



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1300566
Complainant:	Teenee Media Company Limited
Respondent:	Linda C. Austin
Disputed Domain Name(s):	<teenee.com>

1. The Parties and Contested Domain Name

The Complainant is Teenee Media Company Limited, of 99/25, 10th floor, Unit A-1 Software Park Building, Moo 4, Chaengwattana Road.

The Respondent is Linda C. Austin, of Rigoberto Lopez 81, Saucedo, 50010, Uruguay.

The domain name at issue is <teenee.com>, registered by Respondent with Bizcn, Inc, of Xiamen City, the Golden Bay Ridge Road 1001, Block B, Fortune Plaza, Building 1, 801, Zip Code: 361009.

2. Procedural History

The Complaint was filed with the Asian Domain Name Dispute Resolution Centre ("the Centre") on December 26, 2013. On January 10, 2014, the Centre received the appropriate case filing fee.

On January 7, 2014, the Centre transmitted by email to Bizcn.com, Inc. a request for registrar verification in connection with the disputed domain name.

On January 7, 2014, Bizcn.com, Inc. transmitted by email to the Centre its response that the registrant of the disputed domain name was:

Registry Registrant ID:
Registrant Name: Linda C. Austin
Registrant Organization: N/A
Registrant Street: Rigoberto Lopez 81
Registrant City: Saucedo
Registrant State/Province: Saucedo
Registrant Postal Code: 50010
Registrant Country: uy
Registrant Phone: 93321958
Registrant Phone Ext:

Registrant Fax: 93321958
Registrant Fax Ext:
Registrant Email: teeneemedia@yahoo.com
Registry Admin ID:
Admin Name: Linda C. Austin
Admin Organization: N/A
Admin Street: Rigoberto Lopez 81
Admin City: Saucedo
Admin State/Province: Saucedo
Admin Postal Code: 50010
Admin Country: uy
Admin Phone: 93321958
Admin Phone Ext:
Admin Fax: 93321958
Admin Fax Ext:
Admin Email: teeneemedia@yahoo.com
Registry Tech ID:
Tech Name: Linda C. Austin
Tech Organization: N/A
Tech Street: Rigoberto Lopez 81
Tech City: Saucedo
Tech State/Province: Saucedo
Tech Postal Code: 50010
Tech Country: uy
Tech Phone: 93321958
Tech Phone Ext:
Tech Fax: 93321958
Tech Fax Ext:

On January 21, 2014, in response to its notification of administrative deficiencies in the Complaint, the Centre received from the Complainant a revised Complaint with annexures thereto. The Centre verified that the revised Complaint filed with it on January 21, 2014, 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").

On January 23, 2014 the Centre forwarded to the Respondent and to Bizcn.com, Inc the revised Complaint and the annexures thereto, together with the required Written Notice of Complaint by which it gave notice that the formal date for the commencement of the administrative proceeding was January 23, 2014 and that the date by which the Respondent was required to file a Response was February 12, 2014. On February 13, 2014 the Centre notified the Complainant that a Response had not been received within the required period of time.

On February 26, 2014, the Centre appointed The Honourable Neil Anthony Brown QC as Presiding Panelist and Professor Guo Shoukang and Professor Shahla Ali as Co-Panelists in the administrative proceeding.

The Panel finds that it was properly constituted. Members of the Panel have 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

The Complainant is a company incorporated pursuant to the laws of the Kingdom of Thailand and is engaged in communications and related services, in the course of which it provides advertisements and other services. The Complainant alleges that it was the registrant of the domain name <teenee.com> which it used in its business until, without its consent, the registration of the domain name was transferred into the name of the Respondent.

