

ADNDRC

**Asian Domain Name Dispute Resolution Centre -
Kuala Lumpur**
(Kuala Lumpur Office)

ADMINISTRATIVE PANEL DECISION

PANELISTS :: Mr.D.Saravanan, Mr.Michael Soo and Hon'ble Neil Brown QC.

Case No.	KLRCA/ ADNDRC – 259 – 2014
Complainant	ASIA Charts Pte. Ltd., Singapore
Respondent	Neuronet Systems Pte. Ltd., Singapore
Disputed Domain Name	<asiacharts.com>

1. The Parties and Contested Domain Name:

The Complainant is **Asia Charts Pte. Ltd.**, having address at 111, North Bridge Road, # 13-04, Peninsula Plaza, Singapore 179098, represented by its Authorised Representative Lim Chee Leong.

The Respondent is **Neuronet Systems Pte. Ltd.**, having address at 391B, Orchard Road, # 13-09, Ngee Ann City Tower B, Singapore 238874, represented by its Authorised Representative ESQwire.com, P.C., Ari Goldberger and Jason Schaeffer.

The domain name at issue is **<asiacharts.com>** ("Disputed Domain Name") registered by Respondent with Namesecure, LLC.

2. Procedural History:

October 10, 2014 Pursuant to the Internet Corporation For Assigned Names and Numbers (ICANN) Uniform Domain Name Policy ("**the Policy**"), the Rules of Uniform Domain Name Dispute Resolution Policy ("**the Rules**") and the Asian Domain Name Dispute Resolution Centre Supplementary Rules to the ICANN Uniform Domain Name Dispute Resolution Policy and the Rules For the Uniform Domain Name Dispute Resolution Policy ("**the Supplemental Rules**"), the Complainant filed a Complaint in the English language with the Kuala Lumpur Office of the Asian Domain Dispute Resolution

Centre ("**ADNDRC-KL**") and elected to have the case in question be dealt with by a single member panel.

October 10, 2014 The ADNDRC-KL transmitted by email to the Registrar a request for Registrar verification in connection with the Disputed Domain Name.

October 21, 2014 The Registrar transmitted by email to the ADNDRC-KL its verification.

The ADNDRC-KL sent the Complaint Transmittal Coversheet (CTC) to the Respondent along with a copy of the complaint stating that ADNDRC-KL once checked the Complaint to determine that it satisfies the formal requirements of the Policy, ADNDRC-KL will forward an official copy to the Respondent and then the Respondent have 20 calendar days within which to submit a Response to the Complaint.

October 21, 2014 The ADNDRC-KL sent a Written Notice of Complaint ("the Notice") to the Respondent. Providing 20 days time to the Respondent to submit a Response (i.e. on or before November 10, 2014).

November 10, 2014 The Respondent had submitted its written response, along with annexure, to the ADNDRC – KL marking a copy of the same to the Complainant.

The claimant did not provide a list of their choice of panel. Hence, the Director of ADNDRC – KL appointed Mr. Michael Soo as the Claimant's panel and from the Respondent's list Hon'ble Neil Brown, QC was appointed.

November 26, 2014 The ADNDRC-KL sent an email to D.SARAVANAN enquiring from him whether he could act as Third Panelist and if so, whether he could act independently and impartially in the matter in question.

November 26, 2014 D.SARAVANAN made a declaration in writing that he was willing to act and if appointed would act independently and impartially.

November 26, 2014 The ADNDRC-KL notified the parties regarding confirmation of Panelists.

3. Factual background:

A. Complainant

The Complainant claims that even though the disputed domain name <asiacharts.com> was registered by the Respondent in the year 2002, the Respondent never used the same nor intended to be used as an integral part of its business. On the other hand, the Respondent licensed the disputed domain name in the year 2006 to the Complainant for a fee who had in the year 2010 paid further fee in advance for renewal of the same for a further period of 9 years. However, the Respondent had unilaterally terminated its distribution agreement on November 4, 2013 and consequently on July 1, 2014 the Respondent ceased pointing the DNS to Complainant's website and began to point the DNS to Respondent's own website which exhibited Respondent's bad faith in the continued use and registration of the domain name.

