



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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Decision Submission

English Print

Decision ID DE-0700107
 Case ID HK-0700118
 Disputed Domain Name www.佳士得.com
 Case Administrator Dennis CAI
 Submitted By Yun Zhao
 Participated Panelist

Date of Decision 23-05-2007

The Parties Information

Claimant Christie Manson & Woods Ltd
Respondent Zhou Xian Jun

Procedural History

On 15 March 2007, the Complainant submitted a Complaint in the English language to the Hong Kong Office of the Asian Domain Name Dispute Resolution Center (the ADNDRC) and elected this case to be dealt with by a one-person panel, in accordance with the Uniform Domain Name Dispute Resolution Policy (the Policy) approved by the Internet Corporation for Assigned Names and Numbers (ICANN), the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the ADNDRC Supplemental Rules). On 19 March 2007, the ADNDRC sent to the complainant by email an acknowledgement of the receipt of the complaint and reviewed the format of the complaint for compliance with the Policy, the Rules and the ADNDRC Supplemental Rules. All correspondence to and from the HKIAC described herein was in the English language.

On 2 April 2007, the ADNDRC notified the Respondent of the commencement of the action.

On 26 April 2007, the ADNDRC notified the Complainant that the Respondent had failed to submit a Response.

Since the Respondent did not file a response in accordance with the time specified in the Rules, the ADNDRC Supplemental Rules, and the Notification, the ADNDRC informed the Complainant and Respondent by email about the default, stating that, as the Respondent did not file a response within the required time, the ADNDRC would appoint the panelist to proceed to render the decision, in the absence of a response by the Respondent.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance, the ADNDRC notified the parties that the Panel in this case had been selected, with Dr ZHAO Yun acting as the sole panelist. The Panel determines that the appointment was made in accordance with Rules 6 and Articles 8 and 9 of the Supplemental Rules.

On 15 May 2007, the Panel received the file from the ADNDRC and should render the Decision within 14 days, i.e., on or before 29 May 2007.

The language of the proceeding is English, as being the language of the Domain Name Registration 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.

Factual Background

For Claimant

The Complainant in this case is Christie Manson & Woods Ltd, a corporation registered in the United Kingdom. The Complainant is a member of a group of companies (Complainant group) operating the renowned auction house known as “Christie’s” in English and “佳士得” in Chinese. The Complainant group currently offers sale in over 80 separate categories including all areas of fine and applied arts, decorative arts, jewelry and watches, collectibles, wine and motor cars. The Complainant is the owner of the well-known trademark “Christie’s” and “佳士得”.

For Respondent

The respondent, Zhou Xian Jun, is the current registrant of the disputed domain name <佳士得.com> according to the Whois information.

Parties' Contentions

Claimant

The Complainant made the following assertions:

(a) The disputed domain name is identical or confusingly similar to the Complainant’s trademark “佳士得”

The complainant is the creator and proprietor of the trademark “佳士得”. The reputation of the Complainant has already been well established in the auction industry as well as amongst the general public. The disputed domain name incorporates the Complainant’s trademark in its entirety and is no doubt identical to the Complainant’s trademark.

(b) The Respondent has no rights or legitimate interest in respect of the disputed domain name

There is no evidence that the Respondent is commonly known by the disputed domain name, it does not operate a business, have a corporate name, company, product or services under the disputed domain name and has no rights to any trademarks including the name “佳士得”. The Respondent has no relationship with the Complainant or permission from the Complainant to use the trademark. Furthermore, the Respondent is not offering any goods and/or services under the disputed domain name. Accordingly, the Respondent has no basis to assert its rights or legitimate interest in the disputed domain name.

(c) The disputed domain name has been registered and is being used in bad faith by the Respondent

An individual named “Zhou Bin” registered the disputed domain name on 12 April 2006 and offered to sell to the Complainant at a price of US\$ 2,000,000 on 27 April 2006. The Complainant sent a reply to “Zhou Bin” claiming the rights of the Complainant in the trademark “佳士得” and the disputed domain name. However, no satisfactory result has been obtained.

