



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-18010177
First Complainant:	Gear Up International Limited
Second Complainant:	Evisu Group Limited
Respondent:	Worlvi Trading Co., Ltd
Disputed Domain Name:	<evisumall.com>

1. The Parties and Disputed Domain Name

The First Complainant is **Gear Up International Limited** of P. O. Box 957 Offshore Incorporations Centre, Road Town, Tortola, British Virgin Islands.

The Second Complainant is **Evisu Group Limited** of 1st Floor, International Industrial Building, No. 175 Hoi Bun Road, Kwun Tong, Kowloon, Hong Kong SAR.

The First Complainant and the Second Complainant are hereinafter collectively referred to as “the Complainant”.

The Respondent is **Worlvi Trading Co., Ltd** of 11-1, Yeonmujang 11-gil, Seongdong-gu, Seoul, KR.

The domain name at issue is **<evisumall.com>** (“Disputed Domain Name”).

The Registrar is **Gabia, Inc.** Email: abuse@gabia.com

2. Procedural History

On 18 October 2018, pursuant to the Uniform Domain Name Dispute Resolution Policy (“the Policy”), the Rules of the Uniform Domain Name Dispute Resolution Policy (“the Rules”) and the Asian Domain Name Dispute Resolution Centre Supplemental Rules (“the Supplemental Rules”), the Complainant submitted a Complaint to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (“ADNDRC-HKO”) and elected that this case be dealt with by a sole panelist.

On 19 October 2018, the ADNDRC-HKO sent to the Complainant by email an acknowledgement of the receipt of the Complaint and sent to the Registrar a request for verification.

On 23 October 2018, the Registrar transmitted by email to the ADNDRC-HKO its verification.

On 12 November 2018, the ADNDRC-HKO sent a Notification of Commencement of Proceedings (“the Notification”) to the Respondent. The Notification gave the Respondent 20 days to submit a Response (i.e. on or before 2 December 2018).

No formal Response was submitted to the ADNDRC-HKO by the Respondent.

On 3 December 2018, the ADNDRC-HKO advised both parties of the failure of the Respondent to submit a Response to the Complaint within the stipulated time period and that a Panelist for the case would shortly be appointed by the ADNDRC-HKO.

On 17 December 2018, the ADNDRC-HKO sent an email to Mr. FONG Ho Yin enquiring from him whether he could act and if so whether he could act independently and impartially in the matter in question.

On 18 December 2018, Mr. FONG Ho Yin confirmed that he was willing to act and if appointed would act independently and impartially. On the same day, the ADNDRC-HKO notified the parties that Mr. FONG Ho Yin had been appointed as a sole panelist by the ADNDRC-HKO.

On 28 December 2018, the Panel issued an Administrative Panel Order No. 1 requiring the Complainant to file submission in support of the application to use English as the language of the proceedings on or before 4 January 2019 and the Respondent to file submission in reply on or before 11 January 2019.

The Complainant filed the submission on 28 December 2018 but the Respondent did not file any submission in reply.

On 14 January 2019, the Panel issued an Administrative Panel Order No. 2 that English be used as the language of the proceedings. The reasons to use English as the language of the proceedings are given in this Decision.

3. Factual Background

For the Complainant

The First Complainant is a company incorporated under the laws of British Virgin Islands on 9 January 2006. The First Complainant was and is, at all material times, incorporated for the purpose of, inter alia, holding various intellectual properties, including trademarks.

The Second Complainant is a company incorporated under the laws of Hong Kong on 9 March 2001. The Second Complainant was and is at all material times the exclusive licensee of the First Complainant to use the “EVISU” trade mark worldwide.

The First Complainant and the Second Complainant are collectively referred to in this Complaint as “**Complainant**”.

1.1 The “EVISU” trade mark

The Second Complainant is engaged in the business of, inter alia, designing, manufacturing, selling and distributing fashion items, including inter alia, jeans and denim jackets (“**the Complainant’s Products**”) throughout the world under the trade name and/or trade mark “EVISU”. The Complainant’s Products are distributed worldwide under or by reference to, inter alia, the following trademarks:-

(i) EVISU;

(ii)  ; and

(iii)  .

(hereinafter collectively referred to as “**the Complainant’s Trade Marks**”).

The Complainant has further registered the Complainant’s Trade Marks worldwide.

By reason of the substantial sales and extensive advertising of goods under the Complainant’s Trade Marks, the Complainant’s Trade Marks have become well known and distinctive throughout the world as goods of the Complainant. Members of the trade and public throughout the world, recognize and understand and have recognized and understood that goods sold under or by reference to one or more of the Complainant’s Trade Marks are those of the Complainant and none other.