B. Respondent

The Respondent, Neuronet Systems Pte. Ltd., is the registrant/ owner of the Disputed Domain Name.

4. Parties' Contentions:

A. Complainant

The Complainant's contentions are summarized as follows:

(i) The Respondent has no substantive rights or legitimate interests in respect of the Domain Name:

(a) The Domain Name <asiacharts.com> was registered by Respondent on 9th April, 2002. The Complainant was incorporated on 1st June, 2006. Domain name, <asiacharts.com.sg> was also registered on 1st June 2006 by Respondent. It was a

deliberate attempt by the Respondent in registering the domain name <asiacharts.com.sg> on 1st June, 2006 on which day the complainant was incorporated with a view to cyber-squat and to profit from the goodwill of Asia Charts Pte. Ltd. The Complainant negotiated for the use of the Domain Name from the Respondent and was using the same since 1st June, 2006 to which the Complainant paid the Respondent a fee and on 1st June, 2010 the complainant renewed the domain name for a further period of 9 years by paying the fee in advance and continued use of the Domain Name.

(b) The Respondent has never used the Domain Name from its creation and has not used the Domain Name in its business or in furtherance of its business nor did the Respondent establish its physical presence in the internet via the Domain Name and that the Respondent never intended to do so. Respondent registered the domain name primarily for the purpose of licensing to the complainant for a fee. It was an implicit understanding between the Complainant and the Respondent that the Domain Name was for the exclusive use and business of the Complainant. The Domain Name provides the public with the I.P address of the Complainant.

(c) Asia Charts Pte Ltd is the corporate vehicle whereby the Complainant positions its business of a data reseller and as a leading educator in trading strategies in stock and futures markets. The Complainant has by its extensive exposure and publicity through "Asia Charts Pte Ltd" as its corporate vehicle in furthering its business interest throughout the South East Asia in particular Singapore, Malaysia and Indonesia, built up substantial goodwill and reputation in the name "Asia Charts".

(d) The Domain Name <asiacharts.com> is solely used as textual addresses in the internet for the business of Asia Charts Pte Ltd. The Complainant brands and positions its business and associating its business with the word "Asia Charts". The Complainant has extensively carried out branding exercise using "Asia Charts" in Malaysia, Indonesia and in Singapore having advertised extensively and promoted regularly in the platforms of Newspaper, Radio, Magazine and TV.

(e) The Complainant has spent in excess of S\$2 Million in advertising its business and services under the name "Asia Charts" since 2006, and as a consequence acquired significant amount of goodwill and reputation in the name "Asia Charts". On the other

hand, the Respondent never exhibited any intention or spent, any or at all, significant time or expended resources in developing the Respondent's website using the domain name.

(f) The Complainant has come to be known to the public as "Asia Charts" in short. The Domain Name bear close resemblance (if not identical) to the name, identity and business of the Complainant. Complainant has been very careful in policing the use of the name "Asia Charts" and has never allowed the goodwill in the words to be eroded or abuse by anyone. The Respondent never exhibited any intention or spent, any or at all, significant time or expended resources in developing the Respondent's website using the Domain Name since because the Respondent knows that the Domain Name is licensed exclusively to the Complainant and whilst being so licensed has no legitimate interest or use. The Complainant has acquired significant goodwill, reputation and legitimate interest in the word "Asia Charts".

