



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (BEIJING OFFICE)

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Decision Submission

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Decision ID	DE-0800159
Case ID	CN-0600112
Disputed Domain Name	www.兰蔻.com
Case Administrator	lihu
Submitted By	Lulin Gao
Participated Panelist	

Date of Decision	07-04-2008
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The Parties Information

Claimant	LANCOME PARFUMS ET BEAUTE CIE
Respondent	Xu Wan Qin

Procedural History

The Complainant of this case is LANCOME PARFUMS ET BEAUTE & CIE. Its address is at 29 RUE DU FAUBOURG SAINT-HONORE, 75008 PARIS, FRANCE. Its authorized representative is Cheng Xueqiong. The Respondent of this case is Xu Wan Qin with addresses at 350 South Center Street Suite 500, Reno 89501 NV, United States.

The domain name in dispute is 兰蔻.com. The Registrar of the dispute domain name is MELBOURNE IT, LTD.

A Complaint, made pursuant to the Uniform Domain Name Dispute Resolution Policy (“UDRP”) implemented by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on 24 October, 1999, and under ICANN Rules for UDRP and Asia Domain Name Dispute Resolution Center (“ADNDRC”) Supplemental Rules for UDRP, was received by ADNDRC Beijing Office on 27 October 2006. The ADNDRC Beijing Office confirmed the reception of the Complaint on 12 December 2006. On the same day, the ADNDRC Beijing Office requested the Registrar, by email, for the provision of information at their WHOIS database concerning the domain name in dispute. The Registrar confirmed the registration information on 21 December 2006.

On 1 March 2007, ADNDRC Beijing Office transmitted the Complaint to the Respondent by email.

On 9 March 2007, ADNDRC Beijing Office confirmed with both parties and the Registrar by email that the captioned case had formally commenced. ADNDRC Beijing Office also requested the Respondent to file a response within the 20 day scheduled time.

On 12 April 2007, the ADNDRC Beijing Office notified the Complainant and the Respondent by email stating that, as the Respondent did not file a response within the required time, the ADNDRC Beijing Office is appointing the panelist to make the Decision by default.

On 16 April 2007, ADNDRC Beijing Office gave notice to a potential candidate of panelist Dr. Lulin Gao, requesting him to confirm whether or not he would accept the appointment for this case and if so, whether he could maintain impartiality and independence towards the parties in this case. Thereafter, Dr. Lulin Gao confirmed by email to the ADNDRC Beijing Office his agreement to accept the appointment and declared his capability to maintain impartiality and independence when dealing with this case.

On 25 April 2007, ADNDRC Beijing Office informed the parties by email that Dr. Lulin Gao would be the sole panelist for this case and formally transferred the files to the Panel.

Factual Background

For Claimant

For the Complainant

(I) The Complainant enjoys the exclusive rights of the trademark “兰蔻” protected by the Chinese law.

The Complainant LANCOME PARFUMES ET BEAUTE & CIE（兰金香水美容有限公司）was established in 1935 with its headquarters in Paris. Its products cover body lotion series, make-up series and perfume series. (Annex II, the overview of “兰蔻” brand)

The “兰蔻/LANCOME” brand was founded in 1935 in France and joined the L’ Oreal Group, the largest cosmetic group in the world, in 1964. At present, the “兰蔻” brand has become one of the best brands of cosmetic in the world for its French nobleness and elegance. In China, the Complainant had respectively registered the trademarks “兰蔻” and “蘭蔻” in classes 3, 25 and 42 since 1997. The form below shows the details of the registration of the trademark “兰蔻” .

Trademark	Registration Date	Registration Number	Class	Designated Goods	Expiration Date
蘭蔻	8/21/1997	1080518	3	perfume, toilet water etc.	8/20/2007
兰蔻	5/7/2001	1564287	3	perfume, toilet water etc.	5/6/2011
兰蔻	3/14/2001	1537608	25	clothing, shoes etc.	3/13/2011
兰蔻	3/7/2001	1535972	42	beauty parlor, barber’ s shop etc.	3/6/2011

At present, the above-mentioned trademarks are all valid. (Annex III, Copies of the Trademark Registration Certificates)

(II) The Complainant owns various domain names bearing “兰蔻” on the internet.

