



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (BEIJING OFFICE)

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Decision Submission

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Decision ID	DE-0800192
Case ID	CN-0800209
Disputed Domain Name	www.ruyanstore.com
Case Administrator	Xinmin Cui
Submitted By	Shaojie Chi
Participated Panelist	

Date of Decision	08-09-2008
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The Parties Information

Claimant	Beijing SBT RUYAN Technology & Development Co. Ltd.(北京赛波特如烟科技发展有限公司)
Respondent	Marios Papanikolaou

Procedural History

On June 5, 2008, the Complainant submitted its first Complaint in English to the Beijing Office of the Asian Domain Name Dispute Resolution Centre (the "Centre"), in accordance with the Uniform Domain Name Dispute Resolution Policy (the "Policy") adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN") on August 26, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "Rules") approved by ICANN on October 24, 1999, and Asian Domain Name Dispute Resolution Centre Supplemental Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "ADNDRC Supplemental Rules") being effected on February 28, 2002. The Centre confirmed the receipt of the Complaint on June 10, 2008.

On June 10, 2008, the Centre notified the Registrar of the domain name in dispute, and the latter confirmed the information of the disputed domain name on July 17, 2008.

On July 22, 2008, the Centre sent the Complaint by the Complainant to the Respondent; and send the parties the notification of the commencement of the proceedings and the claims have been confirmed and forwarded; and notified ICANN and registrar of the start of the proceedings on July 29, 2008.

The Centre has received no response form the Respondent until August 18, 2008; and notified the parties that since no response received, hearing by default will be conducted.

As requested by the Claimant, a panel of sole expert is to be constituted; and the Centre contact the candidate sole panelist on August 21, 2008.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Mr. Chi Shaojie on August 21, 2008, the Centre informed the Complainant and the Respondent of the appointment of the sole panelist on the same day.

On August 22, 2008, the Centre transferred the documents in hard copy lodged by the Complainant to the sole panelist by post, and the latter confirmed the receipt of the mail.

The sole panelist finds that the panel was properly constituted and appointed in accordance with the Rules and the ADNDRC Supplemental Rules.

Having requested the Respondent to submit the formal Response, the Centre has received no such a document from the requested party in the whole course of the proceedings.

The procedural language is English, as being the language of the Domain Name Registration and Service Agreement, pursuant to Paragraph 11(a) of the Rules, and also in consideration of the fact that it is the language used by the Claimant and there is no express agreement to the contrary by the disputing Parties.

Factual Background

For Claimant

The Complainant contends that it is the exclusive licensee of the trademark “RUYAN” and its equivalent mark “如烟” in Chinese which are owned by Shenyang SBT Technology & Development Co. As a matter of fact, both the licensee and the licensor of the mark “RUYAN” are wholly owned subsidiaries of the Hong-Kong-based SBT Group. “RUYAN” and “如烟” are world-wide registered marks and well-known to the consumers of the products bearing the marks. Ever since the marketing of “RUYAN” branded product that is a sort of electronic device helping cigarette holders to give up smoking, the Complainant has become publicized and closely linked to the mark “RUYAN”. The Respondent has no relations of any kind with the Complainant or its licensor, and registered and used the disputed domain in bad faith due the fundamental facts that the disputed domain name is confusingly similar to the trademark “RUYAN” to which the Complainant is entitled to use exclusively for a long period of time; and the Respondent has no legitimate rights and interests in the ill-registered domain name. In accordance with the stipulations under the Policy that governs the registration of the domain name at issue, the Complainant requests the panel for a ruling to order the transfer of the disputed domain name to the Complainant.

For Respondent

The Respondent was duly notified by the Centre of the Claims lodged by the Complainant and asked to submit the Response in accordance with the relevant regulations under the Policy, the Rules and the ADNDRC Supplementary Rules, but failed to make any defense against what the Complainant claims.

