



## ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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### Decision Submission

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Version  
 Decision ID DE-0900235  
 Case ID HK-0900242  
 Disputed Domain Name www.chritrs.com  
 Case Administrator Dennis CAI  
 Submitted By Lyons Debrett G.  
 Participated Panelist

Date of Decision 02-09-2009

Language Version : English

#### The Parties Information

**Claimant** Christie Manson & Woods Limited  
**Respondent** Lee Brian

#### Procedural History

The Complaint was filed with the Hong Kong office of the Asian Domain Name Dispute Resolution Center (the "Center" ) on February 20, 2009. On February 23, 2009, the Center transmitted by email to eNom Inc. a request for registrar verification in connection with the domain name at issue. On February 24, 2009, eNom Inc. transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy" ), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules" ), and the Center' s Supplemental Rules.

In accordance with the Rules, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on March 3, 2009. In accordance with the Rules, the due date for Response was February 23, 2009. The Respondent submitted an out-of-time Response on February 27, 2009. The Center provisionally accepted the Response, subject to a final ruling on admissibility by this Panel.

The Center appointed Debrett G. Lyons as the sole panelist in this matter on August 14, 2009. The Panel finds that it was properly constituted and has acted impartially in reaching its conclusion.

On August 25, 2009 the Center issued a Panel Procedural Order advising the parties that it was the decision of the Panel to admit the out-of-time Response and extending an invitation to the parties to make further submissions no later than August 31, 2009. No further submissions were received.

#### Factual Background

##### For Claimant

1. The Complainant is a well known auction house, originally established in London in 1766 by James Christie.
2. The Complainant is the owner of trade mark registrations for "CHRISTIE'S" (for example, Chinese Trademark Registration No. 725930) and "佳士得" (for example, Chinese Trademark Registration No.4274006).
3. The Complainant has not licensed or otherwise permitted the Respondent to use the trademark or to register or use any domain name incorporating the trademark.
4. The Complainant petitions the Panel to order transfer the disputed domain name from the Respondent to the

Complainant.

### For Respondent

5. The Respondent is a resident of Hong Kong.
6. The Respondent registered the disputed domain name on January 29, 2008.
7. A website corresponding with the disputed domain name exists at
8. www.chritrs.com, the homepage of which states it to be the official website of a company called "香港佳士德艺术品拍卖有限公司".

### Parties' Contentions

#### Claimant

The Complainant asserts rights in the trademarks "CHRISTIE'S" and "佳士得" and states that the disputed domain name is confusingly similar to the trademarks.

The Complainant alleges that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant alleges that the Respondent registered and used the disputed domain name in bad faith.

The detail of the Complaint is included where necessary in Part 5 of this decision.

#### Respondent

The Respondent's only argument is that the disputed domain name is not confusingly similar to the trademark "CHRISTIE'S".

The detail of the Response is included where necessary in Part 5 of this decision.

### Findings

The Rules instruct the Panel to "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."

Preliminary Issues: Out-of-time Response / Procedural Order

The Response was due March 23, 2009 but filed on March 27, 2009. In these circumstances the Panel has discretion whether or not to admit the Response.

Having regard to the facts that the Response is limited to submissions on confusing similarity – a matter which the Panel regards as the only important question in this case – and was filed three days late, the Panel has determined that it is proper to admit the Response. It was read and given due consideration in reaching this decision.

The Panel also found it appropriate to invite the parties to provide further information relevant to the question of confusing similarity. The substance of that invitation is set out below under Part 5A. Nothing was received from the Respondent. The Complainant sought a two week extension of time to provide the further information. That request was refused. Nothing pertinent to the invitation was received from the Complainant.

The Panel underscores the fact that the UDRP was conceived and has operated as a quick and cost-effective method of combating abusive domain name registrations. In accordance with those objectives, the time limits set on the parties and also on the Panel are characteristically short. Extensions of time are not unknown, but are the exception. In this case the Panel invitation allowed the Complainant to clarify and improve upon its case. It fell to the Complainant to do so promptly and within the time period set.

#### Substantive matters

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

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

## Identical / Confusingly Similar

The Panel has no hesitation in finding that the Complainant has rights in the trademarks "CHRISTIE'S" and "佳士得" acquired through both use and registration: see *State Farm Mut. Auto. Ins. Co. v. Malain*, FA 705262 (Nat. Arb. Forum June 19, 2006; see also *Mothers Against Drunk Driving v. phix*, FA 174052 (Nat. Arb. Forum Sept. 25, 2003). The remaining issue is whether the disputed domain name is confusingly similar to either or both of the trademarks. In making that assessment, the gTLD, ".com" is trivial and of itself does nothing to defeat the Complainant's claim of confusing similarity: see *Rollerblade, Inc. v. McCrady*, WIPO Case No. D2000-0429.

It should first be noted that any comparison between the trademarks "CHRISTIE'S" or "佳士得" and the Respondent's use of "佳士德" is irrelevant to the issue to be considered under paragraph 4(a)(i) of the Policy. The term "佳士德" is not the disputed domain name. The question of the legitimacy of the use of that term is not a matter for this Policy.

