

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE
(Beijing Office)
ADMINISTRATIVE PANEL DECISION
Case No. CN 1100486

Complainant: TRENDY INTERNATIONAL INVESTMENT LIMITED

(赫基国际投资有限公司)

Respondent: ying dai

Domain Name: oushili.net

Registrar: GoDaddy.com, Inc.

1. Procedural History

On 9 August 2011, the Complainant submitted its Complaint to the Beijing Office of the Asian Domain Name Dispute Resolution Centre (the "ADNDRC Beijing Office"), 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"), and ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "ADNDRC Supplemental Rules").

On 16 August 2011, the ADNDRC Beijing Office confirmed the receipt of the Complaint and forwarded a request for verification of registration information to ICANN and the registrar of the domain name in dispute, GoDaddy.com, Inc..

On 18 August 2011, the ADNDRC Beijing Office received the Registrar's confirmation of registration information of the domain name in dispute.

On 8 September 2011, the ADNDRC Beijing Office sent the Transmittal of Complaint to the Respondent.

On 14 September 2011, the ADNDRC Beijing Office notified the Complainant that the Complaint had been confirmed and forwarded, and the ADNDRC Beijing Office notified the Respondent, the Registrar and

the ICANN of the commencement of the case proceeding.

On 14 October 2011, the ADNDRC Beijing Office sent the Notification of No Response Received and Hearing by Default.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Ms. Xue Hong, on 18 October 2011, the ADNDRC Beijing Office informed the Complainant and the Respondent of the appointment of the Panelist, and transferred the case file to the Panelist on 18 October 2011.

The Panel finds that it was properly constituted and appointed in accordance with the Rules and the ADNDRC Supplemental Rules.

The language of the proceeding 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 there is no express agreement to the contrary by the Parties.

2. Factual Background

For the Complainant

The Complainant is TRENDY INTERNATIONAL INVESTMENT LIMITED (赫基国际投资有限公司). Its address is UNIT C 17/F SILVERCORP INT' L TOWER 713 NATHAN RORD KL HK. The authorized representative of the Complainant is LianYunze and LiHaitao.

The Complainant that is primarily in the business of fashion design, production and sales is the owner of the trademark "ou shi li" that was firstly registered on 14 December 1998. The registration number is 1230787 and the registration class is 25 on the goods of clothes, shoes, etc.

For the Respondent

According to the record in the Whois database, the Respondent is ying dai. Its address is shijiazhuang kang xin ya yuan, 7-2-401, shijiazhuang, hebei 05000, China. The disputed domain name "oushili.net" was registered on 20 October 2010 through the registrar GoDaddy.com, Inc.

3. Parties' Contentions

The Complainant

(1) Background of the complainant and its “oushili” brand

The Complainant TRENDY INTERNATIONAL INVESTMENT LIMITED is a large international investment company, under which there are still Guangzhou TRENDIANO CO., LTD 、 Guangzhou Ding Shang Co., Ltd. The main business of the Complainant and its subsidiaries is fashion design, production and sales. The “oushili” which has experienced a sharply growth was firstly introduced to China market in 1999 by the Guangzhou Ding Shang Co., Ltd, After ten years of operation, the Complainant has established hundreds of “oushili ” stores and self-counters in major cities, such as in Beijing, Shanghai, Guangzhou, Shenzhen, Dalian, Chengdu, Chongqing, Hangzhou, Wuhan, Xi'an, Changsha and so on. The sales of the “oushili” products are among the best and the brand fells swoop become the leader in women's fashion.

(2) The mark “oushili” has been widely used by the Complainant as trademark in mainland China, and it is of great fame in China.

The complainant and the “oushili” brand won the unanimous endorsement of the consumers with its quality products and services and received many honors from communities. At the same time the Complainant always concerns about public welfare and gets a good social assessment. In order to expand the reputation and influence of “oushili” brand, the Complainant has done a lot of brand advertising, and gets a good result. The Complainant and the oushili brand enjoy a good fame in China with its quality products and good publicity.

The Complainant is the owner of the trademark “oushili” and has used “oushili” as trademark in business field over 10 years. Owing to excellent management and extensive promotion, products and services, the “oushil” brand is in the front rank around the globe, especially in mainland China.

(3) The Complainant has prior trademark rights of "oushili" trademark; the disputed domain name is identical with the Complainant's trademark.

It is well-known that “oushili” is a worldwide famous trademark which is owned by the Complainant. The validity and fame of its trademarks are

beyond dispute.

As described in the above, the Complainant has the registered trademark in mainland China, (NO. 1230787), which was registered in 1998. The registration date is far earlier than the registration date of the disputed domain name, i.e. October 20, 2010. Therefore, the Complainant has prior trademark rights of “oushili”.

The main part of the disputed domain name is “oushili” consisting of “oushili” which is the well-known trademark of the Complainant. Accordingly, the main part of the domain name “oushili.net” is identical with the trademark “oushili” owned by the Complainant and infringes the Complainant’s legal rights. Therefore, the Complainant has proved paragraph 4 (a) (i) of the policy.

(4) The Respondent does not have any legitimate rights or interests on the disputed domain name.

The Respondent has no legitimate right on the trademark. The Complainant has searched in China, SAIC and Trademark Office online trademark search systems with the keyword of the registrant “ying dai” for all types of registration. But not trademarks that Respondent registered were found.

