

**Asian Domain Name Dispute Resolution Centre
(Hong Kong Office)**

Administrative Panel Decision

Case No. HK-0700134

Complainant	: Nvidia Corporation
Respondent	: 施帅东 Shi ShuaiDong
Domain Name	: nvidia.mobi
Registrar	: Beijing Innovative Linkage Technology Ltd

1. Procedural History

On June 21, 2007, the Complainant submitted the Complaint in English on domain name “nvidia.mobi” to the Hong Kong Office of the Asian Domain Name Dispute Resolution Center (the "Center"), 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 Center Supplemental Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "ADNDRC Supplemental Rules") effected on February 28, 2002. The Center confirmed the receipt of the Complaint.

The Complainant has sought a one-person Panel.

On July 30, 2007, the Center received the information provided by the sponsoring Registrar (www.dns.com.cn), which indicated that it was “陆建英 Lu Jianying” (not “施帅东 Shi Shuaidong”) that was the registrant of the disputed domain name. While the evidence provided by Complaint shows that the dotMobi whois database reveals “施帅东 Shi Shuaidong” is the registrant of the disputed domain name. The center then asked the sponsoring Registrar for further clarification on the Respondent identity, but did not receive any response from the Registrar.

On July 30, 2007, the Center sent the Complaint to the Respondent. The 20-day deadline for the Respondent to respond calculated from July 30, 2007 expired on August 20, 2007. The Respondent did not file a Response with the Centre.

On August 21, 2007, the Centre contacted the Complainant by email and confirmed that no Response to the Complaint had been submitted by the Respondent to the Centre before the deadline and Centre would then proceed to appoint a Panelist for the matter. The email was copied to the Respondent but the Respondent did not submit any response.

On September 8, 2007, the Centre contacted the Complainant and Respondent by email informing them that the Centre has appointed a one-member Panel, Dr. GAO Lulin to decide the dispute. The Respondent did not submit any response.

On September 8, 2007, the Centre transferred the case file to the Panelist by post. The decision shall be rendered on or before September 24, 2007.

On September 24, 2007, the Panel request that the decision be delayed to October 16th, 2007 in accordance with article 10 of ADNDRC Supplemental Rules.

On September 30, 2007, the Center has received a phone call and the other side claimed to be “SHI Shuaidong”, the Respondent of this case.

On October 12, 2007, the Panel request the decision be further delayed until after the Respondent’s identity is confirmed in accordance with article 10 of ADNDRC Supplemental Rules.

On October 18, 2007, the Center sent a letter to both the Complainant and the Respondent regarding the identity of the Respondent. The Center informs the Panel that the Complainant has called saying that the Respondent should be the one they previously mentioned, namely, 施帅东 Shi Shuaidong. The Respondent has not made any response here.

On October 24, at the request of the Panel, the Center requested the assistance of dotMobi (the informal name of mTLD Top Level Domain, Ltd.) with regard to the registrant of the disputed domain name. On October 24, 2007, the dotMobi has provided the url for their database (<http://mtld.mobi/domain/whois?q=domain/whois>),

which shows the registrant's name is "shi shuaidong".

Also on October 24, the Center further contacted the dotMobi requesting the explanation of the different registrants in their WHOIS database and all the relevant email has copied the sponsoring Registrar. The dotMobi has indicated in the email that the sponsoring Registrar in Beijing may explain this but the sponsoring Registrar has not made any explanation.

On October 27, the Center has contacted the dotMobi again for further clarification of the identity of the Respondent.

On October 31, dotMobi provided the WHOIS information of the disputed domain name of that day, which revealed the Registrant of the disputed domain name is still "shi shuaidong". But dotMobi further indicated "this can change anytime the current registrant updates the record at the sponsoring registrar's end".

On November 1, the Center has again requested the dotMobi to further explain their policy on the difference between their WHOIS database and the sponsoring registrar's database but has not received any further response.

On November 9, the Center has contacted the Sponsoring Registrar again and received a response from the Sponsoring Registrar that the registrant of the disputed domain name is "施帅东 Shi Shuaidong". This final response is in conformity with the information on the Respondent, which has been previously provided by the Complainant and the dotMobi WHOIS information.

On November 12, the Panel made the final decision.

2. Factual Background

For the Complainant

The non-contested facts are essentially those provided by the Complainant, as no Response was filed. Those facts are as follows.

