



## ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (BEIJING OFFICE)

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### Decision Submission

English Print

Decision ID	DE-0500036
Case ID	CN-0500039
Disputed Domain Name	www.fourseasonshotels.com
Case Administrator	jinxi
Submitted By	Yong Li
Participated Panelist	
Date of Decision	10-03-2005

### The Parties Information

<b>Claimant</b>	Spring Chang
<b>Respondent</b>	Yong Li

### Procedural History

On Jan. 11, 2005, Beijing Office of the Asian Domain Name Dispute Resolution Center (hereinafter referred to as the Office) received the Complaint from the Complainant.

On Jan. 11, 2005, the Office informed the Complainant of receipt of the Complaint and sent an email to the registrar asking for relevant information.

On Jan. 18, 2005, the Office received a reply from the Registrar confirming that the Respondent is the current registrant, UDRP applies to the domain name dispute complaint, and the language of the registration agreement of the disputed domain name is English.

On Jan. 19, 2005, the Office transmitted the Complaint to the Respondent.

On Jan. 25, 2005, the Office sent to the Respondent the Complaint with the Notification of the Commencement of the Proceedings in which the Office notified the Respondent that he had 20 calendar days to submit a Response to the Complaint. On the same day, the Office notified the Registrar of the commencement of the case and informed the Complainant that the Complaint had been reviewed and forwarded to the Respondent and the Registrar.

On Feb. 19, 2005, because no Response had been received from the Respondent before the stipulated date, the Office sent out a Notification of Hearing by Default.

On Feb. 19, 2005, the Office informed the parties that Mr. Li Yong, Ms. Hong Xue and Ms. Zhang Ping had been appointed by the Office as the Panelists for the case and the date of submitting a decision was set on Mar. 5, 2005.

### Factual Background

#### For Claimant

According to the hard copy of the Compliant and the Annexed documents, the Complainant is Four Seasons Hotels (Barbados) Ltd. The address of the company is SUITE 201/202, CHANCERY HOUSE HIGH STREET, BRIDGETOWN, BARBADOS WEST INDIES. The authorized representative of the Complainant is Attorney Spring Chang, from Beijing Chang Tsi & Partners with address as 19th Floor Tower C, Webok Times-Center, 17 South Zhongguancun Street, Haidian District, Beijing 100081 P.R.China.

The Complainant has acquired registration for trademark "FOUR SEASONS" within the jurisdiction of a lot of countries since 1995, and the trademark "FOUR SEASONS HOTELS - RESORTS" is also one of the famous marks of the Complainant. The Complainant is the owner of the trademark "FOUR SEASONS" in the following jurisdictions: Argentina; Australia; Austria; Barbados; Benelux; Bermuda; Brazil; Cambodia; Canada; China; Costa Rica; CTM; Cuba; Czech Republic; France; Germany; Greece; Hong Kong; Indonesia; Italy; Japan; Jordan; Korea; Laos; Macao; Malaysia; Mexico; New Zealand; Norway; Portugal; Russian Federation; Singapore; Spain; Sri Lanka; St Kitts

Nevis; Switzerland; Taiwan; Thailand; Turkey; United Kingdom; USA; Venezuela; Vietnam.

## For Respondent

The Respondent has not participated in this administrative proceeding and submitted any documents. According to the Complaint furnished by the Complainant, the Respondent is Yong Li with his address as P.O. Box 904, Beijing 100029 China.

## Parties' Contentions

### Claimant

The Complainant has established legal rights and legitimate interests for the FOUR SEASONS mark.

The Complainant, Four Seasons Hotels (Barbados) Ltd., is a well-known company providing hotel, resort and spa services and other accommodation and leisure services, as well as real-estate related services. The Complainant has extensively used its FOUR SEASONS mark for decades worldwide. Since the year 1990, the Complainant has spent more than \$120 million Canadian dollars on advertising and as a part of the Complainant's effort to protect its trade and services marks. The Complainant has since the early 1980s obtained numerous registrations for the FOUR SEASONS mark within the United States of America, as well as numerous other locations around the world in connection with the Complainant's international business activities.

Furthermore, FOUR SEASONS is also the main part of the formal trade name of the Complainant, i.e. Four Seasons Hotels (Barbados) Ltd.. This trade name has been duly and legally registered in Barbados. In addition, among the scope of the Complainant's international operation, including Canada, the original development of the Complainant, and many other states and regions, FOUR SEASONS has always been used as the main part of a trade name, for instance, Four Seasons Hotel (Shanghai).

