



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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Decision Submission

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Version	
Decision ID	DE-0900206
Case ID	HK-0800218
Disputed Domain Name	www.沃尔玛商店.com
Case Administrator	Dennis CAI
Submitted By	Shaojie Chi
Participated Panelist	

Date of Decision 12-03-2009

Language Version : English

The Parties Information

Claimant	(1) Wal-Mart Stores, Inc. (2) Wal-Mart China Co., Ltd.
Respondent	Nantong Shunda Print Stamp Co., Ltd.

Procedural History

On October 29, 2008, the Complainant I and the Complainant II (hereunder commonly referred to as Complainant) submitted its Complaint in English to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (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 August 26, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "Rules") approved by ICANN on October 24, 1999, and Asian Domain Name Dispute Resolution Center Supplemental Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "ADNDRC Supplemental Rules") being effected on February 28, 2002. The Center confirmed the receipt of the Complaint on October 31, 2008.

On October 31, November 3, 4 & 6, 2008, the Center notified the Registrar of the dispute, asking for the confirmation on the disputed domain name, and the latter confirmed the registration information of the disputed domain name on November 8, 2008.

On December 16, 2008, the Center conveyed the Complaint to the Respondent; and sent the parties the notification of the commencement of the proceedings and the claims had been confirmed and forwarded; and notified ICANN and Registrar of the start of the proceedings.

The Center received no response from the Respondent until January 29, 2009; and notified the parties that lacking any reaction by the Respondent, hearing by default would be conducted.

As requested by the Complainant, a panel of sole expert is to be constituted; and the Center contacted the candidate sole panelist on February 25, 2009.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Mr. Chi Shaojie, the Center informed the Complainant and the Respondent of the appointment of the sole

panelist on February 26, 2009.

The Center transferred the documents in hard copy lodged by the Complainant to the sole panelist, and the latter confirmed the receipt of the delivery.

The sole panelist finds that the panel was properly constituted and appointed in accordance with the Rules and the ADNDRC Supplemental Rules.

Having requested the Respondent to submit a Response, the Center has received no response from the requested party in the whole course of the proceedings.

The procedural language is English, as being the language of the Domain Name Registration and Service Agreement, pursuant to Paragraph 11(a) of the Rules.

Factual Background

For Claimant

The Complainant contends that it is the world's largest and most well-known retailer and the operator of "WAL-MART" department stores worldwide under the Trade Mark. The first WAL-MART store was opened in Rogers, Arkansas, USA in 1962. The Complainant currently operates more than 6800 WAL-MART stores and employs more than 1.9 million employees in the world, and has been listed No. One Fortune 500 from 2002 - 2008, except 2006 being the No. Two. In 2007 - 2008 US financial year, the global sales of the Complainant's exceeded US\$ 374 billion. More than 180 million customers visit the Complainant's shops each week. The Complainant spends in excess of US\$1 billion annually on advertising and promotional expenses worldwide, including Greater China.

The Complainant opened its first store under the name of WAL-MART/沃尔玛 in Shenzhen, China in 1996, and now operates 99 Super-centers, 3 Sam's Clubs, 2 Neighborhood Markets and 101 Trust-Mart Hypermarkets stores in 15 provinces in the country, employing 83000 employees. The Complainant procures the majority of goods sold in China from 15000 Chinese suppliers; and its Shenzhen-based Wal-Mart Global Procurement Center exports as many as US\$9 billion of goods from China each year and manages and coordinates another US\$9 billion goods to be exported from third party suppliers in China. The Complainant has registered the trademark Wal-Mart in no less than 95 nations and regions in respect of numerous classes of goods and services, and registered the trademark 沃尔玛 in China in 1994, and the registrations of Wal-Mart and its Chinese equivalent cover each and every of the 45 International Classes of goods and services. In addition, the Complainant registered a series of domain names containing the word "wal-mart" or "沃尔玛".

The Complainant found out that the Respondent registered the disputed domain name in violation of the stipulations under the Policy and the Rules, and asks the Panel to make a ruling on the transfer of the disputed domain name to the Complainant.