(ii) Confusing or misleading the Public that there is a business connection:

Respondent and the Complainant are both in business of sale and resale of End-of-Day (EoD) data. On 4th November, 2013 the Respondent has suddenly terminated its distribution agreement of its EoD data with the Complainant thus terminating the Complainant as its EoD data reseller which unilateral termination was sudden and unexpected. Thereafter, on 1st July, 2014, the Respondent ceased 'pointing' the DNS to complainant's website, resulting in severe disruption to complainant's business operations and in August, 2014 Respondent began to point the DNS to its own website <neuronetsys.com> effectively 'poaching' internet traffic and damage to business. If the Respondent is permitted to be the Registrant and retain the domain name the Respondent is likely to suffer damage and loss of business as the Respondent is causing disruption and diverting internet away from the Complainant and it could lead the public or likely to lead a substantial number of person of the relevant section of the public into confusion and erroneous belief either the goods or services of the Respondent are those of the Complainant or that there is a business connection between the Respondent and the Complainant when there is none. By pointing the DNS to Respondent's website the Respondent has exhibited bad faith in the continued use and registration of the Domain Name.

For the foregoing reasons, the Complainant would require the Domain Name to be transferred to them.

B. Respondent:

The Respondent's contentions are summarised as follows:

(i) The Respondent denied all allegations levied by Complainant, and sought not only the Panel to dismiss the claim but also sought the panel to enter a finding of Reverse Domain Name Hijacking as the Complainant is seeking to wrongfully take the Disputed Domain from Respondent on the factual and legal grounds *inter-alia* that: 1) the Respondent first registered and began using the Disputed Domain in 2002; 2) the Complainant was not formed until 2006; 3) The parties had an "agreement" to point the DNS to Complainant in exchange for Complainant's use of Respondent as an exclusive service provider; 4) the Complainant does not own a registered trademark for ASIA CHARTS; and 5) The parties never agreed for a sale of or change in ownership of the Disputed Domain.

(ii) **Statement of Facts:**

(a) Respondent's predecessor, Neuronet Systems was incorporated in Singapore on October 13, 1997 as a sole-proprietorship and superseded by Neuronet Systems Pte Ltd. on 31st May 2004. Since 1997 Respondent has provided "end-of-Day" data services ("EOD Services") to end users and companies worldwide. Since May, 1999 Respondent has operated online at <neuronetsys.com>, and continues to be a bona fide provider of data and charting to the present.

(b) Respondent registered the domain name <asiacharts.com> on April 9, 2002 and has continually maintained ownership until the present. Between 2002 and 2006 Respondent used the Disputed Domain name in connection with Neuronet Systems to promote its "end-of-day" data services.

(c) Complainant was formed on June 1st, 2006. In June, 2006 Complainant approached Respondent with an interest in using the Disputed Domain. One of the Complainant's founders, Benny Yeo entered into an agreement where Respondent would be the exclusive EOD Services Provider to Complainant. In exchange for access to the

Disputed Domain, Complainant agreed to allow Respondent to be its exclusive EOD Services provider and the parties used the Disputed Domain to promote their mutual business interests. During the parties' agreement, Respondent also passed through the nine (9) year registration cost of \$73.13, which was paid by Complainant.

(d) Between June 1, 2006 and November 15, 2013, the parties worked together with Complainant honoring its deal to utilize Respondent as the exclusive EOD provider of market data and Respondent pointing the DNS as instructed by Complainant. Complainant's last request for a DNS change was made of December 18, 2013. On or around November 15, 2013, Benny Yeo left Complainant, and as a result of failed negotiations Complainant announced they would no longer be using Respondent as the exclusive EOD provider.

(e) After Complainant announced its change in status, between December 2013 and February 2014, the parties exchanged correspondence regarding a potential change in service terms. Complainant finally ceased using Respondent as its EOD Services provider. On 4 Nov, 2013 Respondent advised Complainant that it was in breach of the agreement and received a negative reply. On 1 Jun, 2014, after Complainant failed to remedy its breach of the agreement, Respondent repointed the URL to www.neuronetsys.com.

