



Asian Domain Name Dispute Resolution Centre
- a charitable institution limited by guarantee registered in Hong Kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1300484
Complainant:	Apple Inc.
Respondent:	Vadim Ivanov

1. The Parties and Contested Domain Name

The Complainant is Apple Inc., of 1 Infinite Loop, Cupertino, CA 95014, USA

The Respondent is Vadim Ivanov, of Ul, Centralnaya, dom 6, kv. 38, Dubna Moscovskaya oblast 141983.

The domain name at issue is <jobs-at-apple.com>, registered by Respondent with Bizcn.com, Inc. of 702C NO.59. WangHai Road, Xiamen Software Park, Xiamen Fujian 361008, China.

2. Procedural History

The Complaint was filed with the Asian Domain Name Dispute Resolution Centre ("the Centre") on February 6, 2013,

On February 6, 2013, the Centre transmitted by email to Bizcn.com, Inc. a request for registrar verification in connection with the disputed domain name.

On February 10, 2013 Bizcn.com, Inc. transmitted by email to the Centre its response that the registrant of the disputed domain name was:

Whois Privacy Protection Service
Whois Agent gmvjcxkxhs@whoisservices.cn
+86.05922577888 fax: +86.05922577111
No. 61 Wanghai Road, Xiamen Software Park
xiamen fujian 361008 cn;

On February 20, 2013, Bizcn.com, Inc. again transmitted by email to the Centre, at the request of the Centre, the advice that the original information of the Registrant without the WHOIS Privacy Protection Service was:

NA
Vadim Ivanov admin@jobs-at-apple.com
+74967164758 fax: +74967164758
Ul. Centralnaya, dom 6, kv. 38
Dubna Moscovskaya oblast 141983

Ru.

On February 26, 2013, the Complainant filed a revised Complaint with the Centre wherein the Respondent is:

Vadim Ivanov admin@jobs-at-apple.com
+74967164758 fax: +74967164758
Ul. Centralnaya, dom 6, kv. 38
Dubna Moscovskaya oblast 141983
ru

On February 28, 2013, Complainant served the Respondent by email to admin@jobs-at-apple.com with a copy of the revised Complaint in this proceeding submitted to the Centre together with the annexures thereto.

On March 1, 2013 the Centre verified that the revised Complaint filed with it on February 26, 2013 satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2(a) and 4(a), the Centre by Written Notice sent to admin@jobs-at-apple.com and to postmaster@jobs-at-apple.com formally notified the Respondent of the Complaint, and the proceedings commenced on March 1, 2013.

In accordance with the Rules, paragraph 5(a), the due date for Response was March 21, 2013. No Response was received from the Respondent by the Centre.

The Center appointed The Honourable Neil Anthony Brown QC as panelist in this matter on April 3, 2013.

The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Centre to ensure compliance with the Rule 7.

The Panel finds that the Asian Domain Name Dispute Resolution Centre has performed its obligations under Rule 2(a) of the Rules "to employ reasonably available means calculated to achieve actual notice to Respondent". Accordingly, the Panel is able to issue its decision based on the documents submitted and in accordance with the ICANN Policy, ICANN Rules, the Asian Domain Name Dispute Resolution Centre Supplemental Rules and any rules and principles of law that the Panel deems applicable, without the benefit of any response from Respondent.

3. Factual background

1. Complainant is one of the most famous technology companies in the world.
2. Complainant has several trademarks for APPLE including the United States federally registered mark APPLE, No. 1078312, registered with the United States Patent and Trademark Office ("USPTO") on November 29, 1977.

3. Respondent registered the dispute domain name on October 22, 2012. It presently resolves to a website used for the perpetration of a phishing scam.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

1. Co-founded by Steve Jobs in 1976, the Complainant is one of the most famous technology companies in the world. It designs, manufactures and markets a range of personal computers, mobile communication and media devices, and portable digital media players.

2. One of the Complainant's brands is APPLE and the APPLE brand is one of the best-known brands in the world.

3. The Complainant owns numerous trademark registrations for APPLE, including the United States federally registered mark APPLE, No. 1078312, registered on November 29, 1977.

