



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No:	HK-1901283
Complainant:	万兴科技集团股份有限公司 (Wondershare Technology Co., Ltd)
Respondent:	Ashik King
Disputed Domain Name:	<wondersharestoftware.com>

1. The Parties and Contested Domain Name

The Complainant is 万兴科技集团股份有限公司 (Wondershare Technology Co., Ltd), of Room 1001, Block D, Building 5, Shenzhen Software Industry Base, No.14 Haitian Road 2, Hi-Tech Park, Nanshan District, Shenzhen, GD, China.

The Respondent is Ashik King, of Panchopukur, Nilphamari, BD.

The domain name at issue is wondersharestoftware.com, registered by Respondent with Key Systems GmbH, of abuse@key-systems.net.

2. Procedural History

On 27 August 2019, the Complainant filed a Complaint in this matter with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (“ADNDRC-HK”). On the same day, the ADNDRC-HK confirmed receipt of the Complaint and requested the Complainant to submit the case filing fee.

On 27 August 2019, the ADNDRC-HK notified Key Systems GmbH (“Registrar”) of the Disputed Domain Name of the proceedings by email.

On 28 August 2019, the Registrar acknowledged the email of ADNDRC-HK confirming that the Disputed Domain Name is registered with the Registrar, that Ashik King is the holder of the Disputed Domain Name, that the Internet Corporation for Assigned Names and Numbers Uniform Domain Name Dispute Resolution Policy (“the Policy”) is applicable to the Disputed Domain Name, the language of the Disputed Domain Name is English as provided by the WHOIS information in relation to the Disputed Domain Name and confirmed that the Disputed Domain Name is under Registrar lock status.

On 30 September 2019, the ADNDRC-HK sent a Written Notice of Complaint (“Notification”), together with the Complaint, to the email address of the Respondent’s nominated registrant contact for the Disputed Domain Name (as recorded in the WHOIS database). The Notification gave the respondent twenty (20) calendar days to file a Response (i.e. on or before 20 October 2019).

The Panel comprising of Dr. Shahla F. Ali as a single panelist was appointed by the ADRDRC-HK on 14 October 2019. The papers pertaining to the case were delivered to the Panel by email on the same day.

3. Factual background

According to the documents submitted by the Complainant, the Complainant is a seller of software products via wondershare.com, which is a domain name owned by the Complainant. The Complainant’s full name is Wondershare Technology Group Co., Ltd, which also contains the word “wondershare”. It registered its domain name, wondershare.com as early as 17 September 2003. Wondershare is not only the Complainant’s trade name, it is also the Complainant’s registered trademark in many countries, including but not limited to the USA, EU, China, including under classification 9.

The Respondent, Ashik King, of Panchopukur, Nilphamari, BD registered the disputed domain name on 27 July 2016. The Respondent notes that Wondersharestoftware.com is freeware software base website and contends that the website has not infringed any trademark.

4. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

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

The Complainant contends that Wondershare is not only the Complainant’s trade name, Wondershare is also the Complainant’s registered trademark in many countries, including but not limited to the USA, EU, China, and the classification of trademark includes 9. The Complainant sells numerous software products via wondershare.com, which is a domain name owned by the Complainant.

It further contends that the disputed domain name wondersharestoftware.com uses the word “wondershare” and “software”, which is infringing wondershare’s trade name right and trademark right. The Respondent’s domain name wondersharestoftware.com also sells and distributes the Complainant’s crack software without the Complainant’s consent. Because the Complainant is a software company, and wondersharestoftware.com is very similar to wondershare.com, consumers are quite likely to confuse wondersharestoftware.com with wondershare.com

- ii. The Respondent has no rights or legitimate interests in respect of the domain name:

The Complainant argues that according to a search result from whois.com, wondersharestoftware.com was registered on July 27, 2016. The Complainant further notes that the Complaint's domain name wondershare.com was registered as early as Sep 17, 2003, much earlier than wondersharestoftware.com.

