ID	DE-0800169
Case ID	HK-0800202
Disputed Domain Name	www.香港迪士尼乐园.net
Case Administrator	Dennis CAI
Submitted By	David Kreider
Participated Panelist	

Date of Decision 13-11-2008

Language Version : English

The Parties Information

Claimant	Disney Enterprises, Inc.
Respondent	Zheng Xiaorui

Procedural History

On 23 September 2008, the Complainant submitted a Complaint in the English language to the Hong Kong Office of the Asian Domain Name Dispute Resolution Center (“ADNDRC”), 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” , or the “Supplemental Rules”). On 29 September 2008, the ADNDRC 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 ADNDRC Supplemental Rules. All correspondence to and from the HKIAC described herein was in the English language.

On 29 September 2008, the ADNDRC transmitted by email to the Registrar, Web Commerce Communications Limited d/b/a WEBNIC.CC, a request for registrar verification in connection with the Disputed Domain Name. On 29 September 2008, the Registrar transmitted by email to the ADNDRC its verification response, confirming that the Respondent is listed as the registrant and providing the contact details.

On 9 October 2008, the ADNDRC transmitted the Complaint to the Respondent and notified the Respondent of the commencement of the action by email (the “Notification”). The Respondent failed to submit a Response within the specified period of time. Accordingly, on 31 October 2008, the ADNDRC notified the Respondent’ s default.

Since the Respondent defaulted and did not mention the Panel selection in accordance with the time specified in the Rules, the ADNDRC Supplemental Rules, and the Notification, the ADNDRC informed the Complainant and Respondent that the ADNDRC would appoint a one-person panel to proceed to render the decision.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance, the ADNDRC notified the parties that the panel in this case had been selected, with Mr. David KREIDER (“Panel”), 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 4 November 2008, the Panel received the file from the ADNDRC and should render the Decision within 14 days, i.e., on or before 18 November 2008.

Pursuant to Paragraph 11 (a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding. The language of the current disputed domain name Registration Agreement is English, thus the Panel determines English as the language of the proceedings.

Factual Background

For Claimant

The Complainant in this case is Disney Enterprises, Inc., a corporation registered in California, USA. The Complainant is the owner of several trademarks, including, in simplified Chinese character, “迪士尼” and “迪士尼乐园”, and the English variants of these same trademarks “DISNEY” and “DISNEYLAND”, respectively.

For Respondent

The Respondent, Zheng Xaiorui, is the current registrant of the Disputed Domain Name <香港迪士尼乐园.net> according to the Whois information. The registered address of the Respondent is 3 Haoqiao, Wuxishi, P. R. China 214000; the telephone number is +086.051082454185; and the email address is dbgs6789@163.com.

Parties' Contentions

Claimant

A. Complainant

The Complainant's contentions may be summarized as follows:

I. The Disputed Domain Name is identical or confusingly similar to a trade mark or service mark to which the Complainant has rights

(a) The Disputed Domain Name <香港迪士尼乐园.net > (which means, “Hong Kong Disneyland”, in English) is both the trade name and trademark of the Complainant. The first two characters “香港” (“Hong Kong”), is a geographic indication, and the location of one of Complainant's well-known and established family theme parks, whereas the second part “迪士尼乐园” (“Disneyland”) is a distinctive word and Trademark with well-recognized meaning within the Chinese-speaking world. Viewing the same separately from the geographic indication, the Disputed Domain Name is almost identical or confusingly similar to the registered trademarks and service marks of the Complainant.