In making the first proper comparison – that of CHRITRS with the trademark "CHRISTIE'S" – the Complainant argued as follows:

'The only differences are that an "s" is missing in "chri" in the first part of "chritrs" and the letters "ie" in "CHRISTIE'S" and "christies" are replaced by the letter "r" in the second part of "chritrs". Despite these minor differences, the overall impression given by "chritrs" and that by "CHRISTIE'S" and "christies" are very similar in every respects including visually and phonetically. The word "chritrs" is formed by omitting a letter, i.e. "s", and by replacing particular letters, i.e. "ie", in the Complainant's trade mark.'

... ..

'according to normal trade mark principles, the likelihood of confusion must be appreciated globally, taking into account all relevant circumstances. A lesser degree of similarity between the marks may be offset by a greater degree of similarity between the goods or services. Also, the more distinctive an earlier mark, the greater will be the likelihood of confusion. The above principles should also apply to domain names. In the present case, the website operated under the dispute domain name at [www.chritrs.com](http://www.chritrs.com) claims to provide auctioneering service for works of art, which is the same as the service provided by the Complainant' .

In his Response, the Respondent argued that:

"there is a large gap between the Respondent domain name and Complainant's domain name ([WWW.christies.com](http://WWW.christies.com)) in spelling. In our registered domain name, only the first four letters are same with the Complainant's domain name, while the remaining letters are completely different. In addition, our domain name consists of 7 letters, but Complainant's domain name includes 9 letters, as well as there great difference in spelling and pronunciation."

The essential part of the domain name, CHRITRS, is a collision of consonants. The Panel can not agree with the Complainant that only "minor differences" separate CHRITRS and CHRISTIE'S. The Panel struggles to see how CHRITRS might be pronounced. Placed in the context of auctioneering services, the Panel might recognise it as a gross mutilation of CHRISTIE'S however that, again, is not the correct approach. The Complainant states that "according to normal trade mark principles, the likelihood of confusion must be appreciated globally, taking into account all relevant circumstances. A lesser degree of similarity between the marks may be offset by a greater degree of similarity between the goods or services". Those are indeed accepted trademark principles, but they are not the principles consensually agreed by panellists applying this Policy. Indeed, under paragraph 4(a)(i) of the Policy, circumstances such as the content of related websites are explicitly disregarded : see WIPO Overview of Panel Opinions.

Complainant goes on to argue that this is a case of typosquatting and in support of that claim cites the cases of *Jack Daniel's Properties Inc. v 深圳市杰克丹尼服饰有限公司* (Shenzhen Jieke Danni Clothing Co. Ltd.) (ADNDRC Case No.HK-0800145) ("[jackdanl.com](http://jackdanl.com)"); (2) *Myxer Inc. v Marketing Total S.A. & Others* (WIPO Case No.D2008-0169) ("[mixer.net](http://mixer.net)" and "[myxertoens.com](http://myxertoens.com)" etc.); (3) *Wal-Mart Stores Inc. v Jason Banks* (WIPO Case No.D2007-0266) ("[waljmart.com](http://waljmart.com)" and "[walmzart.com](http://walmzart.com)").

The Panel rejects that argument. The domain name so utterly disfigures the trademark that in the Panel's opinion, a web browser who happened to type the address [www.chritrs.com](http://www.chritrs.com) would not do so with the Complainant's trademark in mind.

The Panel does not find the disputed domain name to be confusingly similar to the trademark "CHRISTIE'S" .

The second comparison – that of the trademark "佳士得" with CHRITRS – was the cause for the Panel Order, which stated so far as relevant:

"The Response was limited to the issue of confusing similarity under paragraph 4(a)(i) of the Policy. This Panel Order

is an invitation for further submissions from both parties strictly limited to that aspect of the Policy.

In particular, the Panel invites comment on the issue of potential confusing similarity as between the disputed domain name and the Complainant's Chinese character trademark “佳士得”. To be clear, the Panel is not concerned with comparisons between that trademark and the Respondent's use of “佳士德” and does not invite comment on that comparison. Instead, the Panel is concerned with the ways (allowing for dialects) in which the Complainant's Chinese character trademark might be transliterated in addition to the manner described in the Complaint, namely, “Jai - Shi - De”. Information going beyond that specific matter may be disregarded by the Panel in reaching its decision.

The parties are required to respond to this invitation no later than August 31, 2009.”

In the absence of any further evidence of how “佳士得” might be pronounced, the Panel makes the finding that CHRITRS is not confusingly similar to the Complainant's trademark “佳士得”, the evidence being that it would be pronounced as “Jai - Shi - De”.

The Panel finds that the Complainant has failed to satisfy the first element of the Policy. For that reason, the Complaint as a whole fails and so there is no requirement for the Panel to consider the remaining aspects of the Policy.

### **Rights and Legitimate Interests**

No finding required.

### **Bad Faith**

No finding required.

### **Status**

www.chritrs.com

Complaint Rejected

### **Decision**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Complaint is DENIED.

Debrett G. Lyons  
Sole Panelist

Date: September 1, 2009