The Complainant later noted that the disputed domain name has been transferred to an individual called “Zhou Xian Jun” with other registration details remaining unchanged. With sufficient reasons to believe that the new registrant (the Respondent) is the same as or alternatively associated with “Zhou Bin”, the Complainant sent a second demand letter to Zhou Bin on 1 June 2006. Again, no satisfactory resolution has been achieved.

The fact that the disputed domain name is currently available for sale leads to the conclusion that the Respondent has no intention to use and has only attempted to attract for financial gain by registering the disputed domain name. Accordingly, the Respondent’s act of registration has constituted acts of bad faith.

The Complainant has also noted that the Respondent has also registered another domain name containing the trademark of another renowned auction company. The Respondent is not in any manner related to or has permission from that auction company. This domain name is being auctioned. By registering this domain name, the respondent is clearly also attempting to assert profits. This fact further substantiates the Complainant’s contention that the Respondent has registered and used the disputed domain name in bad faith.

Respondent

Respondent failed to submit a Response in this proceeding within the stipulated time.

Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: “A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.”

In view of the Respondent’s failure to submit a response, the Panel shall decide this administrative proceeding on the basis of the Complainant’s undisputed representations pursuant to paragraphs 5(e), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence suggests to the contrary.

Paragraph 4 (a) of the Policy requires that the Complainant should prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- 1) 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) the Respondent has no rights or legitimate interests in respect of the domain name; and
- 3) the domain name has been registered and is being used in bad faith.

Identical / Confusingly Similar

The evidence submitted by the Complainant shows that the Complainant owns the trademark 佳士得, which has been registered in Hong Kong, the PRC, Singapore and Taiwan. The evidence also shows that the complainant has been using this Chinese trademark since 1986. Through continuous use, the Chinese trademark has become famous among people worldwide, particularly in Asia. The Panel has no problem finding that the domain name <佳士得.com> is identical to the registered trademark 佳士得. The Panel therefore holds that the Complaint fulfills the condition provided in Paragraph 4 (a)(i) of the Policy

Rights and Legitimate Interests

The Complainant contends that the Respondent does not have rights to or legitimate interests in the disputed domain name. The Complainant’s assertion is sufficient to establish a prima facie case under Policy 4 (a)(ii), thereby shifting the burden to the Respondent to present evidence of its rights or legitimate interests. The Respondent has failed to show that the Respondent has any rights or legitimate interests in respect of the disputed domain name. This entitles the Panel to infer that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Panel therefore finds that the Complaint fulfills the condition provided in Paragraph 4(a)(ii) of the Policy.

Bad Faith

A non-exhaustive list of what constitute bad faith registration and use is set out in Paragraph 4 (b) of the Policy, including the circumstances indicating that the Respondent has registered or acquired a 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 value consideration in excess of the documented out-of-pocket costs directly related to the domain name.

Evidence shows that the Respondent offers to sell the disputed domain name to the Complainant at the price of RMB 200,000, which is in much excess of the out-of-pocket costs for registering a domain name. This is the typical situation of evidence of registration and use in bad faith as provided above.

Evidence also shows that the Complainant’s trademark “佳士得” has achieved a strong reputation throughout the world, particularly in Asia, through long history of use and the worldwide significance of the brand name. As such, the public has come to recognize and associate the Complainant’s trademark “佳士得” as originating from the Complainant and no other. This entitles the Panel to infer that the Respondent should be aware of the existence of the Complainant and its trademark “佳士得”. The action of registering the disputed domain name per se has constituted bad faith.

In conclusion, the Panel finds that the Respondent has registered and used the domain name in bad faith. Accordingly, the Panel finds that the Complaint satisfies the condition provided in Paragraph 4 (a) (iii) of the Policy.

Status

www.佳士得.com

Domain Name Transfer

Decision

Having established all three elements required under the ICANN Policy, the Panel concludes that relief should be granted. Accordingly, it is ordered that the <佳士得.com> domain name should be TRANSFERRED from the Respondent to the Complainant.

ZHAO Yun
Sole Panelist

DATED: 21 May 2007

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