4. Since the dispute relates to the domain name that contains the word "jobs", special attention must also be paid to the Complainant's fame as an employer.

5. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

6. The disputed domain name consists of Complainant's famous trademark, the generic term "jobs", the preposition "at", the two hyphens, and the gTLD suffix "com".

7. The Respondent has no rights or legitimate interests in respect of the domain name.

8. Respondent is not a licensee of the Complainant nor in any way associated with Complainant. Further, the Complainant has never authorized the Respondent to register and use the domain name "jobs-at-apple.com" or any other domain name.

9. In fact, the disputed domain name has been used for a deceptive "phishing" scheme (i.e., deceptive attempts to obtain personal information) targeting jobseekers who may believe that the disputed domain name originates from or is connected with the Complainant.

10. The domain name has been registered and is being used in bad faith.

11. The selection of the disputed domain name was motivated entirely by a desire to capitalize on the widespread fame of the Complainant and its brand, as well as the interest of individuals to be employed by the Complainant.

12. The disputed domain name has been linked to a website (**Exhibit 16**), which is a near wholesale copy of the Complainant's job site www.apple.com/jobs/us (**Exhibit 17**).

13. The Respondent has also been engaged in the perpetration of a fraud, whereby it holds itself out to be an agent of the Complainant for the purpose of obtaining personal information.

14. The Respondent's above conduct demonstrates that the Respondent seeks to exploit the fame, reputation and goodwill of the Complainant, as well as the trust of potential job applicants, to obtain personal information and benefit financially, at the expense of the Complainant and the job applicant. By doing so, the Complainant is in violation of the bad faith registration and use provisions of the Policy at paragraph 4(b)(iv).

15. It is highly unlikely that the Respondent, who registered the disputed domain name in late October 2012, did not know of Complainant's rights when the Respondent registered the disputed domain name.

16. Respondent has previously registered domain names containing third party trademarks such as the <microsoftbox.net>, <google-adsenc.com> and <adobflashplayer-update.com>.

17. The provision of incomplete contact information to a privacy service and the concealment of the underlying registrant information upon the institution of a UDRP proceeding are indicia of bad faith. See e.g. *Fifth Third Bancorp v. Secure Whois Information Service*, WIPO Case No. D2006-0696 and also *Telstra Corporation Limited v. Nuclear Marshmallows*, Case No. D2000-0003.

B. Respondent

The Respondent did not submit a Response in this proceeding.

5. Findings and Discussion of the Issues

Rule 15(a) of the Rules instructs 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."

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (1) the domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (2) Respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered and is being used in bad faith.

As Respondent is in default by not submitting a Response, the Panel shall decide this proceeding on the basis of the contents of the Complaint and its annexures, which it does pursuant to Rules 5(e), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. *See Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc.*, FA 95095 (Nat. Arb. Forum July 31, 2000) (the respondent’s failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true); *see also Talk City, Inc. v. Robertson*, D2000-0009 (WIPO Feb. 29, 2000) (“In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.”).

The Panel will now deal with each element in turn.

A) Identical / Confusingly Similar

The first question that arises is whether Complainant has a trademark or service mark on which it can rely. Complainant submits that it does and it has provided evidence to the effect that it has several registered trademarks for APPLE, for example Trademark Registered No. 1078312, registered on November 29, 1977 with USPTO (“the APPLE mark”). The Panel accepts this evidence. Based upon the evidence of the registrations provided, the Panel finds that Complainant has established its rights in the APPLE mark under Policy ¶ 4(a) (i). *See Intel Corp. v. Macare*, FA 660685 (Nat. Arb. Forum Apr. 26, 2006) (finding that the complainant had established rights in the PENTIUM, CENTRINO and INTEL INSIDE marks by registering the marks with the USPTO).

The second question that arises is whether the disputed domain name is identical or confusingly similar to the APPLE mark. Complainant submits that it is, because it includes the whole of Complainant’s APPLE trademark and several other words that do not negate confusing similarity but emphasise it, as the additional words merely relate to employment at Complainant which is synonymous with the APPLE mark. The Panel agrees with this submission for the following reasons.