In china, “L’ Oreal (China) Co., Ltd.” , a subsidiary company of the L’ Oreal Group, and “Lancome (Suzhou) Cosmetic Co., Ltd. Shanghai Branch” , have both registered a series of domain names relating to “兰蔻” , such as “兰蔻.cn/中国” , CNNIC keyword “兰蔻” and “蘭蔻” . (AnnexIV, Printout from the databases of www.net.cn, Printout from the database of www.cnnic.net.cn)

(III) The trademark “兰蔻” owned by the Complainant has a high reputation in China and is a well-known trademark.

The trademark “LANCOME兰蔻” owned by the Complainant is one of the 26 most well-known trademarks recognized by the Trademark Office of the State Administration for Industry and Commerce in the first half of the year 2004. It received special protection since. (Annex V, the list of the 26 well-known trademarks recognized in the first half year of 2004 issued by the official website of Trademark Office). Here, the Complainant will establish details concerning the reputation of the trademark “兰蔻” .

As mentioned above, the Complainant LANCOME PARFUMES ET BEAUTE & CIE（兰金香水美容有限公司）was established in 1935 with its headquarters in Paris. Its products cover body lotion series, make-up series and perfume series. The Complainant established research centers for exploitation and development of new products in France, Japan and the U.S. Since its establishment, the Complainant has launched 5 kinds of perfume and 2 kinds of cologne. Its products were fashionable in the 1930s for their elegance and novelty. The Complainant joined the L’ Oreal Group in 1964 and began to develop internationally as the first top-grade brand acceding to the Group. In 1983, “兰蔻” entered MACY’ s Department Store, one of the largest department stores in the U.S. and increased its sale by 25% that year through specialization. At present, the Complainant’ s “兰蔻” brand has become No.1 in France and No.2 worldwide in the field of cosmetic.

In early 1993, the Complainant formally set up special counters in big-sized and top-grade department stores in China, and has a number of specially trained beauty consultants. So far, the Complainant has a total of 45 special counters in 22 cities in China. In the department stores, it provides not only products but also the service of special beauty advisors, satisfying the needs of consumers. According to statistics, the sale of “兰蔻” products in the Shanghai Pacific Department Store Huaihai Branch comes up to 8 millions a year; in 2003, the total sale of “兰蔻” products in Hangzhou Tower added up to 17 millions; also in 2003, Chengdu Pacific Department Store made a sale record of 830 thousands in one day during its 10th anniversary celebration of “兰蔻” . 2006 is the 13th year that LANCOME had entered into the Chinese market. During the past 12 years, “兰蔻” has become the No.1 brand in the field of top-grade cosmetic in China with all of its famous products such as mascara, eye cream and night cream etc. going beyond 50% respectively. (AnnexVI, the article “success of LANCOME” , from www.globrand.com,).

To enhance its reputation and recognition, the Complainant promotes its products through the internet, television, broadcast, VCD, DVD, magazines, newspaper, poster, and so on. Furthermore, it invited world-famous movie stars to

represent its products. In 2000, the Complainant has spent 12.7 million on advertisement in all. According to the Rank of National Cosmetic Plane Advertisement of January 2004 from www.cnad.com provided by the National Media Monitoring Center, the Complainant had advertised for its “兰蔻” products 13 times at the cost of 2.3734 millions, and 31 times at the cost of 5.36 millions in the bank of March 2005. (Annex VII, the printouts of the Rank of National Cosmetic Plane Advertisement of January 2004 and March 2005 from www.cnad.com, and the advertisements of the trademark “兰蔻”).

The “兰蔻” brand enjoys high reputation through numerous advertisements. In the Shangbiao Yi Zi No. 00239 decision (2003) on Trademark Opposition against “兰蔻LANCOME” made by the Trademark Office, it is pointed out that the trademark “兰蔻LANCOME” has become a cosmetic brand familiar to Chinese consumers. (Annex VIII, the copy of the decision on the trademark “兰蔻LANCOME”). Thus it can be seen that the Trademark Office has fully confirmed “兰蔻” reputation.

To sum up, the trademark “兰蔻” owned by the Complainant deserves the designation of a well-known trademark.

For Respondent

Respondent has failed to file a response in this matter.