(f) At no time did Respondent agree to sell the Disputed Domain to Complainant, and Complainant did not offer to purchase the Disputed Domain from Respondent. At no time did Complainant ever have any ownership of the Disputed Domain. Respondent did not register the Disputed Domain with Complainant's trademark in mind and had no knowledge of Complainant, its web site, its business name or trademark when it registered the Disputed Domain. Complainant did not exist and its trademark did not exist when Respondent registered the Disputed Domain in 2002. Indeed, Complainant was not formed until four (4) years after Respondent registered and began using the Disputed Domain. At all times Respondent has used and will continue to use the Disputed Domain in good faith and in connection with its common descriptive meaning.

(iii) The Complainant has no enforceable rights to a Trademark identical or confusingly similar to the Disputed Domain:

(a) Complainant's purported rights rest on its corporate formation documents, a logo design that incorporates the words "Asia Charts," and a breached "limited lease agreement" between the parties wherein Respondent pointed the DNS to Complainant while the parties worked together using Respondent as the exclusive EOD Services Provider. Complainant does not hold a registered Trademark and its purported trademark rights in a generic or descriptive term is tenuous at best. Accordingly, there is simply no evidence that Complainant has any rights to satisfy this Prong of the Policy. Therefore, Complainant's must fail.

(b) Even if the Panel were to consider Complainant's purported common law trademark rights, the Complainant has failed to demonstrate secondary meaning in the marketplace and its purported rights are based on Respondent's rights as the owner of the Disputed Domain. Therefore, Complainant as the once positioned "partner/licensee," cannot eclipse the licensor's (Respondent's) rights absent written agreement to transfer ownership or assign such rights. Here no such rights exist and the claim must be dismissed on this element of the Policy.

(iv) Respondent's registration and use of a common word Domain establishes Respondent's rights and a legitimate interest in the disputed Domain Name:

(a) The registration of domain names, like AsiaCharts.com, that incorporate common descriptive dictionary words, subject to third party use, *ipso facto* establishes the Respondent's legitimate interest, provided there is no evidence the respondent targeted the complainant's trademark. Energy Source Inc. v. Your Energy Source. Case No. 96364 (NAF Feb. 19, 2001)("[r]espondent has persuasively shown that the domain name is comprised of generic and/or common descriptive terms, and, in any event, is not exclusively associated with Complainant's business"). Indeed, it is settled that the registration of domain names that contain common words are permissible on a first-come, first served basis, and such registration establishes the Respondent's legitimate interest, provided the domain was not registered with a trademark in mind. See Overview of WIPO Panel Views on selected UDRP Questions ("WIPO Overview"). See also National Gardening Association, Inc. v. CK Ventures, No. 1294457 (NAF Feb. 16, 2010); CNRV Inc. v. Vertical Axis, Inc. No. 1300901 (NAF May 3, 2010); Landmark Group

v. DigiMedia.com, L.P., FA 285459 (NAF Aug. 6, 2004); Baccus Gate Corp. et al v. CKV et al, No. D2008-0321 (WIPO May 20, 2008); C Brewer and Sons Ltd. v. Vertical Axis Inc., No. D2009-1759 (WIPO April 11, 2010) (“in general it is inherently more likely that a respondent may have a legitimate interest in using a more descriptive domain name”). The principle of “first come first served” still applies to adjudicate the conflict between a domain name and a later registered trademark and there is simply no evidence here that would provide Complainant with superior rights to the Disputed Domain. PJS International SA v. Vertical Axis Inc., D203-0805 (WIPO Aug. 8, 2013). Respondent’s rights and legitimate interest in the Disputed Domain are established because Respondent registered the Disputed Domain based on its common descriptive meaning and not to target a trademark.