The Respondent's domain name is confusingly similar to Complainant's FOUR SEASONS mark.

The disputed domain name registered by the Respondent is confusingly similar to the Complainant's FOUR SEASONS mark because the disputed domain name incorporates the Complainant's mark in its entirety and deviation form by only adding a description of a service, i.e. "hotels". As demonstrated, hotel service is one of the most traditional and essential services that the Complainant has been investing into; the Complainant has also obtained a professional reputation in this field and was awarded by consumers, as well as by professional critics.

The predominant part of the disputed mark is composed of two expressions, "four seasons" and "hotels". In line with the above presented material displaying the public knowledge in regard to the trademark "FOUR SEASONS" and taken into account the outstanding achievement the Complainant has accomplished in the field of hotel services, the Respondent has, by using the expression "FOUR SEASONS", created a strong likelihood that Internet users will associate the disputed website to the Complainant or its services; and by adding the description "hotels", such likelihood is enhanced.

Respondent's combination of "FOUR SEASONS" and "HOTELS" does not create a sufficient difference for Internet users to avoid confusion and it was so designed only to strengthen the possibility that Internet users would be misled to assume all information contained on the disputed domain name website solely concerns the Complainant.

Respondent does not have any rights or legitimate interests in the domain name at issue.

The Respondent is using a domain name that is confusingly similar to the Complainant's FOUR SEASONS mark and redirects Internet users interested in the Complainant's services to a commercial website that shows search results of the top sites related to the Complainant as well as websites of competitors offering FOUR SEASONS branded services. This is not a use in connection with a bona fide offering of services pursuant to the Policy Art. 4 (c) (i) and it is not a legitimate noncommercial or fair use of the domain name pursuant to the Policy Art. 4 (c) (iii). Moreover, the Respondent has not established rights or legitimate interests in the disputed domain name pursuant to the Policy Art. 4 (c) (ii); neither did Respondent ever apply for a license or permission from the Complainant to use the trademark or name FOUR SEASONS. The Respondent is not commonly known by the disputed domain name or using the domain name in connection with a legitimate or fair use.

The Respondent registered and used domain name at issue in bad faith.

The Respondent uses the disputed domain name to redirect Internet users to a website that shows search results of the top sites related to the Complainant and websites of other third parties offering FOUR SEASONS branded services. When typing domain name <fourseasonshotels.com> in the web browser address bar, the connection will automatically redirect the user to a website with the URL <http://usseek.com/search/internet/four%20seasons%20hotel>, which offers directory-like links to services all under the name of "FOUR SEASONS". The Complainant's host website, [www.fourseasons.com](http://www.fourseasons.com), is also included; but most of the other websites, which are claimed to use the trademark and trade name "FOUR SEASONS", were never properly or legally authorized, assigned, licensed to use the trademark "FOUR SEASONS" by the Complainant.

The Respondent registered the disputed domain name for commercial profits. The Respondent's misleading domain name diverts Internet users wishing to search under the Complainant's well-known mark to the Respondent's commercial website. The Respondent's practice of diversion, motivated by commercial gain, through the use of a

confusingly similar domain name shows the Respondent's bad faith upon registration and use pursuant to the Policy Art. 4 (b) (iv). The Respondent intentionally attempts to attract Internet users to his websites for commercial gain by creating a likelihood of confusion with Complainant's mark and offering the same accommodation services via his websites as the Complainant. As the disputed domain name redirects to a website where similar services are offered to Internet users, it is likely that the user is misled into believing that Complainant is the source of or is sponsoring the services offered at the disputed site.

The links shown from the website of the disputed domain name displays services that, although under the name "FOUR SEASONS", never have been supported or managed by the Complainant. This will directly cause Internet users that type in the domain name, in search of the services provided by the Complainant, a false sense of reassurance that the website is owned or authorized by the Complainant and that all the provided links truly represent the Complainant. The Respondent's registration of the domain name, a domain name that incorporates the Complainant's well-known registered mark in its entirety and deviation form only adding a description of the service "hotel", suggests that the Respondent fully knew of Complainant's rights in the FOUR SEASONS mark, the high standard of professionalism that mark represents, the commercial value of the trademark FOUR SEASONS, and the reputation the Complainant has established within the business of hotel services; thus, the Respondent is likely to choose the domain name based on the distinctive and well-known qualities of the Complainant's mark. In this case, the reputation of the trademark in hotel services where the mark is associated, means that the intentional registration and use of disputed domain name manifests that intent to capitalize on the mark, and constitutes bad faith.