Parties' Contentions

Claimant

The Complainant

I) The main part of the domain name “兰蔻.com” registered by the Respondent is identical with to the Complainant's trademark “兰蔻” in its pronunciation, appearance and arrangement of letters, thus is likely to cause confusion.

II) The Respondent does not enjoy any legitimate right or interest concerning the registered domain name “兰蔻.com”.

Ø The Respondent does not enjoy exclusive right to the trademark “兰蔻”;

Ø The Complainant has never authorized or licensed the Respondent to use the trademark “兰蔻”, and has never transferred the trademark “兰蔻” to the Respondent. As far as the Complainant knows, the Respondent has never obtained authorization or license for the trademark “兰蔻” from any channel;

Ø Upon investigation, the registrar of the disputed domain name is neither employee of the Complainant, nor authorized person to register the disputed domain name. Also, there is no relationship such as entrustment and cooperation between the Complainant and the Respondent.

Ø Upon investigation, the Respondent has never actually used the disputed domain name.

To sum up, the Respondent does not enjoy any legitimate right or interest regarding the registered domain name “兰蔻.com”.

III) The Respondent has registered the disputed domain name in bad faith.

As it is known, the registered domain name could only achieve its function and value after having been connected to a specific website. As a well-known trademark owned by the Complainant, “兰蔻” is known and loved by consumers through large amount of advertisements and wide registration in China and all over the world. Products bearing the trademark “兰蔻/LANCOME” can be found in any country. More importantly, the Trademark Office of the State Administration for Industry and Commerce had recognized it as a well-known trademark. Thus, the Respondent should know the Complainant's “兰蔻” brand. However, the Respondent still registered the Complainant's well-known trademark as its domain name in this situation. Therefore, it can be observed that the Respondent's act is viciously conducted. Also upon investigation, it is found that the Respondent has not actually used nor have prepared to use the disputed domain name after registration. The disputed domain name “兰蔻.com” does not direct to any website. When visiting the disputed domain name, “Page not found” is displayed. (Annex IX, the status of the disputed domain name “兰蔻.com”). In addition, the Respondent is a natural person and has no relationship with “兰蔻”. Therefore, the Respondent's purpose in registering the disputed domain name is questionable. The Complainant considers that the Respondent's purpose in registering the disputed domain name is to gain unlawful benefits, restrain the Complainant from using its lawfully registered trademark on the internet under the domain name 兰蔻.com, thus affecting the Complainant's normal business operation. The Respondent's act is obviously conducted in bad faith.

Moreover, the Complainant considers that the Respondent enjoys neither legitimate right on the disputed domain name

nor on its main part. The Respondent's purpose in registering the disputed domain name is to gain unlawful benefits by utilizing the high reputation of the Complainant's well-known trademark hence unavoidably causing the consumers' confusion and misidentification. For the Complainant's clients and other consumers who know the Complainant's trademark, “兰蔻” in the disputed domain name can easily mislead them into believing that the disputed domain name has a certain connection with the Complainant's well-known trademark “兰蔻”. The Respondent's act violates the honesty and credibility principle, therefore is obviously conducted in bad faith.

The above facts show that the Respondent's act in registering the disputed domain name is not accidental and is obviously of bad faith. Thus, the Respondent's act has fallen into the conditions of bad faith provided in Section (ii) of Item b of Article 4 of “Uniform Policy for Domain Name Dispute Resolution”, namely, “The disputed domain name holder registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the said mark in a corresponding domain name”.

Respondent

The Respondent did not file a response within the stipulated time.

Findings

According to Paragraph 4a of the Policy which is applicable hereto, the Complainant has the burden of prove, proving:

- 1) that the domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- 2) that the Respondent has no rights or legitimate interests in respect of the domain name; and
- 3) that the domain name has been registered and is being used in bad faith.

Identical / Confusingly Similar

According to the evidence provided by the Complainant, the Panel finds that the Complainant is the proprietor of the trademark “兰蔻”. The Complainant obtained registration of “兰蔻” as a trademark in Classes 3, 25 and 42 in China, and the earliest date of registration (Registration No. 1535972) was 7 March 2001, which is prior to the registration date (10 June 2003) of the disputed domain name. Thus, the Panel is of the opinion that the Complainant enjoys the prior trademark right to “兰蔻”.