The Complainant was established in the U.S. in 1993, and become famous in the field of graphics and digital media processors. It has more than 4,000 employees worldwide and has established 13 local offices in the US and 21 offices across

Europe and Asia, including in China Mainland, Hong Kong, Taiwan, Japan and Korea.

The Complainant has registered mark “NVIDIA” in different jurisdictions, including but not limited to, U.S., China, Hong Kong, Taiwan, Japan, Korea and Singapore.

The Complainant provided the following copies of selected trademark certificates:

1. Trademark: NVIDIA

Jurisdiction: U.S.

Registration No: 2341814

Class: 9

Duration: March 5, 1998 to March 5, 2008

2. Trademark: NVIDIA

Jurisdiction: China

Registration No: 1288796

Class: 9

Duration: June 28, 1999 to June 27, 2009

3. Trademark: NVIDIA

Jurisdiction: Taiwan

Registration No: 00869465

Class: 9

Duration: October 1, 1999 to September 30, 2009

4. Trademark: NVIDIA

Jurisdiction: Japan

Registration No: 4269529

Class: 9

Registration Date: April 30, 1999

5. Trademark: NVIDIA

Jurisdiction: Korea

Registration No: 0445767

Class: 9

Registration Date: April 6, 1999

6. Trademark: NVIDIA
Jurisdiction: Singapore
Registration No: T01/11398I
Class: 9
Registration Date: July 27, 2001

For the Respondent

The Respondent did not respond to the Complaint.

3. Parties' Contentions

The Complainant

The Complainant's contentions are as follows:

The Disputed Domain Name is identical and/or confusingly similar to trade or service marks in which the Complainant has rights

The Complainant submits that the Disputed Domain Name is identical and/or confusingly similar to marks in which the Complainant has rights on the following grounds:

- (a) the Complainant is the owner of 170 trade mark registrations for "NVIDIA" spanning more than 70 countries;
- (b) the Complainant has acquired an extensive reputation and goodwill in the trade mark "NVIDIA" worldwide.

The Disputed Domain Name is identical to the Complainant's registered trade mark "NVIDIA". It is well established that, in making an enquiry as to whether a trade mark is identical or confusingly similar to a domain name, the domain extension, in this case <.mobi>, should be disregarded.

The Complainant also has civil rights in the "NVIDIA" trade mark throughout the world by virtue of the extensive reputation and goodwill that the Complainant has acquired in this mark amongst computer and video game consumers and the public generally through its world wide use, advertising and promotion of the NDIVIA brand as detailed above.

The Complainant accordingly submits that it has proved that the Disputed Domain Name is identical and/or confusingly similar to both registered and unregistered trade marks in which the Complainant has rights or interests for the purposes of Article 4(a)(i) of the ICANN UDRP.

The Respondent has no right or legitimate interest in respect of the Disputed Domain Name

The Complainant submits that the Respondent has no right or legitimate interest in respect of the Disputed Domain Name on the following grounds:

- (a) The Disputed Domain Name does not reflect the Respondent's name;
- (b) The Respondent does not have any registered trade mark rights in the PRC, being the Respondent's country of domicile, which reflect the Disputed Domain Name (and further, given the Complainant's worldwide registered trade mark portfolio for "NVIDIA", unless the Respondent submits evidence to the contrary, there is an irrefutable presumption that the Respondent does not have any trade mark registrations for "NVIDIA" anywhere else in the world either);
- (c) There is no evidence that the Respondent has (i) acquired any reputation in the Disputed Domain Name in the PRC, being the Respondent's country of domicile, or elsewhere (ii) used the Disputed Domain Name in connection with any bona fide offering of goods or services or (iii) making any legitimate commercial use of the Disputed Domain Name.

There is no connection, either phonetically or in meaning, between Disputed Domain Name and the Respondent's name (施帅东). The phonetic transliteration of the Respondent's name is "Shi Shuai Dong". Shi is a common Chinese surname which translates in meaning as 'apply' or 'implement'. Shuai Dong literally means 'leading the East'.

The Respondent is not the owner of any registered trade marks reflecting the Disputed Domain Name in the PRC, being the Respondent's country of domicile. The Complainant's legal representative conducted proprietor trade mark searches in the name of 施帅东 (i.e. the Respondent) which revealed that no individual by that name owns any registered trade marks in the PRC.