(b) Complainant further submits that a domain name containing the words “Disney” or “Disneyland”, and a generic word, such as “Hong Kong”, in a word string, is confusing to the public and dilutes the distinctiveness of the “DISNEYLAND” and “DISNEY” trademarks. The Complainant cites to China International Export and Trade Arbitration Commission (“CIETAC”) decisions under the China Internet Network Information Centre (CNNIC) Dispute Resolution Procedures, in respect of the domain names: “disney.cn”, “disney.net.cn”, “disneyland.cn”, “disneyland.com.cn”, “hkdisney.cn”, “hkdisney.com.cn”, “hongkongdisney.cn”, “hongkongdisney.com.cn”, “hongkongdisneyland.cn”, “disneyfamily.cn”, “disneyfamily.com.cn”, “disneyshanghai.cn”, “disneysports.cn”, “disneybaby.cn” and “disneyenglish.com.cn”, in CIETAC cases 2003000025, 2007000006, 2006000221, 2005000021, 2007000008, 2006000222, 2006000223, 2006000187, 2006000193, 2007000114, 2008000012, 2008000071, 2008000072 and 2008000075, and World Intellectual Property Organisation (“WIPO”) Case No. D2001-0489 (Disney Enterprises, Inc. v. John Zuccarini, Cupcake City and Cupcake Patrol), respectively, as authorities supporting this proposition.

II. The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name

(a) The Disputed Domain Name is the trade name and trademark of the Complainant. The Respondent is not entitled to or otherwise authorized or licensed by the Complainant by any means whatsoever to use the Trademark in connection with any goods or services. The Respondent will not be able to demonstrate that his conduct satisfies any of the conditions in paragraph 4(c) of the Policy. Specifically, (i) the Respondent is not using and has not demonstrated an intent to use the Disputed Domain Name or names corresponding to the Disputed Domain Name in connection with a bona fide offering of goods or services in the course of trade; (ii) the Respondent, being an individual, is not and has not been doing business under any business name referable to or commonly known by the Disputed Domain Name; and (iii) the Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name, without intent to misleadingly divert consumers or to tarnish the Complainant's marks for commercial gain. Therefore, the Respondent has no rights or legitimate interests in respect of the domain name in dispute.

III. The Disputed Domain Name has been registered and is being used in bad faith

(a) As set forth below, the Respondent's bad faith is established under paragraphs 4(b)(iii) and 4(b)(iv) of the Policy, as well as by the other circumstances surrounding the Respondent's registration and use of the Disputed Domain Name.

(b) The Respondent has deliberately registered the Disputed Domain Name, which is identical to the Complainant's famous trademark “迪士尼乐园”, with an intention of causing confusion to the public that the Respondent and/or the Respondent's

website is related to or authorized by the Complainant and/or the Complainant's website, for the purpose of diverting the traffic of Chinese-speaking web-users to the Respondent's website. The Respondent, who is situated in the China, should be well aware of the Complainant and its group of companies, which are well known in China and Hong Kong. Further, given the substantial fame of the Complainant and its Disneyland theme parks and resorts throughout the world, it is most unlikely that the Respondent is unaware of the Complainant's rights in the “迪士尼乐园” trademark. It cannot be a mere co-incidence that the Respondent has chosen the Disputed Domain Name, which is identical to the Complainant's Trademark, as his/her domain name.

(c) The www.香港迪士尼乐园.net website is inactive.

(d) As a result, the members of the public in Chinese-speaking cities and countries will likely be confused into believing that the Respondent and/or the Respondent's website is related to or authorized by the Complainant and/or the Complainant's website. Due to the extensive use, promotion and advertisement of the Complainant's Disneyland theme parks and resorts, the public will associate the Disputed Domain Name exclusively with the Complainant's business.

(e) Finally, the Complainant argues that the Respondent registered the Disputed Domain Name in bad faith under the provision of paragraph 4(b)(iv), and that, given the distinctiveness and fame of the “迪士尼乐园” and “DISNEYLAND” marks, and the prominent presence of Hong Kong Disneyland, there is no plausible explanation for the Respondent's registration of the Disputed Domain Name other than to trade upon the goodwill the Complainant has developed in its Trademarks. *Telstra Corp. v. Nuclear Marshmallows*, WIPO Case No. D2000-0003.

Respondent

The Respondent failed to submit a Response to the Complaint within the specified time period.

Findings

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 in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.” Paragraph 4 (a) of the Policy requires that the Complainant should prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- i. the domain name registered by the Respondent must be identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- ii. the Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. the domain name has been registered and is being used in bad faith.

