



Asian Domain Name Dispute Resolution Centre

beijing

ADMINISTRATIVE PANEL DECISION

Case No. CN-1701100

Complainant: GLAMGLOW LLC
Respondent: GGC.INC
Domain Name: GLAMGLOWCHINA.COM
Registrar: GoDaddy.com, LLC

1. Procedural History

On 15 September 2017, the Complainant submitted a Complaint in English to the Beijing Office of the Asian Domain Name Dispute Resolution Center (the ADNDRC Beijing Office) and elected this case to be dealt with by a one-person panel, in accordance with the Uniform Domain Name Dispute Resolution Policy (the Policy) and the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules) approved by the Internet Corporation for Assigned Names and Numbers (ICANN), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the ADNDRC Supplemental Rules) approved by the ADNDRC.

On 26 September 2017, the ADNDRC Beijing Office sent to the Complainant by email an acknowledgement of the receipt of the Complaint and transmitted by email to ICANN and the Registrar, GoDaddy.com, LLC, a request for registrar verification in connection with the disputed domain name.

On 29 September 2017, the Registrar transmitted by email to the ADNDRC Beijing Office its verification response, confirming that the Respondent is listed as the registrant and providing the contact details.

On 29 September 2017, the ADNDRC notified the Complainant that the Complaint has been confirmed and transmitted to the Respondent and the case officially commenced. On the same day, the ADNDRC Beijing Office transmitted the Written Notice of the Complaint to the Respondent, which informed that the Complainant had filed a Complaint against the disputed domain name and the ADNDRC Beijing Office had sent the complaint and its attachments through email according to the Rules and the Supplemental Rules. On the same day, the ADNDRC Beijing Office notified ICANN and registrar, GoDaddy.com, LLC, of the commencement of the proceedings.

The Respondent failed to submit a Response within the specified time. The ADNDRC Beijing Office notified the Respondent's default. Since the Respondent did not mention the Panel selection in accordance with the time specified in the Rules, the ADNDRC Supplemental Rules, and the Notification, the ADNDRC Beijing Office informed the Complainant and the Respondent that the ADNDRC Beijing Office would appoint a one-person panel to proceed to render the decision.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Mr. ZHAO Yun, the ADNDRC Beijing Office notified the parties on 6 November 2017 that the Panel in this case had been selected, with Mr. ZHAO Yun acting as the sole panelist. The Panel determines that the appointment was made in accordance with Paragraph 6 of the Rules and Articles 8 and 9 of the Supplemental Rules.

On 7 November 2017, the Panel received the file from the ADNDRC Beijing Office and should render the Decision within 14 days, i.e., on or before 21 November 2017.

Pursuant to Paragraph 11 (a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding. The language of the current disputed domain name Registration Agreement is English, thus the Panel determines English as the language of the proceedings.

2. Factual Background

A. The Complainant

The Complainant in this case is GLAMGLOW LLC. The registered address is 767 Fifth Avenue, New York, New York, US.

B. The Respondent

The Respondent in this case is GGC.INC. The registered address is 701 S.W. Broadway, Portland, Oregon, US.

The Respondent is the current registrant of the disputed domain name "GLAMGLOWCHINA.COM", which was registered on 6 November 2014 according to the WHOIS information. The registrar of the disputed domain name is GoDaddy.com, LLC.

3. Parties' Contentions

A. The Complainant

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

The Complainant is an American company whose main business is “GLAMGLOW” cosmetics (main products are facial mask, eye mask and facial cleansing products). The founders of the brand “GLAMGLOW” are the couple Glenn Dellimore and Shannon Dellimore, who developed a kind of facial mask particularly for professionals in Hollywood entertainment, music and fashion fields and named it “GLAMGLOW” in 2010. To expand the sales of “GLAMGLOW” facial mask products, Glenn Dellimore and Shannon Dellimore founded Glamglow INC. In 2011, cosmetics of GLAMGLOW began to sell globally and now “GLAMGLOW” products have been sold in 86 countries, and more than 6500 luxury retail stores, hot springs and bars, luxury hotels, airlines and cruise ships are selling “GLAMGLOW” products. “GLAMGLOW” products including facial masks have enjoyed great reputation and distinctiveness all over the world rapidly within seven years after its birth.

To adjust its operational strategy, GLAMGLOW, INC. signed the Trademark Transfer Agreement with the Complainant on 16 January 2015 to transfer all the Brand “GLAMGLOW” related Intellectual Property Rights (including the Name of the Company, Symbols, Logos, Trade Dress, Trade Marks, Service Marks and other Marks related to its Source and Operation and invisible assets with similar nature, etc.) to the Complainant. Based on the Trademark Transfer Agreement, the Complainant is the owner of all Intellectual Property Rights related to the Brand “GLAMGLOW”.