(b) In the instant matter, there is no evidence that the Disputed Domain was registered with Complainant’s trademark in mind because of three (3) undisputed facts, *inter-alia*, 1)Complainant did not exist in 2002 when Respondent registered the disputed Domain; 2)Complainant has never owned or had ownership rights to the disputed Domain; and 3)Complainant holds no trademark for generic ASIA CHARTS. Accordingly, there is no evidence that respondent targeted Complainant in any manner. To the contrary, it is simple implausible that respondent targeted Complainant rather than consciously decided to profit off of a combination of common words used in the English language.

(c) The WIPO Overview of WIPO Panel Views on selected UDRP Questions, at paragraph 2.2., states [i]f a respondent is using a generic word to describe his product/business or to profit from the generic value of the word without intending to take advantage of complainant’s rights in that word, then it has a legitimate interest. Havanna S.A. v. Brendhan Hight, MDNH, Inc. D2010-1652 (Nov.26 2010) (referring to Allocation Network GmbH v. Steve Gregory, WIPO Case No. D2000-0016; Porto Chico Stores, Inc. v. Otavio Zambon, WIPO Case No. D2000-0270; Asphalt Research Technology, Inc. v. National Press & Publishing Inc., WIPO Case No. D2000-1005; and Gorstew Limited v. Worldwidewebsales.com, WIPO Case No. D2002-0744).

(d) Indeed, the registration and use of common words and dictionary words, used in their commonly understood sense, is recognized as a legitimate use under the policy.

Havanna S.A. (citing Dial-a-Mattress Operating Corp v. Ultimate Search, WIPO Case No. D2001-0764, and Kaleidoscope Imaging Inc v. V Entertainment aka Slavik Viner, FA 203-207, and National Trust for Historic Pres v. Preston, WIPO Case No. D2005-0424). Accordingly, because "asiacharts" is solely comprised of common words in the English dictionary, the Panel should find respondent has established a legitimate interest in the domain.

(v) Respondent's use of the disputed Domain in connection with its Descriptive Meaning is a legitimate interest:

(a) Respondent's legitimate interest is bolstered by the fact that it has used (between 2002 and 2004) and currently uses the disputed Domain to promote financial charts and market information, items naturally related to the common descriptive meaning of the disputed Domain. Complainant is wrong that such use is illegitimate. Indeed, between 2002 and 2004, before Complainant's existence Respondent used the disputed Domain in connection with its descriptive meaning. Below are links to snapshots of Respondent's website between 2002 and 2004:

<https://web.archive.org/web/20020524075734/http://asiacharts.com/>

<https://web.archive.org/web/20030207230355/http://asiacharts.com/>

<https://web.archive.org/web/20040924070521/http://asiacharts.com/>

(b) Respondent's registration of the disputed Domain in 2002 and its descriptive use for years before Complainant was formed belies any claim that Respondent has no legitimate interest in the disputed Domain. Respondent's current use of the disputed Domain also demonstrates a legitimate interest.

(c) Under paragraph 4(c) of the Policy the fact that Respondent is using the disputed Domain in connection with posting of descriptive links is a bona fide offering of goods or services. Liberated Servicios Financeros, S.A. DE C.V. S.F.P. v. Telepathy, Inc., D2011-1635 (WIPO Jan 10, 2012). See also A.D. Sutton & Sons, Inc. v. Vertical Axis Inc., D2010-1125 (WIPO September 22, 2010); Board of Regents, The University of Texas System v. Vertical Axis, Inc., No. 1322040 (NAF June 25, 2010); CNRV, Inc. v. Vertical Axis, Inc., No. 1300901 (NAF May 03, 2010); Future Steel Holdings Ltd. v. Private Whois

Service No. 1350737 (NAF Dec. 6, 2010); Target Brands, Inc. v. Eastwind Group No. 267475 (NAF July 9, 2004); Accordingly, Respondent has demonstrated that it has rights and a legitimate interest in the disputed Domain and the Complaint must, therefore, be dismissed.