“兰蔻” as the identifying part of the disputed domain name is exactly the same as the Complainant's trademark as stated above. Thus the disputed domain name is confusingly similar, both visually and phonetically, to the Complainant's registered trademark.

Based on the submission of evidence, the trademark “兰蔻” does enjoy a high reputation in China through the Complainant's long-term promotional and commercial activities, and it has been recognized as a well-known trademark by the Trademark Office of the State Administration of Industry and Commerce since 2004. Considering the prior rights in the trademark “兰蔻” owned by the Complainant along with its reputation and goodwill, the Panel finds that the disputed domain name is identical or confusingly similar to the Respondent's trademark; the Complainant has satisfied the first condition under Paragraph 4(a) of the Policy.

Rights and Legitimate Interests

In light of the fact that the Complainant has not authorized, licensed, endorsed or otherwise permitted the Respondent to use its trademark and that “兰蔻” appears to be a coined word which the Respondent would not legitimately choose unless seeking to create an impression of association with the Complainant, the Panel can fathom no possible legitimate connection or interest between the Respondent and the disputed domain name.

Furthermore, the Respondent has not filed any response and has failed to prove that he has any right or legitimate interest regarding the disputed domain name. Due to the default and the evidence in the Complaint, it is presumed that the Respondent has no right or legitimate interest in the disputed domain name.

Accordingly, the Panel finds that the Complainant has satisfied the second condition under Paragraph 4(a) of the Policy.

Bad Faith

In accordance with Paragraph 4 (b) of UDRP setting out 4 non-exclusive criteria which shall be evidence to the registration and use of a domain name in bad faith:

(i) the respondent has registered or has 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 trade mark or service mark or to a competitor of that complainant for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent has registered the domain name in order to prevent the owner of the trade mark 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 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 its web site or location or of a product or service on its web site or location.

First of all, given the inherent distinctiveness and fame of the Complainant's mark “兰蔻” as a well-known trademark recognized by the Trademark Office of the State Administration of Industry and Commerce and the Complainant's long-standing use of the mark, the Panel finds it difficult to accept that the Respondent registered the domain name without knowledge of the Complainant's rights in “兰蔻”. Moreover, It cannot be a mere coincidence that the Respondent has chosen the disputed domain name, which is identical to and is an imitation of the Complainant's mark, as his domain name. These findings, together with the above finding that the Respondent has no right or interest in the domain name, allow the Panel to conclude that the disputed domain name has been registered by the Respondent in bad faith.

Secondly, as demonstrated above, the Respondent should have been aware of the Complainant and the Complainant's trademarks when registering the disputed domain name “兰蔻.com”. This act inevitably prevents the Complainant from reflecting its trade name/trademark in such corresponding domain names. Accordingly, the stipulations of paragraph 4 (b) (ii) concerning the bad faith are satisfied here.

Thirdly, the Complainant has argued that the Respondent has not actually used or prepared to use the disputed domain name after registration. According to Anne. IX (the status of the disputed domain name “兰蔻.com”) provided by the Complainant, the web page displays “Page not found”. The Panel notes that the bad faith conditions may not be limited to the above four conditions according to UDRP. It is possible, in certain circumstances, for passive holding by the Respondent to amount to the domain name being used in bad faith. This point is acknowledged in the Panel Decision in Telstra Corporation Limited v. Nuclear Marshmallows (WIPO Center Case No. D2000-0003).

Based on the above analysis, the Complainant's mark “兰蔻” has a high reputation and is widely known due to its substantial use and promotion in China. Meanwhile, the Respondent has provided no evidence whatsoever of any actual or contemplated usage of good faith of the domain name. Taking into account these particular circumstances, the panel may infer that the Respondent has no real intension of active usage of the disputed domain name, and such act constitutes a passive holding of the disputed domain name amounting to the domain name being used in bad faith.

In light of all of the above circumstances, the Panel concludes that the Complainant has satisfied the third condition under Paragraph 4(a) of the Policy.

Status

www.兰蔻.com

Domain Name Transfer

Decision

For all the forgoing reasons, the Panel has decided that the Complainant has sufficiently proved the three elements of Paragraph 4(a) of UDRP. Accordingly, the Panel directs that the disputed domain name be transferred to the Complainant.

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