1.2 Infringing activities involving the Disputed Domain Name

The Disputed Domain Name was registered on 6 December 2004 in the name of the Respondent. The Respondent operates the website www.evisumall.com bearing the Disputed Domain Name (“**the Respondent’s Website**”) and to offer for sale goods identical and in direct competition to those of the Complainant under and by reference to the Complainant’s Trade Marks. The Respondent’s Website is directed to the webpages <http://en.evisumall.com/> and <http://cn.evisumall.com/>. The Respondent’s Website is substantively similar to the Complainant’s official website www.evisu.com.

For the Respondent

On 6 December 2004, the Respondent through the Registrar registered the Disputed Domain Name.

The Respondent has not filed any Response to these proceedings.

4. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

- 1. The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights**

The Disputed Domain Name <evisumall.com> contains the word components of “evisu”. “evisu” is the most distinctive component in the Disputed Domain Name, and it is identical to the “EVISU” trade mark in which the Complainant has acquired and enjoys legitimate rights and interests.

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

The Respondent has not made any legitimate or active use of the Disputed Domain Name except the infringing activities. As such, the Respondent has not been commonly known by the Disputed Domain Name. Evidenced by the imitation of the Complainant’s website, the Respondent is using the Disputed Domain Name for unlawful commercial use to “misleadingly divert consumers”.

Furthermore, the Respondent does not own any trade mark registrations reflecting or corresponding to the Disputed Domain Name, and has not made any legitimate non-commercial or fair use of the Disputed Domain Name anywhere in the world.

The Respondent applied for registration of the mark “EVISU” in Korea in Class 32 on 27 July 2010 under application no. 4020110049258 without the authorization of the Complainant (the “Infringing Trade Mark”). The registration of the Infringing Trade Mark has been rejected by the Korean Trade Marks Office.

The Infringing Trade Mark is deceptively similar to the Complainant’s Trade Marks “EVISU”. Further or in the alternative, the Complainant avers that the Infringing Trade Mark was applied for registration, used and/or intended to be used as an instrument of deception in the Respondent’s attempt to pass off its products as the Complainant’s Products, or as products associated with the Complainant.

The Respondent has no connection or affiliation with the Complainant and has received no authorization, license or consent from the Complainant to use the “EVISU” trade mark or any other trade marks of the Complainant.

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

The Respondent clearly has registered and used the Disputed Domain Name in bad faith in order to mislead the public into the mistaken belief that its services or goods are in some way related to or associated with the Complainant. Further or in the alternative, the Respondent hosts a website in the name of the Disputed Domain Name with the purpose of attracting Internet users for commercial profits through the selling of goods on such a website for which “evisumall.com” can be confused as “evisu.com” to ordinary internet users or customers, which severely damaged the business of the Complainant. Such acts in bad faith shall be prohibited by the law. This in essence violates the principle of honesty and credibility, causing severe damage to the legitimate rights and interests of ordinary customers and for that matter the general public and that of the Complainant.

B. Respondent

The Respondent has not submitted any Response within the stipulated timeframe. Therefore, the Respondent is in default.

5. Findings

1. The Language of the Proceedings

The language of the Registration Agreement for the Disputed Domain Name is Korean. Pursuant to Paragraph 11 of the Rules, in the absence of an agreement between the parties, or unless specified otherwise in the Registration Agreement, the language of the administrative proceedings shall be the language of the Registration Agreement i.e. Korean.

Paragraph 11(a) of the Rules allows the Panel to determine the language of the proceedings having regard to all the circumstances. In particular, it is established practice to take Paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceedings. In other words, it is important to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving disputed domain name disputes. Language requirements should not lead to undue burden being placed on the parties and undue delay to the proceedings: see **Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) Electrical Appliance Co. Ltd.**, WIPO Case No. D2008-0293; **Solvay S.A. v. Hyun-Jun Shin**, WIPO Case No. D2006-0593.

The Complainant has requested that English be the language of the proceedings for the following reasons:

1. The Respondent's Website www.evisumall.com is directed to the webpage <http://en.evisumall.com/>. The contents of the aforesaid webpage is in English. Obviously, the Respondent has a good command of English. Accordingly, no harm will be done to the Respondent's interest if English be used as the language of the administrative proceedings.
2. On the other hand, substantial prejudice will occur to the Complainant if the present proceedings to be conducted in Korean language. If the Complainant was requested to submit the Complaint with evidence in Korean language, the Complainant will as a result incur substantial costs in doing the translations.
3. The present proceedings be conducted in Korean language will no doubt prejudice, embarrass and delay the otherwise fair trial of the dispute herein.
4. The Respondent did not file any response to the Complaint within the stipulated time. The Respondent's failure and/or refusal to respond to the evidence and submissions presented by the Complainant is further evidence of bad faith use.