(vi) Complainant has not demonstrated that the disputed Domain Name was registered and is being used in bad faith:

(a) The fact that Respondent's registration of the disputed Domain pre-dates the existence of complainant Four (4) years precludes finding bad faith registration. There is no evidence of bad faith registration or use. It is indisputable that respondent had absolutely no knowledge of complainant when it registered the disputed Domain on April 9, 2002. Respondent simply registered the domain because it was available and incorporated a descriptive term and because it became available when the prior registrant of the domain name failed to renew it. This is not a case of a cybersquatter looking for trademarks upon which to prey. Indeed complainant did not exist until 2006 and Complainant still holds no trademark for Asia Charts (the parties never agreed to a sale or transfer of ownership of the disputed Domain).

(b) Absent direct proof that a common term domain name was registered or acquired solely for the purpose of profiting from Complainant's trademark rights, there can be no finding of bad faith registration or use. Ultrafem, Inc. v. Warren Royal, FA 097682 (NAF Aug 2, 2001) (bad faith showing would require the Complainant to prove that the Respondent registered instead.com specifically to sell to the Complainant"); See also Futureworld Consultancy Pty Ltd. v. Online Advice No. D2003-0297 (WIPO July 18, 2003) ("there is no evidence to show that the disputed domain was registered with the Complainant in mind..."). Kis v. Anything.com Ltd., supra ("the Administrative Panel finds that there are no indications that Respondent knew of Complainant or its trademark when registering the Domain Name.") Absent specific proof of intent to profit from Complainant's mark, bad faith registration cannot be established. See e.g. Streetprices.com v. Nett Corp. No. 1280020 (NAF Nov. 10, 2009)(finding no evidence of bad faith where the domain is descriptive and where there is no evidence that Respondent knew of Complainant's mark at the time of registration); Candadrugs.com Partnership et al v. ASM Bioventure, No.568743 (NAF Nov. 29, 2005)("Respondent did

not register the <canadadrugsonline.com> domain name in bad faith because Complainant's mark is comprised of common terms.').

(c) Paragraph 4(a)(iii) of the Policy prescribes a conjunctive requirement, namely that both bad faith use and registration must be shown. Here, because the Complainant did not exist and had no mark when the Respondent registered the disputed Domain, registration could not have been made in bad faith. Tata Communications International Pte Ltd (f/k/a VSNL International Pte Ltd.) v. Portmedia Inc., D2010-0217 (WIPO Jun 1, 2010). Therefore, Complainant cannot establish that Respondent registered the disputed Domain in bad faith and the case must fail.

(vii) Reverse Domain Name Hijacking

(a) There is absolutely no basis for this claim and Complainant should have known that before filing its Complaint. It certainly had an obligation to understand the rules and present a valid claim. Complainant and its counsel are sophisticated and certainly understand the importance of knowing the law and facts before proceeding. The Complaint is woefully devoid of any facts or information. Indeed, Complainant has not presented any trademark registration because none exists. Under the first prong of the Policy, the Complainant cannot show trademark rights just because its corporate name includes "Asia Charts." Moreover, the fact that the parties once had an "agreement" to partner on the use of the disputed Domain and for Respondent to point the DNS in exchange for Complainant's use of Respondent as the exclusive EOD Services provider hardly establishes Complainant's "rights" to the disputed Domain. Absent agreement to transfer ownership of the disputed Domain, there is simply no merit to this claim.

(b) On the second two prongs of the Policy the Complainant is also completely devoid of merit on its face, and warrants a finding of reverse domain name hijacking to deter future claims and abuses of the system. Complainant knew when it filed the Complaint that it could not prove at least 2, if not all 3 of the elements to prevail. Complainant undoubtedly filed this UDRP to hijack the disputed Domain from its rightful owner and gain exclusive use of an inherently valuable common term and combination of two English words. Even a cursory review of the UDRP and UDRP decisions would have

alerted Complainant that is case was devoid of merit. The fact that the Complaint shows no evidence of wrongdoing is itself proof of bad faith of Complainant in filing this action.