It is now well established that the top level domain cannot negate a finding of confusion similarity that otherwise exists: *Trip Network Inc. v. Alviera*, FA 914943 (Nat. Arb. Forum Mar. 27, 2007) (concluding that the affixation of a gTLD to a domain name is irrelevant to an analysis under paragraph 4(a)(i) of the Policy).

Moreover, it is true as Complainant submits, that the whole of the APPLE trademark has been included in the <jobs-at-apple.com> domain name. The only additions are the generic word “jobs”, the connecting word “at” and the two hyphens. The internet user could not but conclude that this is a domain name relating to jobs and employment at Complainant or working on APPLE products. See the cases cited by Complainant and *Microsoft Corporation v. ABK/George Owens*, FA 1473573 (Nat. Arb. Forum, Jan. 21, 2013) (finding <xboxmusicpassfree.com> confusingly similar to the XBOX mark); *Microsoft Corp. v. PRQ Inet KB / Swartholm*, FA1206001450976 (Nat. Arb. Forum Aug. 13, 2012) (finding <xboxliverewards.com> confusingly similar to XBOX LIVE and awarding transfer).

Adding generic or common words to a trademark does not have the effect of negating confusing similarity with the trademark, particularly when the words added are part of the business of the trademark owner, as employment is in the case of the Complainant which, on the evidence, is renowned as a good and popular employer. The Panel therefore finds that the domain name is confusingly similar to the trademark.

Complainant has thus made out the first of the three elements that it must establish.

B) Rights and Legitimate Interests

It is now well established that Complainant must first make a *prima facie* case that Respondent lacks rights and legitimate interests in the disputed domain name under Policy ¶ 4(a) (ii), and then the burden shifts to Respondent to show it does have rights or legitimate interests. *See Hanna-Barbera Prods., Inc. v. Entm't Commentaries*, FA 741828 (Nat. Arab. Forum Aug. 18, 2006) (holding that the complainant must first make a *prima facie* case that the respondent lacks rights and legitimate interests in the disputed domain name under UDRP ¶ 4(a) (ii) before the burden shifts to the respondent to show that it does have rights or legitimate interests in a domain name); *see also AOL LLC v. Gerber*, FA 780200 (Nat. Arab. Forum Sept. 25, 2006) (“Complainant must first make a *prima facie* showing that Respondent does not have rights or legitimate interest in the subject domain names, which burden is light. If Complainant satisfies its burden, then the burden shifts to Respondent to show that it does have rights or legitimate interests in the subject domain names.”).

The Panel finds that Complainant has made out a *prima facie* case that arises from the following considerations:

- (a) Respondent has chosen to take Complainant’s APPLE trademark and to use it in its domain name, adding the generic word “jobs” and the connecting word “at”, thereby giving the false impression that this is an official domain name of Complainant and that it will lead to an official website of Complainant dealing with employment with Complainant or employment on APPLE products;
- (b) Respondent has then used the domain name to conduct a fraudulent phishing scheme, an integral part of which is using Complainant’s trademark without permission; it is apparent from the evidence of screenshots of Respondent’s website to which the disputed domain name resolved and from the emails to and from victims of the fraud that the fraud was a very real and serious one;
- (c) Respondent has engaged in these activities without the consent or approval of Complainant and Respondent is not sponsored by or legitimately affiliated with Complainant in any way.

All of these matters go to make out the *prima facie* case against Respondent. As Respondent has not filed a Response or attempted by any other means to rebut the *prima facie* case against it, the Panel finds that Respondent has no rights or legitimate interests in the disputed domain name.

Complainant has thus made out the second of the three elements that it must establish.

C) Bad Faith

It is clear that to establish bad faith for the purposes of the Policy, Complainant must show that the disputed domain name was registered in bad faith and has been used in bad faith. It is also clear that the criteria set out in Policy ¶ 4(b) for establishing bad faith are not exclusive, but that Complainants in UDRP proceedings may also rely on conduct that is bad faith within the generally accepted meaning of that expression.