The Complainant owns the trademark exclusively, and the complainant never authorized, permitted the respondent to register or use the disputed domain name, or to use the trade name or trademark for any purposes. The Complainant has never acquiesced the Respondent to register or use the disputed domain name in any way.

For these reasons, the Complainant considers that, under the Policy 4 (a) (ii), the Respondent has no rights or legitimate interests on the disputed domain name.

(5) The domain name has been registered and used in bad faith

The trademark has been used in mainland China by the Complainant. And the trademark enjoys a great reputation in the location that the disputed domain name registered in, so it is unimaginable that the Respondent didn’t acknowledge the trademark when he registered the domain. For the trademark is a fancy word, it is impossible for the

Respondent to think out the same word for a domain name registration. Therefore, the Respondent's actions describe that the Respondent registered and used the disputed domain name in bad faith.

The trademark "oushili" owned by the Complainant has a high reputation in China, thus the registrant knew clearly the existence of this famous trademark and still registered it which indicated a registration bad faith. The disputed domain name has not been used for any websites, which falls under the circumstances in Paragraph 4(b) (ii), i.e. the Respondent has 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, which demonstrates the bad faith.

For the above reasons, the Complainant considers that According to the Policy section 4 (a) (iii), the Respondent has registered and used the disputed domain name in bad faith.

The Complainant requests the disputed domain name "oushili.net" be transferred to the Complainant.

The Respondent

The Respondent did not submit the Response.

4. Findings

Identity or Confusing Similarity

Pursuant to the Policy, paragraph 4(a)(i), a complainant must prove that the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights. In line with such requirement, a complainant must prove its trademark rights and the identity or confusing similarity between the disputed domain name and its trademark.

The Panel notes that the trademark "ou shi li" had been registered (Registration Number 1230787) on clothes, shoes and many other products in China on 14 December 1998. The trademark registration for "ou shi li" (Registration Number 1230787) was assigned to the Complainant on 13 November 2010.

The Panel finds that the Complainant's registered trademark "ou shi li",

which displays in italic Latin characters, is a character mark consists of OU SHI Li. The Complainant acquired the trademark right over “ou shi li” on 13 November 2010 and has been the owner of this registered mark since then. The Complainant therefore enjoys the exclusive trademark rights therein.

The disputed domain name is “oushili.net” . Apart from the generic top-level domain suffix “.net”, the disputed domain name consists of “oushili”, which merely omits the space between OU SHI Li and obviously confusingly similar with the Complainant’s registered trademark “ou shi li.”

The Panel therefore finds that the disputed domain name “oushili.net” is confusingly similar to the Complainant’s registered trademark “ou shi li.” Accordingly, the Complainant has proven the first element required by paragraph 4(a) of the Policy.

Rights or Legitimate Interests of the Respondent

The Complainant asserts that the Respondent has no rights or legitimate interests in the disputed domain name and, as stated above, the Respondent did not provide any information to the Panel asserting any right or legitimate interest it may have in the disputed domain name.

It is apparent from the Complaint that there is no connection between the Respondent and the Complainant or its business. Paragraph 4(c) of the Policy lists a number of circumstances which can be taken to demonstrate a respondent’s rights or legitimate interests in a domain name. However, there is no evidence before the Panel that any of the situations described in paragraph 4(c) of the Policy apply here. To the contrary, the lack of a response leads the Panel to draw a negative inference.

Therefore, and also in light of the Panel’s findings below, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name “oushili.net”. Accordingly, the Complainant has proven the second element required by paragraph 4(a) of the Policy.

Bad Faith

The Complainant contends that the Respondent had bad faith. The

Respondent did not respond.

Through examining the evidence submitted, the Panel holds that the fact that the Complainant acquired the trademark right over the “ou shi li” on 13 November 2010 while the disputed domain name was registered on 20 October 2010 shall not be an issue preventing the Complainant from claiming against the disputed domain name. The trademark “ou shi li” in which the Complainant has exclusive right was registered on 14 December 1998, sufficiently prior to the registration date of the disputed domain name. Once the trademark was assigned to the Complainant, the Assignee should acquire the trademark’s rights entirely, including the capacity to enforce the right against any trespass into its exclusive domain occurred before assignment and continue after assignment, unless the assignor had expressly waived the relevant rights and availed to the assignee.

The Panel notes that the disputed domain name has not been used on the Internet or in any other means. The Policy, paragraph 4(b), provides a non-exclusive list of circumstances that may prove the bad faith of a respondent. The Panel finds that the Respondent’s act in the captioned case does not fit in any of the typical circumstances listed in the Policy, paragraph 4(b). However, the Panel holds that the Complainant’s trademark “ou shi li” is a distinctive sign without any meaning other than the mark and has acquired considerable reputation and recognition in the market through registration and use in China for more than a decade. Therefore, the Respondent’s passive holding of the disputed domain name that is confusingly similar to the Complainant’s reputable trademark is a serious threat to the legitimate interests of the Complainant, which can be deemed the evidence of bad faith of the Respondent.

The Panel rules that this is adequate to conclude that the Respondent has bad faith under the Policy, paragraph 4(b). Therefore, the Complainant has successfully proven the third element required by paragraph 4(a) of the Policy.

5. Decision

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the domain name “ oushili.net ” be transferred to the Complainant TRENDY INTERNATIONAL INVESTMENT LIMITED (赫基国际投资有限公司).

Panelist: 薛虹

Dated: 1 November 2011