- iii. The disputed domain name has been registered and is being used in bad faith:

On the bad faith issue, the Complainant contends that the Respondent uses "wondershare" in the domain name "wondersharestoftware.com", and the Respondent's domain name wondersharestoftware.com sells and distributes the Complaint's crack software without the Complaint's consent. Complainant contends that the Respondent aims to use wondersharestoftware.com to confuse users into believing that wondersharestoftware.com is a domain name owned by the Complainant.

B. Respondent

The Respondent's contentions may be summarized as follows:

The Respondent contends that Wondersharestoftware.com is a freeware software base website. It submits that it did not find any content or url for Wondershare Software. The Respondent also claims that it checked the Wondershare Technology screenshot which displays the following message: "OOPS! THAT PAGE CAN'T BE FOUND." As a result, Respondent contends that it has not broken any Wondershare Technology trademarks.

5. Findings

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 is 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.

A) Identical / Confusingly Similar

The Complainant has established its right to the "Wondershare" trademark by submitting trademark registration certificates and records in a number of jurisdictions including in the US, EU and China. The disputed domain name <wondersharestoftware.com> contains three elements: "Wondershare" "software" and the top-level domain ".com". Numerous UDRP precedents have established that the top-level domain does not have trademark significance, conferring no distinctiveness to the domain name sufficient to avoid user confusion.

The only distinctive part of the disputed domain should be "Wondershare", which is identical to the Complainant's "Wondershare" trademark and trade name. This striking resemblance will no doubt mislead consumers into believing that the website is operated by or associated with the Complainant. The Disputed Domain Name incorporates the Complainant's Wondershare Mark in its entirety, and adds only the descriptive qualifier "software." The use of a famous mark in its entirety together with a descriptive term in a domain name creates a domain name that is confusingly similar to the famous mark. See *Playboy Enterprises International Inc. v. Melancia, WIPO Case No. D2006-1106*.

There is no doubt that the Disputed Domain Name < wondersharestoftware.com > completely incorporates the Complainant's "Wondershare" trademark which is the distinctive part of the Disputed Domain Name, and such incorporation makes the Disputed Domain Name confusingly similar with the Complainant's trademark.

In conclusion, the Panel finds that the Complainant has satisfied the Paragraph 4(a)(i).

B) Rights and Legitimate Interests

As the owner and/or proprietor of the "Wondershare" trademarks, the Complainant has confirmed that it has no prior connection with the Respondent in any way, nor has it authorized the Respondent to use its trademarks in the Disputed Domain Name.

In determining whether the Respondent has any legal right and interest in the Disputed Domain Name, the mere registration of the Disputed Domain Name by the Respondent itself is not sufficient to prove that it owns legal rights and interests thereof; otherwise, "all registrants would have such rights or interests, and no complainant could succeed on a claim of abusive registration" (See: *Adobe Systems Incorporated v. Domain OZ*, WIPO Case No.: D2000-0057).

In the present case, the Respondent failed to provide evidence indicating that it has been commonly known by the Disputed Domain Name, nor has been making a legitimate noncommercial or fair use thereof. It is well established that using a Disputed Domain Name to attract visitors to a website does not constitute a "bona fide offering of goods or services".

In conclusion, the Panel finds that the Complainant has satisfied the Paragraph 4(a)(ii).

C) Bad Faith

In determining whether the Respondent has registered or used the Disputed Domain Name in bad faith, paragraph 4(b) of the Policy sets down four (4) factors which the Panel will need to examine. The four (4) factors are as follows:

"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.”

The Respondent, domiciled in Bangladesh, must have been aware of the Complainant’s prior rights and interest in the Disputed Domain Name given the Complainant’s reputation in the mark “Wondershare” within the US, EU and Asia as of the date that the Respondent registered the Disputed Domain Name.

No evidence has been provided showing that the Respondent sought the permission of the Claimant to use its mark, nor any evidence showing that the Claimant gave such permission to the respondent.

Given the above findings, the Panel is of the view that the Respondent registered and used the contested domain name in bad faith.

6. Decision

Pursuant to Paragraph 4(i) of the Policy and Article 15 of the Rules, the Panel orders that the disputed domain name < wondersharesoftware.com > be transferred to the Complainant.



Dr. Shahla F. Ali
Panelist

Dated: 21 October 2019