Before the Registration Date (6 November 2014) of the disputed domain name, GLAMGLOW, INC has registered the trademark of “GLAMGLOW” in a dozen countries. The registered products and services mainly center on Class 3, Class 35 and Class 44. The Complainant acquired all trademark rights based on the Trademark Transfer Agreement signed with GLAMGLOW, INC. on 16 January 2015. The Complainant has acquired the rights of the trademark in many countries around the world.

GLAWGLOW, INC, registered the domain name <GLAMGLOW.INC.> on 26 April 2009. After signing the Trademark Transfer Agreement on 16 January 2015, the domain name <GLAMGLOW.INC.> has been transferred from GLAMGLOW, INC. to the Complainant. Furthermore, the Complainant has sold products with the Brand “GLAWGLOW” to all countries around the world, including China, through the website of WWW.GLAMGLOW.COM.

The distinctive part of the disputed domain name GLAMGLOWCHINA.COM is GLAMGLOWCHINA, consisting of two parts: “GLAMGLOW” and “CHINA”. “GLAMGLOW” is identical to the Complainant’s prior trade name, trademark and domain name “GLAMGLOW”; while the other part “CHINA” belongs to the name of a country. The disputed domain name combined “CHINA” with “GLAMGLOW” that the

Complainant possesses prior right to, which couldn't eliminate confusion, but enhanced the possibility of confusion. It is easy to mislead the relevant public to deem that the disputed domain name website is the official Chinese website of the Complainant.

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

Based on the name of the Respondent in the search results in WHOIS, the Complainant didn't find any prior right related to "GLAMGLOW" in the name of the Complainant in the data bases of Internet and the Trademark Office. The Complainant never had any cooperative relationship with the Respondent. Neither did it authorize the Respondent to use its trademark or trade name in any form. Therefore, the Respondent doesn't possess any right or legitimate interests to the disputed domain name.

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

a. Obviously, the Respondent having registered the disputed domain name was to confuse the difference between the Complainant's and Respondent's and to mislead the public.

The trademark "GLAMGLOW" of the Complainant has established a very high profile in global markets, including China. "GLAMGLOW" has established an exclusive and determined corresponding relation with the Complainant.

The Respondent knew that the Complainant had the prior trade name right, registered trademark right and domain name right to "GLAMGLOW", but the Respondent still registered it in the disputed domain name completely. Obviously, it was in bad faith. That the Respondent registered the disputed domain name unavoidably caused misleading to the relevant public. It made the relevant public deem that there existed some business connection between the Respondent and the Complainant and that the disputed domain name was registered with the Complainant's authorization. Hence it achieved the goal of making the relevant public confuse it with that of the Complainant.

b. The Respondent registered the disputed domain name and used it to sell products with the logo of "GLAMGLOW". However, the products are not sold with the Complainant's authorization or come from regular dealers authorized by the Complainant, so the quality and authenticity are suspicious.

As mentioned above, the Respondent did not possess any legitimate rights and interests to the disputed domain name. however, the Respondent still chose to register the disputed trademark based on a malignant motive and used the website with the domain name to sell products with the logo of "GLAMGLOW". However, the Respondent was not a legitimate dealer to sell "GLAMGLOW" products authorized by

the Complainant. Neither did the Complainant ever authorize the Respondent to sell “GLAMGLOW” products. The source, quality and authenticity of its sold “GLAMGLOW” products are suspicious.

c.The actual operator of the disputed domain name is a Chinese company and the company has been listed in the abnormal operation directory by the local Industrial and Commercial Bureau.

It can be learnt that although the holder of the disputed domain name is the Respondent from the search results in the WHOIS system, the contents of the disputed domain name are all Chinese. Obviously, it is mainly targeted at Chinese customers. In the ICP record information system of the Ministry of Industry and Information Technology of the People’s Republic of China, by conducting ICP record search of the disputed domain name, it can be learnt that the record subject of the disputed domain name (namely the operating subject) is Fuzhou Xintianyue Network Technology Co., Ltd., a company registered in Taijiang District, Fuzhou, Fujian Province, China. By conducting search towards the record subject in the National Enterprise Credit Information Publicity System, it is found that the local Industrial and Commercial Bureau has listed it in the abnormal operation directory because the registered address or the operating address couldn’t be accessed. That is to say, the record subject (the actual operator) of the disputed domain name website recorded in ICP couldn’t be found. Once there are problems in selling “GLAMGLOW” products through the disputed domain name website, consumers cannot find the seller. Therefore, the Respondent’s actions of registering and using the disputed domain name will bring unforeseeable harm to the Complainant and the brand “GLAMGLOW”.

Thus, the Respondent’s actions of registering and using the disputed domain name are clearly in bad faith.