Parties' Contentions

Claimant

It is entitled to an exclusive right to use the trademark “RUYAN” and its equivalent Chinese mark “如烟”. The disputed domain name is confusingly similar to the trademark “RUYAN”, due to the fact that “RUYAN” in the domain name is identical to the mark “RUYAN” to which the Complainant is an exclusive licensee; and the word “STORE” means a shop to sell goods. Seeing what the Respondent advertises for selling on the web site using the disputed domain name, one may easily understand the ill purpose of the Respondent. There is no relation between the disputing parties, and neither there is any relation between the Respondent and the owner of the mark “RUYAN”. What is more, the disputed domain name was registered after the mark “RUYAN” became a registered mark, meaning that the Respondent has no prior legal rights and legitimate interests in the disputed domain name. The Complainant thinks all the three conditions set forth under the relevant paragraph of the Policy for the request for a transfer of the name have all been met.

Respondent

The Respondent did not make any contentions against the Complainant's allegations.

Findings

One of the Pre-requisites for the Respondent to register the disputed domain name through the Registrar is to accept the Policy as the binding regulations. As mentioned, the Policy applies to this dispute. As stipulated in the Paragraph 4(a) of the Policy, when claiming back a domain name registered by the Respondent, the Complainant must prove each of the following:

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

Based itself upon the stipulations under the Policy, what the Panel needs to do is to find out whether each of the above-mentioned facts can be proved. If the answer is yes, the Panel makes final award in accordance with the fact-finding and

the relevant stipulations under the Policy, the Rules and the ADNDRC Supplemental Rules. If not, the claims by the Complainant shall be rejected.

The Respondent failed to submit the Response or defense of any sort to argue against what the Complainant claims and to show his intention to retain the disputed domain name as required by the Policy, the Rules and the ADNDRC Supplementary Rules. As stipulated in Paragraph 5(e) in the Rules, “If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint”. In view of the situation, the Panel cannot but make the decision based primarily upon the contentions and the accompanying exhibits by the Complainant, except otherwise there is an exhibit proving to the contrary; or the Panel thinks what the Complainant advocates false based upon natural and logical deduction.

Identical / Confusingly Similar

Pursuant to Paragraph 4(a) (i) of the Policy, the Complainant must prove that the domain name is identical or confusingly similar to a trademark or service mark in which it has rights. To meet the requirement, the Complainant submitted a series of trademark certificates to prove the registration of the trademarks “RUYAN” and “如烟” inside and outside China. The Panel has attended to the fundamental fact that the registrant of the certificates is not the Complainant but Shenyang SBT Technology & Development Co, As it is, the first pre-requisite for the Complainant to meet is to prove the fact that it has rights in respect of the mark “RUYAN”. To prove the fact, the Complainant submitted several licensing agreements concluded between the owner of the mark “RUYAN” and “如烟” as the licensor and the Complainant as the licensee. Since there is no evidence to prove a fact to the contrary and the Panel has no reason to leave aside the exhibits by the Complainant, the Panel holds that the Complainant is an exclusive licensee of the trademark “RUYAN” and “如烟”. Legally speaking, an exclusive licensee has the right to exclude others including the licensed trademark owner to use the subject matter under the license, thus in a position to be regarded as a nominal “owner” of the licensed trademark and is fully entitled to the licensed trademark except the right to dispose the licensed subject matter, e.g. to assign the licensed trademark, etc. From this perspective, the Panel holds that the Complainant has rights in the trademark “RUYAN” which is to be used to compare with the disputed domain name to satisfy the requirement of identity or confusing similarity.