(c) Reverse Domain Name Hijacking is defined under the UDRP Rules as 'using the UDRP in bad faith to attempt to deprive a registered domain-name holder of a domain name' ... WIPO panels have found Reverse Domain Name Hijacking in circumstances including where: the complainant in fact knew or clearly should have known at the time that it filed the complaint that it could not prove one of the essential elements required by the UDRP." Jvier Zetter Casillas v. Vertical Axis, Inc. D2014-0400 (WIPO Jun. 6, 2014). Under these circumstances, this is an abuse of the Policy and warrants a finding of reverse domain hijacking. See Planate Management Group LLC v. Vertical Axis, Inc. D2011-1535 (Dec. 6, 2011) (stating, [i]n the circumstances, the Complainant clearly knew or should have known at the time it filed the Complaint that it could not prove one of the essential elements required by the Policy, i.e. bad faith registration); Vortal Group, Inc. v. Digital Transp., FA 222968 (NAF Mar. 9, 2004) (The claim for reverse domain name hijacking is granted, because filing a Complaint which one knows or should have known would fail based upon the admissions of Complainant can be interpreted as harassing *per se* and should be discouraged.). The Realty Alliance v. Vertical Axis, Inc., No. 296997 (NAF Feb. 12, 2010), CNRV, Inc. v. Vertical Axis, Inc. No. 1300901 (NAF May 3, 2010) ("Complainant must have known it could not demonstrate bad faith registration and use").

(d) Complainant or its counsel should have known before it filed this case that the basic elements that must be proved were missing from this claim and it should not have been filed. Instead, an extremely valuable generic domain name that was originally registered in 2002 by respondent is subject to a dubious claim because the parties have ceased their relationship. This action placed respondent's valuable asset at risk, required respondent to incur legal fees and is waste of the Panel and the Forum's valuable resources.

(e) Thus, for the aforementioned reasons, it is respectfully submitted that the panel should find that Complainant abused this administrative proceeding when it filed this claim and a finding of reverse domain hijacking should be awarded.

5. Discussion and Findings:

(A) Under paragraph 4(a) of the Policy, the Complainant must prove each of the following three elements of its case:

- (i) The Respondent's domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) The Respondent has no rights or legitimate interest in respect of the domain name; and
- (iii) The Respondent's domain name has been registered or is being used in bad faith.

(B) Identical/Confusing Similarity:

(i) Paragraph 4(a)(i) of the policy requires the complainant to prove that the disputed Domain Name is identical and confusingly similar to a trade mark or service mark in which complainant has rights. The requirements are in two folds. The first requirement is that the Complainant should have right in a particular trademark or service mark and the second requirement is that the domain name in reference should be identical or confusingly similar to such trademark or service mark. However, the Complainant has nowhere in the complaint claimed any ownership over the words "Asia Charts". On the other hand, the facts that the domain name "asiacharts.com" was registered by the Respondent on 9th April, 2002; Complainant did not exist when the disputed domain name was registered in the year 2002 and Complainant was not formed until four years since the date of registration of the disputed domain name are admitted by the Complainant. The Complainant has not established its right over the words "Asia Charts". In the absence of any such right, the Complainant cannot claim that the Respondent's domain name is identical or confusingly similar.

(ii) Accordingly, the panel arrives at an irresistible conclusion that the Complainant has not satisfied the Paragraph 4(a)(i) of the policy.