For Respondent

The Respondent was duly notified by the Center of the claims lodged by the Complainant and asked to submit a Response in accordance with the relevant regulations under the Policy, the Rules and the ADNDRC Supplementary Rules, but failed to make any defense against whatever the Complainant alleges.

Parties' Contentions

Claimant

The Complainant's essential contentions include:

It has extensively registered the trademarks WAL-MART and its Chinese equivalent 沃尔玛, and has full rights and legal interests in the word Wal-Mart and the Chinese characters 沃尔玛.

The major portion of the identifying part of the disputed domain name is identical to the Complainant's trademark 沃尔玛, and the other two Chinese characters mean "shop" in English; thus making the disputed domain name confusingly similar to the Complainant's registered trademark.

The Complainant has never granted a license to the Respondent to use the characters 沃尔玛, and the latter has never had any right and legitimate interest in the disputed domain name.

The Respondent registered and used the disputed domain name in bad faith by directly hyper-linking it to a website that offers for sale the household fabric products, etc., which is within the business scope of the Complainant's.

Respondent

The Respondent did not make any contention against whatever the Complainant said.

Findings

One of the Pre-requisites for the Respondent to register the disputed domain name through the Registrar is to accept the Policy as the binding regulations. As mentioned, the Policy applies to this dispute. As stipulated in the Paragraph 4(a) of the Policy, when claiming back a domain name registered by the Respondent, 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; an
- (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.

Based itself upon the stipulations under the Policy, what the Panel needs to do is to find out whether each of the above-mentioned facts can be established. If the answer is yes, the Panel makes final award in accordance with the fact-finding and the relevant stipulations under the Policy, the Rules and the ADNDRC Supplemental Rules. If not, the claims by the Complainant shall be rejected.

The Respondent failed to submit a Response, or make defense, of any sort to argue against whatever the Complainant alleges and to show his intention to retain the disputed domain name as required by the Policy, the Rules and the ADNDRC Supplementary Rules. As stipulated in Paragraph 5(e) in the Rules, "If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint". In view of the situation, the Panel cannot but make the decision based primarily upon the contentions and the accompanying exhibits by the Complainant, except otherwise there is an exhibit proving to the contrary; or the Panel thinks what the Complainant advocates false based upon natural and logical deduction.

Identical / Confusingly Similar

Pursuant to Paragraph 4(a) (i) of the Policy, the Complainant must prove that the domain name is identical or confusingly similar to a trademark or service mark in which it has rights. To meet the requirement, the Complainant submits the trademark certificates to prove the registrations in China of the trademarks "WAL-MART" and its Chinese equivalent "沃尔玛". The Panel has attended to the fundamental fact that the Complainant is fully entitled to the Chinese characters "沃尔玛". The disputed domain name is "沃尔玛商店.com" that is not identical to the Complainant's trademark "沃尔玛". Thus the question is whether the two are confusingly similar. The Panel thinks the answer is YES due to the following reasons: ".com" has no significant meaning in making the judgment on the confusing similarity of the disputed domain name and the mark owned by the Complainant. Since the difference between the two is the extra two Chinese characters, i.e. "商店", in the disputed domain name, whether it may negate the confusing similarity of the two compared plays essential role in the Panel's judgment. Obviously, the two Chinese characters mean SHOP or STORE in English. Since the disputed domain name attracts no other than those who understand Chinese, the identifying part of the disputed domain name, i.e. "沃尔玛商店", means

nothing but “WAL-MART Shop” or “WAL-MART Store” . It is apparent that when the web-users see the disputed domain name, they may easily mistake the Respondent for the Complainant. Based upon this fundamental fact, the Panel holds that the disputed domain name is confusingly similar to the Complainant’ s registered trademarks. Since the Policy asks for either “identity” OR “confusingly similarity” , the Panel holds that the Complainant meets the first requirement set forth 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. Unfortunately, the Panel cannot see that the Respondent has any legal right or legitimate interest in respect of the disputed domain name, due to the fact that the Respondent does not claim any of such a right or interest, and nothing so far could lead the Panel to hold such a fact in the Respondent’ s favor. Besides, the Panel has attended to a very basic fact that the disputed domain name was created and registered much later than the trademarks owned by the Complainant.