The Respondent registered the disputed domain name on or about September 13, 2013 and not later than September 22, 2013.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

1. The Complainant was the registrant of the disputed domain name from 2001 until 2013, has never consented to its sale or transfer and has never had the intention to sell or transfer it.
2. The disputed domain name has been illegally transferred into the name of the Respondent. It appears that the Respondent became the registrant of the disputed domain name on or about September 13, 2013 and not later than September 22, 2013.
3. The Complainant has filed a criminal complaint with the Royal Thai Police against the Respondent for the illegal transfer of the domain name to the Respondent and that complaint is proceeding.
4. The disputed domain name was originally registered by an authorized director of the Complainant for it to be used by the Complainant in its business. It has achieved success and the website to which it resolved prior to its transfer to the Respondent has acquired a substantial reputation because of the valuable services it provides, achieving up to 3 million page hits per day. The website has become widely associated and identified with the Complainant as a result of which the Complainant is well known as the owner of the domain name and the website and the services promoted on the website.
5. The disputed domain name is identical to the Complainant's trademarks and service marks for TEENEE.

6. The Respondent has no rights or legitimate interests in the disputed domain name. In fact, the website is still under the operation of the Complainant and consequently the Respondent is making no legitimate use of the domain name.

7. Whoever was responsible for the transfer of the registration to the Respondent was able to convince the then registrar to do so, but the Complainant never consented to that transfer taking place.

8. After the transfer took place the Respondent tried to blackmail the Complainant to have the domain name transferred back to the Complainant.

9. The disputed domain name was registered and is being used in bad faith.

10. The Respondent has tried to sell the domain name back to the Complainant for the equivalent of USD 91, 000 and has threatened the Complainant that if it will not do so, the Respondent will re-direct the domain name and reveal confidential information about the Complainant.

B. Respondent

The Respondent failed to file a Response in this proceeding.

5. Findings and Discussion of the Issues

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 the 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 first question that arises is whether the Complainant has a trademark on which it can rely. The Complainant has adduced evidence that the Panel accepts to the effect that the Complainant has a trademark that it uses in its business. The Complainant has not adduced evidence that this is a registered trademark, but it is now well established that if a Complainant has a common law or unregistered trademark, it is sufficient for the purposes of a UDRP proceeding as the Policy only requires a Complainant to have a trademark, irrespective of whether it is registered or unregistered. Further evidence has been adduced by the Complainant relating to the use in its business of TEENEE and TEENEE.COM as trademarks ("the TEENEE mark"). The Complainant has adduced detailed and comprehensive evidence of the use of the TEENEE mark and it is clear from that evidence that the community, particularly the commercial community in the Kingdom of Thailand, regards the TEENEE mark as an indication of the source of the services that the Complainant provides and has provided over several years and hence as a trademark.

It is also clear law that it is not necessary to have a trademark in the country in which the Respondent is domiciled and that it is sufficient if the trademark is based on facts that have occurred in the country of the Complainant or indeed, in view of the universality of the internet, anywhere else. The Complainant has thus proved that it has a trademark on which it may rely.

The second question that arises is whether the disputed domain name is identical or confusingly similar to the TEENEE mark. The domain name is identical to the TEENEE mark as, in making this comparison, the gTLD suffix is to be ignored.

In any case it is clear law that if, as in the present case, a trade mark is embedded as a whole in a domain name, the domain name is to be taken as identical or confusingly similar to the trademark that has been taken and used in that manner.

The Complainant has therefore established the first of the three elements that it must establish.

B) Rights and Legitimate Interests

It is now well established that the Complainant must first make a *prima facie* case that Respondent lacks rights and legitimate interests in the disputed domain name under paragraph 4(a)(ii) of the Policy and then the onus of proof shifts to the Respondent to show it does have rights or legitimate interests. There are many decisions to that effect, one of the most notable of which is *Hanna-Barbera Prods., Inc. v. Entm't Commentaries*, FA 741828 (Nat. Arb. Forum Aug. 18, 2006) where it was held that a complainant must first make a *prima facie* case that the respondent lacks rights and legitimate interests in the disputed domain name under paragraph ¶ 4(a)(ii) of the UDRP before the onus of proof shifts to the respondent to show that it does have rights or legitimate interests in the domain name). Having regard to the substantial evidentiary case presented on behalf of the Complainant, the Panel finds that the Complainant has made out a *prima facie* case that arises from the following considerations:

(a) the Respondent has chosen to take the Complainant's TEENEE mark and to use it in the domain name which has then been transferred to the Respondent, clearly at the behest of the Respondent and without any alteration at all being made to the trademark;

(b) the Respondent has then not made any secret of the fact that she has acquired the domain name dishonestly and without any right to do so and that moreover, she is prepared and has attempted to use the domain name to blackmail the Complainant for money and under threat to redirect it elsewhere, to reveal confidential information calculated to do harm to the Complainant and to engage in some other "unpleasant surprises" directed at the Complainant;

(c) the Respondent has engaged in these activities without the consent or approval of Complainant.