It was not practicable for the Complainant to conduct trade mark searches in all

other countries to determine whether the Respondent is the owner of any trade mark registrations for "NVIDIA" other than in his country of domicile. The Complainant submits that this would be very unlikely on the basis that the Respondent's business activities appear from the WHOIS search results to be confined to the PRC such that it is logical to presume that the PRC would be the only, or at least the first, country in which the Respondent would seek to register a trade mark. However, more importantly is the fact that in light of the Complainant's extensive registered trade mark portfolio for or incorporating "NVIDIA" in no less than 8 classes in 70 countries across the world, considered in light of the Complainant's vigorous trade mark prosecution practices, it is extremely unlikely that any trade mark application for "NVIDIA" filed in any country by any person other than the Complainant would progress to registration.

As at the date of this Complaint the Respondent is not using the Disputed Domain Name and to the Complainant's knowledge the Respondent has not used the Disputed Domain Name to operate any active website and therefore has not used the Disputed Domain Name in any bona fide offering of goods or services. The website to which the Disputed Domain Name resolves, which appears to be a personal site for the Respondent, and which does not contain any reference to "NVIDIA". Further, until the Respondent was alerted to the possibility that the Complainant would file complaint proceedings in respect of the Disputed Domain Name, the Respondent was not using and to the Complainant's knowledge had not ever used the Disputed Domain Name for any purpose.

In the absence of any other evidence of use of the Disputed Domain Name, or of "NVIDIA" (being the core component of the Disputed Domain Name), the Respondent cannot therefore be said to have acquired any reputation in, or to have become commonly known by, the Disputed Domain Name and certainly not a reputation sufficient to confer upon the Respondent any legitimate right or interest in the Disputed Domain Name.

The Complainant accordingly submits that it has proved that the Respondent has no right or legitimate interest in respect of the Disputed Domain Name for the purposes of Article 4(a)(ii) of the ICANN UDRP.

The Disputed Domain Name has been registered by the Respondent in Bad Faith

The Complainant submits that the Disputed Domain Name has been registered

by the Respondent in bad faith on the following grounds:

(d) The Respondent offered to sell the Disputed Domain Name to the Complainant (through the Complainant's legal representatives) for a price exceeding exponentially the Respondent's costs in registering the Disputed Domain Name;

(e) The price at which the Respondent offered to sell the Disputed Domain Name to the Complainant demonstrates (in monetary terms) the value that the Respondent attaches to the Disputed Domain Name which is in turn indicative not only of the Complainant's reputation in "NVIDIA" but more importantly of the Respondent's knowledge of the Complainant's reputation in "NVIDIA"; and

(f) As at the date of this Complaint the Respondent was not using the Disputed Domain Name for any legitimate commercial purposes and had not, until the Respondent was alerted to the possibility of complaint proceedings being filed against him, used the Disputed Domain Name for any purpose.

The Respondent in an email to the Complainant's legal representatives dated 08 February 2007 offered to sell the Disputed Domain Name to the Complainant for US\$56,000. The email has been attached as evidence.

The formal offer by the Respondent to sell the Disputed Domain Name was initially prompted by a demand letter sent to the Respondent from Ms. Emily Burns (the Complainant's US legal representative) in which Ms. Burns clearly stated that she was acting for the Complainant in wishing to acquire the Disputed Domain Name. The letter, together with the Respondent's email reply dated 21 January 2007 which provides the Respondent's mobile telephone number, is attached. Further to the Respondent's email reply, Sarah Doyle (the Complainant's Hong Kong legal representative), who identified herself as a colleague of Ms. Burns, telephoned the Respondent and asked whether he would be interested in selling the Disputed Domain Name to the Complainant. The Respondent stated that he would be prepared to sell the Disputed Domain Name for an appropriate price. Ms. Doyle followed up this telephone conversation with an email dated 06 February 2007, in which an offer was made to acquire the Disputed Domain Name on behalf of the Complainant for US\$1,000. The Respondent replied with a counter offer to sell the Disputed Domain Name to the Complainant for US\$56,000, stating in his email that he was "an [domain name] investor" and that his main objective was to "make a profit" ("我们是投

资者，我们要追求利润最大化呢").

The blatant admission by the Respondent that he is "an [domain name] investor" having as his main objective "making a profit" from the Disputed Domain Name demonstrate unequivocally that the sole purpose of the Respondent's registration of the Disputed Domain Name was to resell it for financial gain. The submission that the sole purpose of the Respondent's registration of the Disputed Domain Name was to resell it for financial gain is strengthened by the fact that the Respondent has not made any legitimate commercial use of the Disputed Domain Name.

