



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (BEIJING OFFICE)

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Decision Submission

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Decision ID	DE-0600080
Case ID	CN-0600087
Disputed Domain Name	www.yafang.org
Case Administrator	xiechangqing
Submitted By	Matthew A. Murphy
Participated Panelist	

Date of Decision	28-07-2006
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The Parties Information

Claimant	AVON PRODUCTS, INC.
Respondent	BOB SMITH

Procedural History

The Complaint was filed with the Asian Domain Name Dispute Resolution Centre (the “Center”) on April 27, 2006. On May 16, 2006, the Center transmitted by email to Wild West Domains, Inc. a request for registrar verification in connection with the domain name at issue. On June 6, 2006, Wild West Domains, Inc. transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details for the administrative, billing, and technical contact. The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the Centre’s Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on June 20, 2006. In accordance with the Rules, paragraph 5(a), the due date for Response was July 10, 2006. The Respondent did not submit any response. Accordingly, the Center notified the Respondent of its default on July 11, 2006.

The Center appointed Matthew Murphy as the sole panelist in this matter on July 13, 2006. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

Factual Background

For Claimant

The Complainant is a one of the world’s most well known direct sellers of cosmetic products. Since 1886, the Claimant claims that it has built up distribution networks covering 145 countries, 8 million customers and 4.8 million independent sales representatives. The Claimant has expended extensive amounts of fiscal and temporal capital in preserving the value of its AVON and “Ya Fang” trademarks in Roman and Chinese characters, including registration of these trademarks throughout the world, including the PRC, the regions of Hong Kong and Taiwan, and Singapore. The Complainant claims that it entered into the PRC market in 1990 and now has 77 branches in the People’s Republic of China (PRC), over 6,000 specialty shops, and that sales between 2000 and 2004 of products marked with “Ya Fang” in Chinese characters (or derivative marks) totaled over US\$681 million, thereby providing substantial evidence of a global association of the Complainant’s “Ya Fang” marks with its cosmetic products. None of these claims have been refuted by the Respondent.

The Claimant asserts that Respondent’s registration and use of the yafang.org domain name in relation to inter alias

cosmetic sales will confuse existing and future customers of Claimant, and constitutes use and registration in bad faith. None of these claims have been refuted by the Respondent in time. The Respondent sent an email to the Centre after the deadline for submitting its Reply had passed, therefore it would be wrong for me to consider the statements in that email.

The Complainant owns numerous trademark registrations in the PRC for trademarks that include “Ya Fang” in Roman and Chinese characters as distinctive parts of those trademarks – the Complainant has provided a list of registrations (as well as copies of those registrations) of the “Ya Fang” trademarks maintained in the PRC. None of these claims have been refuted by the Respondent in time.

For Respondent

The Respondent did not provide any submissions or evidence in time.

Parties' Contentions

Claimant

The Claimant asserts that the Respondent’s registration and use of this domain name will confuse existing and future customers of the Claimant and dilute the inherent value in the Claimant’s mark for which the Claimant has expended both financial and temporal resources. In support of this statement, the Claimant has described how the Respondent implies some relationship with the Complaint in the site operated at yafang.org, which will lead to confusion and the Complainant has confirmed that it does not have a relationship with the Respondent and has not consented to it carrying out such activities.

Respondent

The Respondent has not asserted any claims, defenses or contentions in time.

Findings

Identical / Confusingly Similar

Under paragraph 4 (a) of the Policy, the Panel should be satisfied that:

- (i) The 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) The domain name has been registered in bad faith;
- (iv) The domain name is being used in bad faith.

Identical or Confusing Similarity

The Panel finds that Complainant has established that it is the owner of the trademark “Ya Fang” in Roman and Chinese characters for various products and services, including cosmetics and business services. The validity and fame of this trademark is beyond dispute in the PRC and amongst Chinese speaking communities. The Respondent’s domain name includes the Complainant’s trademark and implies a relationship with the Complainant – no evidence or submissions to refute these claims have been provided by the Respondent in time. Internet users may easily be confused into thinking that the site located at yafang.org is authorized by the Complainant or run by the Complainant. Accordingly, the domain name is confusingly similar to the trademark “Ya Fang” owned by the Complainant.

Rights and Legitimate Interests

There is no evidence that the Respondent had any right or legitimate interest whatsoever in respect of the domain name yafang.org or the trademark “Ya Fang”, before registering the domain name. Given that the Respondent has not provided any evidence to support a right or legitimate interest in the domain name in time, the Panel finds that the Respondent has no rights or legitimate interests in respect of the domain name.

Bad Faith

The trademark “Ya Fang” is well-known enough that it is presumable that the Respondent knew about its existence when registering the domain name (see Banca Sella S.p.A. v. Mr. Paolo Parente, WIPO Case No. D2000-1157; Expedia, Inc. v. European Travel Network, WIPO Case No. D2000-0137). No arguments have been submitted by the defaulting Respondent in order to counter these findings in time. The Panel concludes that the domain name has been registered in bad faith.

As far as use of the domain name in bad faith is concerned, the Panel concludes that the Respondent’s use of the domain name in this particular case satisfies the requirement of paragraph 4(a)(iii) of the Policy in that the domain name “is being used in bad faith” by the Respondent - the Complainant’s trademark has a strong reputation and is widely known as referring to the Complainant, as evidenced by its substantial use in the PRC and Chinese speaking communities, and the Respondent has provided no evidence of any actual or contemplated good faith use by it of the domain name in time.

Status

www.yafang.org

Domain Name Transfer

Decision

Pursuant to Paragraph 4(i) of the Policy and Rule 15 of the Rules, this Panel orders that the domain name < yafang.org> be transferred to the Complainant.

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