The Complainant requests that the disputed domain name be transferred to the Complainant.

B. The Respondent

The Respondent failed to submit a Response within the specified time period.

4. Discussions and Findings

Paragraph 4(a) of the Policy provides that in order to be entitled to a transfer of the disputed domain name, the Complainant shall prove the following three elements:

- (i) The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) The registrant has no rights or legitimate interests in respect of the disputed

domain name; and

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

Paragraph 4(b) of the Policy states that the following circumstances in particular, but without limitation, shall be evidence of registration and use of a domain name in bad faith:

(i) Circumstances indicating that the respondent has registered or 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 documented out-of-pocket costs directly related to the domain name; or

(ii) The respondent 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 the respondent has engaged in a pattern of such conduct; or

(iii) The respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) By using the domain name, the respondent has intentionally attempted to attract, for commercial gain, internet users to its website or other online location, by creating a likelihood of confusion with the 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.

A. Identity or Confusing Similarity

The Complainant is an American company whose main business is "GLAMGLOW" cosmetics. The brand "GLAMGLOW" was first registered by the company GLAMGLOW INC. in the USA in 2010. GLAMGLOW INC. registered the trademark GLAMGLOW in a dozen countries afterwards. GLAMGLOW signed the Trademark Transfer Agreement with the Complainant on 16 January 2015, transferring all rights related to the trademark "GLAMGLOW" to the Complainant. Accordingly, the Complainant enjoys the trademark right over "GLAMGLOW".

Evidence shows that the registration date of the trademark is 19 May 2011, which was obviously earlier than that of the disputed domain name, i.e. 6 November 2014. The Panel finds that the Complainant enjoys the indisputable prior rights and interests in the trademark "GLAMGLOW".

The disputed domain name is "GLAMGLOWCHINA.COM". The Panel finds that the addition of the name of a place to a trademark, such as the addition of "CHINA" to "GLAMGLOW", is a common method for specifying the location of business provided under the trademark. The addition of a place name generally does not alter the underlying mark to which it is added. As the suffix ".com" only indicates that the domain name is registered under this gTLD and is not distinctive, the Panel has no problem in finding that the disputed domain name <GLAMGLOWCHINA.COM> is

confusingly similar the Complainant's trademark "GLAMGLOW".

The Panel therefore holds that the Complaint fulfills the condition provided in Paragraph 4 (a)(i) of the Policy.

B. Rights or Legitimate Interests of the Respondent

The Complainant contends that the Respondent does not have rights to or legitimate interests in the disputed domain name. The Complainant's assertion is sufficient to establish a *prima facie* case under Policy 4 (a)(ii), thereby shifting the burden to the Respondent to present evidence of its rights or legitimate interests.

The Respondent fails to submit a Response, neither does it put forward any evidence to show any positive interests that it relies on. No evidence shows that the Respondent has acquired any trademark rights or other proprietary interests relevant to support its claim to the disputed domain name. The registration of a certain domain name does not of itself confer upon the registrant rights or legitimate interests in the domain name or in the subject matter of the domain name.

The Panel therefore finds that the Complaint fulfills the condition provided in Paragraph 4(a)(ii) of the Policy.

C. Bad Faith

The Complainant is an American company with "GLAMGLOW" cosmetics as its main business. The trademark "GLAMGLOW" was first registered in the USA in 2010 and then registered in many other countries. The Complainant, through the Trademark Transfer Agreement in 2015, was transferred all the rights related to the trademark "GLAMGLOW" and became the owner of this trademark. The Complainant has been very successful in its cosmetic products and services.

"GLAMGLOW" is not a name commonly used in trade. Through extensive use and promotion, the Complainant's trademark "GLAMGLOW" has been widely accepted in relevant market. As such, the public has come to recognize and associate the Complainant's trademark "GLAMGLOW" as originating from the Complainant and no other.

The evidence shows that the website of the disputed domain name offers the same products as the Complainant. The website also includes the Complainant's trademark and logo "GLAMGLOW". This is exactly the type of bad faith use of disputed domain name as identified in the Policy, i.e. the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the website or other on-line location, by creating a likelihood of confusion with the Complainant's trademark as to source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

The Panel concludes that the Respondent has registered and used the disputed

domain name in bad faith. Accordingly, the Panel finds that the Complaint satisfies the condition provided in Paragraph 4 (a) (iii) of the Policy.

5. Decision

Having established all three elements required under the ICANN Policy, the Panel concludes that relief should be granted. Accordingly, it is ordered that the <GLAMGLOWCHINA.COM> domain name be TRANSFERRED from the Respondent to the Complainant, GLAMGLOW LLC.

A handwritten signature in black ink, appearing to be the Chinese characters '赵云' (Zhao Yun), written on a light-colored background.

ZHAO Yun

Dated: 21 November 2017