These matters go to make out the *prima facie* case against the Respondent and it is then up to the Respondent to rebut that case. As the Respondent has not filed a Response or attempted by any other means to rebut the *prima facie* case against her, the Panel finds that the 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, the Complainant must show that the disputed domain name was registered in bad faith and has been used in bad faith.

That case may be made out if there are facts coming within the provisions of paragraph 4(b) of the Policy. That paragraph sets out a series of circumstances that are to be taken as evidence of the registration and use of a domain name in bad faith, namely:

“(1) circumstances indicating that Respondent has registered or has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to Complainant who is the owner of the trademark or service mark or to a competitor of Complainant, for valuable consideration in excess of Respondent’s documented out-of-pocket costs directly related to the disputed domain name; or

(2) Respondent has registered the disputed domain name in order to prevent Complainant from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or

(3) Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or

(4) by using the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location.”

However, those criteria are not exclusive and 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 facts come squarely within paragraph 4(b)(1). It is clear from the evidence that the Respondent has acted dishonestly, had no right to acquire the domain name and that, having acquired it dishonestly, has now set about trying to extract money from the Complainant illegally for returning its own property. Not only is it clear from the evidence that this was and apparently still is the Respondent’s plan, but she has brazenly admitted and asserted it in emails she wrote to the Complainant which are annexed to the Complaint and which are clear attempts at extortion. She has demanded the equivalent of USD 91,000 from the Complainant and threatened that if the Complainant does not co-operate she will re-direct the domain name elsewhere, reveal confidential information about the Complainant and unleash some “unpleasant surprises”. The clear intention of that attempted extortion shows that the Respondent’s primary purpose in acquiring the domain name was to obtain from the Complainant “valuable consideration in excess of Respondent’s documented out-of-pocket costs directly related to the disputed domain name.” The case is therefore a clear application of paragraph 4(b) (i).

In this regard as in others, the Panel agrees with the observations of the distinguished three member panel in *Titi Tudorancea v. Patrick Larouche* ADNDRC Case No. CN 1300669 on a very similar fact situation to that in the present case, also involving as it did the illegal transfer of a domain name followed by attempted blackmail:

“This situation constitutes exactly the type of bad faith use of the disputed domain name as identified in the Policy...”.

Indeed, that decision also provides a usefully analogous case in several respects, illustrating that the UDRP is an appropriate mechanism to use in cases of the illegal transfer of domain names and blackmail and that panelists will act swiftly on returning them to the rightful registrants when a case is made out to that effect as the present case does, with the meticulous and persuasive case presented on behalf of the Complainant.

Secondly, the facts also come within paragraph 4(b)(4) of the Policy for it is clear from the evidence that the Respondent created the confusion contemplated by the paragraph and for commercial gain, being the proceeds of the blackmail that the Respondent hoped to acquire.

In addition, apart from applying the specific criteria in paragraph 4(b) and having regard to the totality of the evidence, the Panel finds that, in view of Respondent’s acquisition of the disputed domain name using the TEENEE mark in the manner described above and in view of the Respondent’s subsequent dishonest conduct, the Respondent registered and used the 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 Policy, the Panel concludes that relief should be granted. Accordingly, it is ordered that the disputed domain name <teenee.com> should be TRANSFERRED to the Complainant.

The Honourable Neil Anthony Brown QC

Presiding Panelist

Professor Guo Shoukang
Co-Panelist

Professor Shahla Ali
Co-Panelist

Dated March 14, 2014