Identical / Confusingly Similar

The evidence submitted by the Complainant shows that the Complainant owns the trademark “迪士尼乐园” (“Disneyland”), and operates very well known and established theme parks under this name in multiple locations around the world, including one such park in Hong Kong. The initial two Chinese characters of the Disputed Domain Name, “香港” (“Hong Kong”), is therefore confusing to the public and dilutes the distinctiveness of the “迪士尼乐园” trademark. As the suffix “.net” only indicates that the domain name is registered under this gTLD and is not distinctive, the Panel finds that the major part of Disputed Domain Name <香港迪士尼乐园.net> is identical with the Complainant's trademark “迪士尼乐园”.

The Panel therefore holds that the Complaint fulfills the condition provided in Paragraph 4 (a)(i) of the Policy.

Rights and Legitimate Interests

The Complainant contends that the Respondent does not have rights to or a legitimate interest in the Disputed Domain Name. The Complainant's assertion is sufficient to establish a prima facie case under Policy 4 (a)(ii), thereby shifting the burden to the Respondent to present evidence of its rights or legitimate interests. The Respondent has failed to show that the Respondent has any rights or legitimate interests in respect of the Disputed Domain Name and has defaulted.

The Panel therefore finds that the Complaint fulfills the conditions provided in Paragraph 4(a)(ii) of the Policy.

Bad Faith

The Panel finds that Respondent deliberately registered the Disputed Domain Name, which is identical to the Complainant's famous trademark “迪士尼乐园”, with an intention of causing confusion to the public that the Respondent and/or the Respondent's website is related to or authorized by the Complainant and/or the Complainant's website to divert the traffic of Chinese-speaking web-users.

The Respondent, who is situated in the China, should be well aware of the Complainant and its group of companies, which are well known in China and Hong Kong (and indeed, throughout the Chinese-speaking world), under the Chinese names “迪士尼” and “迪士尼乐园”, (“DISNEY” and “DISNEYLAND”, respectively, in English). Given the substantial fame of the Complainant, a global entertainment empire known to generations around the world as having been built upon the creative genius and imaginative wonderment of its founder, Mr. Walt Disney, and its Disneyland family theme parks and resorts, which are heavily promoted and advertised in China and in Hong Kong and includes a well known family theme park located in Hong Kong,

it is virtually inconceivable that the Respondent could be unaware of the Complainant' s rights in the “迪士尼乐园” trademark. It cannot be a mere co-incident, and the Panel finds that it was not mere coincidence, that the Respondent chose the Disputed Domain Name, which is identical to the Complainant' s Trademark, as his/her domain name.

As a result, the members of the public in Chinese-speaking cities and countries are likely to be confused into believing that the Respondent and/or the Respondent' s website is related to the Complainant' s Hong Kong family theme park and/or is authorized by the Complainant and/or the Complainant' s website.

Given the distinctiveness, fame and wide recognition of the “迪士尼乐园” and “DISNEYLAND” marks, and the prominent presence of Hong Kong Disneyland, there is no plausible explanation for the Respondent' s registration of the Disputed Domain Name other than to trade upon the goodwill the Complainant has developed in its Trademarks. The Respondent did not put the Disputed Domain Name into active use. This additionally evidences that the registration of the Disputed Domain Name had no purpose other than to create confusion that the Complainant endorsed such registration.

In conclusion, the Panel finds that the Respondent has registered and used the domain name in bad faith. Accordingly, the Panel finds that the Complaint satisfies the condition provided in Paragraph 4 (a) (iii) of the Policy.

Status

www.香港迪士尼乐园.net Domain Name Transfer

Decision

Having established all three elements required under the ICANN Policy, the Panel concludes that relief should be granted. Accordingly, it is ordered that the <香港迪士尼乐园.net> domain name should be TRANSFERRED from the Respondent to the Complainant.

David KREIDER
Sole Panelist

Dated: 7 November 2008