In exercising its discretion to use a language other than that of the Registration Agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs: see **Groupe Auchan v. xmxzl**, WIPO Case No. DCC2006-0004; **Finter Bank Zurich v. Shumin Peng**, WIPO Case No. D2006-0432.

The Respondent did not make any submissions to the language of the proceedings and did not object to the use of English as the language of the proceedings.

The Panel is of the view that there is no evidence to suggest that the Respondent is not conversant and proficient in the English language.

In view of the above, it is unlikely that the Respondent will be prejudiced, should English be adopted as the language of the proceedings.

Having carefully considered all the above matters, the Panel determines under Paragraph 11(a) of the Rules that English shall be the language of the proceedings.

2. Discussions and Findings

Paragraph 4(a) of the Policy provides that the Complainant must prove that each of these three elements are present:

- (i) the Respondent's domain name is 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 Respondent's domain name has been registered and is being used in bad faith.

A) Identical / Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to prove that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

Based on the "EVISU" registered trademark of the Complainant, the Panel finds that the Disputed Domain Name is identical or confusingly similar to the Complainant's registered trademark.

As noted, the Disputed Domain Name "evisumall.com", composes of "evisumall" and ".com".

The only difference between the Disputed Domain Name and the Complainant's registered trademark is the inclusion of the word "mall" as a suffix at the end of "evisu". The Panel is of the view that the English word "mall" means shopping mall or shopping centre through which a product is marketed. It is thus a generic word that adds no distinctive element.

It is well-established that in cases where the distinctive and prominent element of a Disputed Domain Name is the Complainant's mark and the only addition is a generic term that adds no distinctive element, such an addition does not negate the confusing similarity between the Disputed Domain Name and the mark: see **LEGO Juris A/S v. huangderong**, WIPO Case No. D2009-1325.

No doubt, ".com" is a generic top-level domain name (gTLD) suffix. It is non-distinctive and is incapable of differentiating the Disputed Domain Name from the Complainant's

registered trademark : see **Pomellato S.p.A v. Tonetti**, WIPO Case No. D2000-0493. Hence, the gTLD “.com” is without legal significance as the use of a gTLD is technically required to operate domain names and it does not serve to identify the source of the goods or services provided by the registrant of a domain name.

Accordingly, the Panel is satisfied that the Complainant has complied with Paragraph 4(a)(i) of the Policy.

B) Rights and Legitimate Interests

The fact that the date of registration of the “EVISU” registered trademark in Hong Kong (i.e. 21 October 1999) predates the Respondent’s Disputed Domain Name (i.e. 6 December 2004) has the practical effect of shifting the burden of proof to the Respondent in establishing that it has legitimate rights and/or interests in the Disputed Domain Name: see **PepsiCo, Inc. v. Amilcar Perez Lista d/b/a Cybersor**, WIPO Case No. D2003-0174.

As the Respondent is in default and has not filed any Response, in particular, the Respondent has not discharged the burden of proof under Paragraph 4(c) of the Policy.

Accordingly, the Panel is satisfied that the Complainant has complied with Paragraph 4(a)(ii) of the Policy.

C) Bad Faith

Paragraph 4 (b) of the Policy provides that:

“Evidence of Registration and Use in Bad Faith. For the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (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 complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.”

On the information before the Panel, the Panel finds that the Respondent registered the Disputed Domain Name in bad faith.

In reaching this conclusion, the Panel takes into account of a number of facts into consideration:

1. The registration of the “EVISU” trademark in Hong Kong was long before the Disputed Domain Name was registered.
2. The Complainant’s “EVISU” trademarks have been registered, advertised and used widely and intensively, and have become well-known amongst the Internet users globally and in Korea. It has been held that registration of a well-known trademark by a party with no connection to the owner of the trademark and no authorization and no legitimate purpose to utilize the mark reveals bad faith: see **The Caravan Club v. Mrgsale**, Case No. NAF/FA95314.
3. The Panel accepts that by using the Dispute Domain Name <evisumall.com>, the Respondent has intentionally attempted to attract, for commercial gain, internet users to its website, by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of its website.

Accordingly, the Panel is satisfied that the Complainant has complied with Paragraph 4(a)(iii) of the Policy.

6. Decision

For the foregoing reasons, the Panel is satisfied that the Complainant has proved its case against the Respondent under Paragraph 4(a) of the Policy.

The Panel hereby orders that the Disputed Domain Name be transferred to the First Complainant.



FONG Ho Yin
Sole Panelist

Dated: 28 January 2019