(C) Respondent's Rights or Legitimate Interests:

(i) As held hereinabove, the Complainant does not hold any registered trademark or service mark rights over "Asia Charts". Admittedly, the Respondent registered the disputed domain name four years prior to the formation of Complainant in the year 2006. According to the Respondent the disputed domain name incorporate the common descriptive dictionary words having no knowledge of the Complainant as the Complainant itself did not exist when the Respondent registered the disputed domain name in the year 2002. The Complainant has not adduced any evidence that the Respondent targeted the Complainant in any manner. Above all, admittedly the Complainant had an agreement of license to a limited period for the use of Respondent's domain name <asiacharts.com> by the Complainant since 2006. Therefore, it is categorical that the Complainant having recognized the legitimate right of the Respondent over the domain name <asiacharts.com> had an agreement with the Respondent to use the domain name for a limited period. The Complainant being a licensee cannot eliminate the ownership right of the Respondent being a licensor unless any written agreement to transfer ownership or assign such rights. The Respondent asserts that there are no such right exist or the Complainant does not claim existence of any such right. The Respondent has furnished there links to snapshots proving their use of website during the year 2002, 2003 and 2004 to promote financial charts and market information related to the common descriptive meaning of the Disputed Domain. It is an admitted case of both the Complainant and Respondent that they had an agreement to use the domain name by the Complainant from 2006 until termination of such agreement on 1st July, 2014. The Respondent has provided the screen shot of prior and current use of disputed domain name. Thus, the respondent's use of the Domain Name proves their legitimate interest over the domain name. Thus, the Respondent has discharged its burden and established their rights and interest in the disputed domain name who had registered the Domain Name based on its common descriptive meaning.

(ii) Accordingly, the panel arrives at an irresistible conclusion that the Complainant has not satisfied the Paragraph 4(a)(i) of the policy.

(D) Registration and use in Bad Faith:

(i) Paragraph 4(b) of the Policy provides that:

“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 a such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competition; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Interest users to you 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 you web site or location”.

(ii) Upon the admitted pleadings and documentary evidences, the panel has held, hereinabove, inter-alia that the Respondent simply registered the domain name as it was available and incorporated a descriptive terms in the year 2002 even 4 years before coming into existence of Complainant in year 2006; the Respondent has provided evidences for the use of domain name between the years 2002 and 2004 and for the current use; the Complainant had acknowledging the ownership of the Respondent over the domain name <asiacharts.com> obtained license to use the same from 1st June, 2006 which license was renewed on 1st June 2010 and used the same until its termination by the Respondent on 1st July, 2014; there is no evidence that the Respondent targeted the Complainant in any manner. Therefore, the panel concludes that the Registration of the Disputed Domain Pre-dates the existence of complaint four years precludes finding bad faith registration.

(iii) Accordingly, the panel arrives at an irresistible conclusion that the Complainant has not satisfied the Paragraph 4(a)(iii) of the policy.

E) Reverse Domain Name Hijacking:

(i) Respondent seeks a declaration that the Complainant has engaged in Reverse Domain Name Hijacking ("RDNH"). Paragraph 1 of the Rules defines RDNH as "using the policy in bad faith to attempt to derive a registered domain-name holder of a domain name". Paragraph 15(e) says as follows:

"If after considering the submissions the panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceedings"

The onus of proving bad faith is on the Respondent. Mere lack of success of the complaint is not itself sufficient to constitute RDNH.

(ii) According to UDRP Rules, as pointed hereinabove, the Complaint which was brought in primarily to harass the domain-name holder would constitute bad faith. What is particularly troubling here is that the complainants never claimed any ownership right over the words "Asia Charts" and categorically admitted that the Complainant was only a permissive user by the Respondent for a limited period. That being the admitted case, the Complainant should not have indulged themselves in lodging the present complaint placing Respondent's valuable asset, being the domain name, at risk apart from costs and resources of all the concerned.

(iii) Accordingly, the panel finds that the Complainant's action constitutes an abuse of the UDRP process. The panel thus enters a finding of Reverse Domain Name Hijacking.

6. Decision

For the foregoing reasons, the Complaint is denied and the Panel decides that the Complainant was brought in bad faith in an attempt at Reverse Domain Name Hijacking.

Hon'ble Neil Brown QC
Panelist

Micheal Soo
Panelist

Saravanan Dhandapani
Presiding Panelist
11th December, 2014.