On the other hand, the Complainant expounds the development history of its business and submits plenty of exhibits to support its allegations. Facing the pile of the evidences, the Panel can hardly say that what the Complainant states is not true. On one side, the Panel cannot see any right or legitimate interest of the Respondent’ s in the disputed domain name. On the other side, the Complainant’ s claiming that it does have rights and legitimate interests in the domain name is much convincing and persuasive. For this reason, the Panel holds that the Complainant meets the second requirement set forth under Paragraph 4(a)(ii).

Bad Faith

The Complainant also has to establish the fact of bad faith on the part of the Respondent as set forth in the Paragraph 4(a)(iii) of the Policy. First and foremost, the bad faith reflects the subjective desire of the registrant of the disputed domain name when making the registration. As demonstrated by the Complainant, its trade name and trademarks are well-known either in China or in other places in the world. Linguistically and phonetically speaking, the word WAL-MART is NOT a common English word that may be easily found in the English dictionary. Neither is its Chinese equivalent “沃尔玛” . Obviously, either the English word or its Chinese equivalent was created intentionally by the Complainant to distinct itself from other business operators in the market. Years of market operation makes the Chinese characters “沃尔玛” familiar to the majority of the consumers in China. Based upon the fact, the Panel thinks that the Respondent knew, or at least should have known, the reputation and value of the Chinese characters “沃尔玛” , due to the fact that the probability of the coincidence that the Respondent creates the identifying part of the disputed domain name without knowing the Complainant’ s trade name and trademarks is much low. As held by the Panel, the disputed domain name is confusingly similar to the registered trademark of the Complainant’ s, and the Respondent has no rights or legitimate interest in the disputed domain name. The holding itself becomes the base for the Panel’ s holding of the Respondent’ s bad faith in registration, because it reveals the subjective desire of the Respondent to make use of the Complainant’ s reputation to gain unfair commercial interests. In addition, when making the registration, the Respondent provided incomplete and false information. The fact also reflects that the subjective status of the Respondent is NOT that of a normal registrant’ s.

Under the Paragraph 4(b) of the Policy, the following circumstances, in particular, shall be considered as the bad faith in the registration or use of a domain name, “……. (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complaint’ s mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or a product or service on your web site or location; ……” .” The Complainant submits and proves that the Respondent has directly hyper-linked the disputed domain name to a website operated by a direct competitor of the Complaint’ s. So far, the Panel sees no evidences that may make the Panel thinks what the Complainant said is NOT true. Thus, the Panel has full reason to hold that the disputed domain name was used in bad-faith.

Since the Panel comes to see the bad faith of the Respondent’ s in the registration and use of the domain name at issue, the Panel comes to the conclusion that the Complainant meets the requirement set forth under

Paragraph 4(a)(iii) of the Policy.

Based upon all the foregoing findings, the Panel rules that the Complaint fulfills the conditions provided in Paragraph 4(a)(i)(ii) (iii) of the Policy, thus its claims shall be held.

Status

www.沃尔玛商店.com Domain Name Transfer

Decision

In light of all the fact-findings and in accordance with Paragraphs 4(a), 8(a) of the Policy and 5(e) of the Rules, the Panel holds:

- a) That the disputed domain name “沃尔玛商店.com” is confusingly similar to the trademark “沃尔玛” owned by the Complainant, and
- b) That the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- c) That the domain name was registered and subsequently used by the Respondent in bad faith.

As such and as requested by the Complainant in its Complaint, the Panel rules that the registration of the domain name “沃尔玛商店.com” be transferred to the Complainant.

Chi Shaojie
Sole Panelist-
Dated: March 6, 2009