Obviously, the disputed domain name is composed of “ruyanstore” and “.com”. Since “.com” is a suffix to the domain names of a sort and commonly used in the group of domain names, it should not be an essential part when making a judgment on the issue of identity or confusing similarity. Hence, the part of “ruyanstore” is the identical part of the disputed domain name. To an English-speaking web-user, the part is composed of two words, i.e. “ruyan” and “store”. It is now as clear as a nose on a face that the former is identical to the trademark to which the Complainant is entitled, and the latter is a common English word that has a meaning of a place for selling something. Thus, when a web-user who knows the brand “RUYAN” and intends to find the maker and/or the seller of the e-cigarette bearing the trademark “RUYAN” may be easily led to the website using the disputed domain name. In this respect, how could the Panel refuses to rule that the disputed domain is similar to the registered trademark “RUYAN” and may cause confusion of the consumers? As it is, the Panel holds that the Complainant meets the first requirement set forth under Paragraph 4(a)(i) of the Policy.

Rights and Legitimate Interests

Paragraph 4(c) of the Policy stipulates how a Respondent can effectively demonstrate rights or legitimate interests in the disputed domain name. Unfortunately, the Panel cannot see that the Respondent has any legitimate rights or interests in respect of the disputed domain name, due to the fact that the Respondent does not claim such a right or interest, and nothing so far could lead the Panel to hold such a fact in the Respondent’s favor. The Panel notices that the disputed domain name was created on March 22, 2008; and the trademark claimed by the Complainant was registered earlier than the disputed domain name was registered. Judging from this simple fact, the Panel can hardly say that the Respondent has any rights or legitimate interests in the disputed domain name prior to the Complainant has. Let alone the facts of creation of “RUYAN” mark, the extensive and intensive use of the mark, the significant market impact of the product using the mark “RUYAN”, etc. proved by the Complainant by its huge amount of evidences. On one side the Panel cannot see any rights or legitimate interest of the Respondent in the disputed domain name; and on the other side the Panel is persuaded that the Complainant does have rights and legitimate interests in the domain name. The result is, the Panel holds that the Complainant meets the second requirement set forth under Paragraph 4(a)(ii).

Bad Faith

The Complainant also has to establish the fact of bad faith on the part of the Respondent as set forth in the Paragraph 4(a) (iii) of the Policy. Under the Paragraph 4(b)(i) of the Policy, the following circumstances, in particular, shall be considered evidence of the registration and use of a domain name in bad faith: ……(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your web site or location.;……” The Complainant submitted a notarized exhibit showing what is on the web site using the disputed domain name. The eye-catching words on the front page of the web site are Ruyan Store. This way of using reinforced the Panel’s holding that the identical part of the disputed domain name is composed of “ruyan” and “store”. On the page there are ads for products using the brand of “ruyan”. Also, there is an indication “Please visit our official website of www.ruyanxpress.com”. Upon seeing what is on the front page of the web site using the disputed domain name, the Panel cannot but hold the fact that the Respondent knows that it has no rights or legitimate interests in the mark RUYAN” while deliberately leads Internet users to get confused of the relationship between the Respondent and the Complainant.

Obviously, the word “RUYAN” is not an English word, but a phonetic translation of the Chinese characters “如烟”. Judging from the name of the Respondent, it seems to be occidental. It is not a coincidence to see an occidental creates a domain name that is identical to the translation of two Chinese characters, thus revealing the ill purpose of the registrant of the disputed domain name.

Since the Panel comes to see the bad faith of the Respondent in the registration and use of the domain name at issue, the Panel comes to the conclusion that the Complainant meets the requirement set forth under Paragraph 4(a)(iii) of the Policy.

Based upon all the above findings, the Panel rules that the Complaint fulfills the conditions provided in Paragraph 4(a)(i) (ii) (iii) of the Policy, thus its claims shall be held.

Status

www.ruyanstore.com Domain Name Transfer

Decision

In light of all the foregoing findings and in accordance with Paragraphs 4(a), 8(a) of the Policy and 5(e) of the Rules, the Panel holds:

- a) That the disputed domain name “ruyanstore.com” is confusingly similar to the trademark “RUYAN” to which the Complainant is entitled, and
- b) That the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- c) That the domain name was registered and subsequently used by the Respondent in bad faith.

As such the Panel requires that the registration of the domain name “ruyanstore.com” be transferred to the Complainant.

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