



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

— A charitable institution limited by guarantee registered in Hong Kong

(Kuala Lumpur Office)

ADMINISTRATIVE PANEL DECISION

Case No: KLRCA/ADNDRC-3-2012
Complainant: ASTRATA GROUP INC.
Respondent: RICHARD NELSON

1. The Parties and Contested Domain Name

The Complainant is ASTRATA GROUP INC. (Company Registration No. T04UF0548K) a company incorporated in California, United States of America and having a principal place of business at 750E Chai Chee Rd, Suite 502, Technopark, Singapore 469005, Singapore.

The Respondent is RICHARD NELSON whose address is at Manserd House, South Town Rd, Medstead, Hampshire GU34 5ES, United Kingdom.

The domain name in dispute is <astratagroup.com> (“the Domain Name”). It was registered on May 25, 2004.

The Registrar of the Domain Name is Tucows, Inc. (“the Registrar”).

2. Procedural History

The following is the case file chronology :-

SUBMISSION DATE Documents submitted by Parties (date received by Centre) Documents communicated by Centre (date issued)	DESCRIPTION
September 14, 2012	Proof of payment
September 25, 2012	Complaint Transmittal Coversheet and Form C-Complaint
October 2, 2012	New Case Notification to Registrar

October 2, 2012	Email from Registrar
October 4, 2012	Notification of Commencement of Proceedings
November 6, 2012	Letter of Appointment and Declaration of Impartiality and Independence of Panelist

The Complainant elected a single-member Panel (“**the Panel**”) to decide the Proceeding. I, the undersigned, was constituted by the Centre as the Panel. The notice of appointment of the Panel was sent on October 29, 2012. The Panel submitted the Declaration of Impartiality and Independence on November 6, 2012.

3. Factual Background

The Complainant actively conducts business under the business name “Astrata Group Inc.” which is identical to this Domain Name. The Complainant manages and controls the Astrata website <www.astratagroup.com> to which the Domain Name points. However, the Complainant is not the registrant of the Domain Name and hence is unable to make any changes to the Astrata website.

The registrant of the Domain Name is the Respondent.

The Respondent was a former employee of the Complainant who was tasked to register the Domain Name on behalf of the Complainant. The Respondent no longer works for the Complainant.

The Complainant has requested the Respondent to transfer the Domain Name to it but the Respondent has refused.

4. Parties’ Contentions

A. Complainant

The Complainant contends that the Domain Name belongs to the Complainant as it is synonymous to the Complainant’s trade or business name under which the Complainant conducts its business.

The Complainant asserts that the Respondent had wrongfully registered the Domain Name in his own name without the Complainant’s authorization and in bad faith.

The Complainant also asserts that the Respondent has no interest in the Domain Name and had attempted to sell the Domain Name to the Complainant.

B. Respondent

The Respondent failed to submit his Response to the Complaint.

5. Findings

Rule 15(a) of the Rules states that the Panel shall decide a complaint on the basis of the statement and documents submitted and in accordance with the Policy, Rules and any other rules and principles of law that it deems applicable.

Rule 5(e) of the Rules states that if the Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the Complaint.

Paragraph 4(a) of the Policy provides that the Complainant must establish each of the following elements in the Complaint:-

- (i) the Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) the Respondent has registered and/or used the Domain Name in bad faith.

A) Identical or confusingly similar

The Domain Name is identical to the Complainant's trade / business name.

The Domain Name incorporates the Complainant's trade / business name in its entirety. It is well established in domain name cases that the inclusion of gTLD and ccTLD is immaterial in determining whether the Domain Name is identical or confusingly similar to a Complainant's trade mark (**Volkswagen Group Singapore Pte Ltd v Webmotion Design Case No.: rca/dndr/2003/01 (int)**). Accordingly, the Panel finds that the Domain Name is identical to the Complainant's mark.

The Panel accepts the Complainant's evidence which is unchallenged, that it is the proprietor of the trade / business name Astratagroup which is identical to the Domain Name. The Panel finds that the Complainant has adduced prima facie evidence that it has rights over the mark Astratagroup in relation to its business. Accordingly, the Panel is satisfied that paragraph 4(a)(i) of the Policy has been established.

B) Rights and legitimate interests

Evidence of rights and legitimate interests may include any one of the following circumstances:-

- (i) before any notice of the Complainant's dispute, the Respondent had used or made preparations to use the Domain Name or a name corresponding to the Domain Name in relation to a genuine offering of goods or services; or
- (ii) the Respondent is commonly known by the Domain Name even though the Respondent has not acquired trade mark or service mark rights; or
- (iii) the Respondent is 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 trade mark or service mark at issue.

The Respondent has not adduced any evidence at all in this proceeding. Accordingly, the Panel concludes that the Respondent does not have any rights and legitimate interests in the Domain Name under paragraph 4(a)(ii) of the Policy.

C) Bad Faith

It appears that the crux of the Complainant's complaint of bad faith falls within paragraph 4(b)(i) of the Policy. Paragraph 4(b)(i) of the Policy states that evidence of bad faith may include circumstances where the respondent registered and/or are using the Domain Name mainly to sell, rent or transfer the Domain Name for profit to the Complainant, its competitor or the owner of the trade mark or service mark.

The Complainant had adduced a copy of a letter written by the Respondent wherein the Respondent had offered to assign the Domain Name to the Complainant free of charge provided that a certain outstanding balance is paid to Kingswood Marketing. No evidence has been adduced to show how Kingswood Marketing is related to the Respondent. Notwithstanding this, the Panel notes that although the offer to assign was stated to be "free of charge" it was conditional upon a certain payment being made. The Panel holds the view that this suggests that the Respondent had made an offer albeit indirect to sell the Domain Name to the Complainant.

More importantly, the Panel would like to make an observation that the Respondent's refusal to transfer the Domain Name to the Complainant who is actively using the website for its business represents a hindrance to the Complainant's trade and business in that the Complainant is unable to make full use of the website, being unable to make changes to it.

In the absence of evidence to the contrary, the Panel finds that the Complainant has adduced sufficient evidence to substantiate its claim under paragraph 4(b)(i) of the Policy.

6. Decision

With due regard to the parameters of the Policy, the Rules and the Supplemental Rules, the Panel finds that the Complainant has proved bad faith under paragraph 4(a)(iii) of the Policy.

Based on the foregoing reasons, the Complaint is allowed and the Domain Name registration is to be transferred to the Complainant.



Michael Soo Chow Ming
Panelist

Dated: November 9, 2012