To conclude, by using the domain name, the Respondent have intentionally attempted to attract, for commercial gain, Internet users to the 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 the website or location or of a product or service on the website or location.

In accordance with the Policy and based on the above presented facts and grounds, The Complainant requests that the domain name be transferred from the Respondent to the Complainant.

### **Respondent**

The Respondent failed to submit its contentions during the administrative proceeding before the stipulated date.

### **Findings**

#### **Identical / Confusingly Similar**

The Complainant has established its rights in the trademarks "FOUR SEASONS" with numerous registrations worldwide.

The Panel follows the Complainant's submission that the domain name <fourseasonshotels.com> is confusingly similar to the Complainant's trademarks. The disputed domain name merely deviates from the Complainant's mark by adding a description of a service, i.e. "hotels" which is one of the most traditional and essential business that the Complainant has been doing. In effect, the addition of such a descriptor to the trademark does not change the confusing nature of the similarity.

The Panel finds that the disputed domain name is confusingly similar to the trademark in which the Complainant has rights.

#### **Rights and Legitimate Interests**

Paragraph 4(c) of the Policy provides a non-exclusive list of circumstances which, if found by the Panel to be proved based on its evaluation of all evidence submitted, shall demonstrate rights to or legitimate interests in the domain name in dispute.

The Respondent, in not responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to Paragraph 4(c) of the Policy, any rights to or legitimate interests in the domain name in dispute. This entitles the Panel to draw any inferences from such default as it considers appropriate pursuant to Paragraph 14(b) of the Rules. The Respondent has not provided evidence of circumstances specified in the Policy, 4(c). There exists no evidence that the Respondent, before receipt of any notice of the dispute, has used the domain name or a name corresponding to the domain name in connection with bona fide; or that the Respondent has been commonly known by the domain name; or that the Respondent is making a legitimate noncommercial or fair use of the domain name. Furthermore, the Respondent has not provided evidence of any other circumstances giving rise to a right or legitimate interest in the disputed domain name. As such, the Panel believes that the Respondent has no rights or legitimate interests with respect to the disputed domain name.

#### **Bad Faith**

In accordance with the Policy, the Complainant asking for transfer of the domain name must prove that the Respondent has registered the domain name and is using it in bad faith (Policy, 4 (a)(iii)).

Paragraph 4(b) of the Policy provides a non-exclusive list of circumstances that can prove registration and use of a domain name in bad faith. Any one of the following behaviors is sufficient to support a finding of 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 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 your website or location or of a product or service on your website or location.

The Respondent did not file any response to the Complaint, failing thereby to invoke any circumstance which could demonstrate his good faith in the registration or use of the domain name at issue. Nevertheless, the Panel still has the responsibility of determining which of the Complainant's assertions are established as facts, and whether the conclusions asserted by the Complainant can be drawn from the established facts.

Considering the reputation of the trademark of the Complainant, the worldwide business activities of the Complainant under the mark "FOUR SEASONS", and the behavior of the Respondent to redirect Internet users to the websites offering FOUR SEASONS branded services, the Panel holds that the Respondent should have been well aware of the Complainant's trademark registrations, at the time it registered the disputed domain name. Moreover, the evidence submitted by the Complainant shows that the Respondent uses the domain name at issue to redirect internet users to the websites offering FOUR SEASONS branded services without permission or authorization of the Complainant, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the related website or of the service on the said website.

Based on the above, the Panel finds that the circumstance of the Policy 4(b)(iv) has appeared in this case. Accordingly, the Panel finds that bad-faith within the meaning of the Policy 4(a)(iii) is established.

## Status

www.fourseasonshotels.com      Domain Name Transfer

## Decision

The Panel concludes (a) that the domain name <fourseasonshotels.com> is confusingly similar to the Complainant's trademark, (b) that the Respondent has no rights or legitimate interest in the domain name and (c) that the domain name at issue has been registered and used in bad faith. Therefore, pursuant to paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the domain name <fourseasonshotels.com> be transferred to the Complainant.

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