Having regard to those principles, the Panel finds that the disputed domain name was registered and used in bad faith. That is so for the following reasons.

First, the Complainant submits that selection of the disputed domain name was motivated entirely by a desire to capitalize on the widespread fame of the Complainant and its brand, as well as the interest of individuals to be employed by the Complainant. The Panel finds that this conclusion is the only one that can be drawn from the facts in view of Complainant's APPLE mark being one of the most famous in the world and in view of the fact that the domain name is expressed in such a blatant way as to entice job seekers to put their trust in the contents of the Respondent's website.

Secondly, the disputed domain name has been linked to a website which is a near wholesale copy of the Complainant's job site at www.apple.com/jobs/us. Respondent's website is therefore fraudulent in itself and thus plainly in bad faith both with respect to the registration and the use of the disputed domain name.

Thirdly, the Respondent has clearly been engaged in the perpetration of a fraud, whereby it holds itself out to be an agent of the Complainant for the purpose of obtaining personal information and which, again, must constitute bad faith registration and use.

Fourthly, the Respondent's conduct demonstrates that the Respondent seeks to exploit the fame, reputation and goodwill of the Complainant, as well as the trust of potential job applicants, to obtain personal information and benefit financially, at the expense of the Complainant and the job applicants. By doing so, as the Complainant submits, the Respondent is in violation of the bad faith registration and use provisions at paragraph 4(b)(iv) of the Policy. It is instructive to note that the sort of "phishing" activity shown in this case has already been held to be bad faith and in reach of paragraph 4 (b) (iv) of the Policy: *CareerBuilder, LLC v. Stephen Baker*, WIPO Case D2005-0251.

Fifthly, it is highly unlikely that the Respondent, who registered the disputed domain name in late October 2012, did not know of Complainant's rights when the Respondent registered the disputed domain name. The Panel finds that the Respondent had actual knowledge of the Complainant's APPLE mark because of its great fame and because the Respondent uses the very name itself on its website. The Panel, having examined the evidence, concludes that Respondent had actual knowledge of Complainant's trademark at the time of registration. This is evidence of bad faith registration. In view of the fame of Complainant's mark and in view of the use of it made by Respondent, without permission, the Panel concludes that Respondent had actual knowledge of the mark at the time of the registration of the domain name and it was thus registered in bad faith; see *Assoc. Materials, Inc. v. Perura Wells, Inc.* FA154121 (Nat. Arb. Forum, May 23, 2003 (respondent's actual knowledge of a complainant's rights in the ULTRAGUARD mark evidenced that the disputed domain name was registered in bad faith).

Sixthly, on the evidence tendered by the Complainant, the Respondent has previously registered domain names containing third party trademarks such as the <microsoftbox.net>, <google-adsenc.com> and <adobflashplayer-update.com> and its conduct in those cases reinforces the categorization of its conduct in the present proceeding as bad faith.

Seventhly, the Panel agrees with the submission of the Complainant that the provision of incomplete contact information to a privacy service and the concealment of the underlying registrant information upon the institution of a UDRP proceeding are indicia of bad faith. See e.g. *Fifth Third Bancorp v. Secure Whois Information Service*, WIPO Case No. D2006-0696 and also *Telstra Corporation Limited v. Nuclear Marshmallows*, Case No. D2000-0003.

Eighthly, in addition and having regard to the totality of the evidence, the Panel finds that, in view of Respondent's registration of the disputed domain name using the APPLE mark and in view of the conduct that Respondent engaged in when using it, Respondent registered and used the disputed domain name in bad faith within the generally accepted meaning of that expression.

Complainant has thus made out the third of the three elements that it must establish.

6. Decision

Having established all three elements required under the ICANN Policy, the Panel concludes that relief shall be **GRANTED**.

Accordingly, it is Ordered that the <jobs-at-apple.com> domain name be **TRANSFERRED** from Respondent to Complainant.

The Honourable Neil Anthony Brown QC
Panelists

Dated: April 16, 2013