Further, the price at which the Respondent offered to sell the Disputed Domain Name to the Complainant, i.e. US\$56,000, far exceeds the Respondent's out-of-pocket costs directly related to the Disputed Domain Name. This price demonstrates the monetary value that the Respondent attaches to the Disputed Domain Name which in turn is not only testament to the Complainant's reputation in "NVIDIA" but also serves to demonstrate that the Respondent was aware of the Complainant's reputation in "NVIDIA", and therefore of its rights to the Disputed Domain Name, at the time of registering the Disputed Domain Name and offering to sell it to the Complainant.

The Complainant submits that the combination of the statements made by the Respondent in relation to his registration of the Disputed Domain Name as an investor "to make a profit", the offer to sell the Disputed Domain Name to the Complainant for US\$56,000 and the fact that the Respondent has not used the Disputed Domain Name for any legitimate commercial purposes constitutes circumstances indicating that [the Respondent] has registered or 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 trademark or service mark... for valuable consideration in excess of [the Respondent's] documented out-of-pocket costs directly related to the domain name for the purposes of establishing bad faith pursuant to Article 4(b)(i) of the ICANN UDRP.

The Complainant accordingly submits that it has proved that the Respondent has registered the Disputed Domain Name in bad faith for the purposes of Article 4(a)(iii) of the ICANN UDRP.

The Respondent

The Respondent did not respond to the Complaint.

4. Findings

One of the prerequisites for a domain name registration through the Registrar is to accept the Policy as the binding regulations in terms of the procurement of the entitlement. As previously mentioned, the Policy governs the procedural and substantive issues in the domain name dispute resolution. As stipulated in the Paragraph 4(a) of the Policy, when claiming a domain name registered by Respondent, the Complainant must prove each of the followings:

- (i) that the domain name of the Respondent's is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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 on the relevant stipulations under the Policy, the Rules and ADNDRC Supplemental Rules, the Panel needs to determine whether the Complainant satisfies each of the afore-said prerequisites. If the answer is yes, the Panel will make a final decision in accordance with the facts and relevant stipulations under the Policy, the Rules and the ADNDRC Supplemental Rules; if not, the Complainant's claims shall be rejected.

With regard to the current dispute, a fundamental fact is that the Respondent failed to submit a defense or a written response. Particularly, the Respondent did not exhibit any intention to RETAIN the disputed domain name. As stipulated in Paragraph 5(e) of 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 light of this stipulation, the Panel has no choice but to make the decision based primarily on the Complainant's contentions and the accompanying exhibits unless proven otherwise or that the Panel, based upon its professional experiences, thinks that the Complainant's allegations are not logical or obviously contradictory to a prior judgment or any other enforceable decisions.

Identical or Confusing Similarity

The Complainant claims that the disputed domain name is identical to its registered trade mark “NVIDIA”.

On the other hand, the Respondent does not submit any defense.

The Panel holds that, pursuant to Paragraph 4(a) (i) of the Policy, the Complainant must prove that the domain name in dispute is identical or confusingly similar to a trademark or service mark in which the Complainant has right to. In order to meet this requirement, the Complainant provided proof certifying its entitlement to the registered trademark “NVIDIA” in U.S., China and Singapore, which are still valid. As demonstrated by the Complainant’s exhibits, the Complainant’s trademark was registered well before the Respondent had registered the disputed domain name (September 26, 2006). Additionally, the Complainant’s exhibits reveal that “NVIDIA” mark has become a mark with some reputation by consecutive use. As such, what the panel needs to do is to make a conclusion on the identity or confusing similarity between the Complainant’s registered trademark “NVIDIA” and the Respondent’s registered domain name “nvidia.mobi”.

When making a judgment on the issue of identity or confusing similarity, the Panel often compares the identifying part of the disputed domain name with that of the claimed trademark. It is observable that the identifying part of the disputed domain name is “nvidia”, which is obviously identical to the Complainant's registered trademark.

In light of the above reasoning, the Panel holds that the identifying part of the disputed domain name is identical to the registered trademark belonging to the Complainant, thus the Complainant satisfies the first requirement when claiming back a domain name registered by Respondent as set forth in the Policy.

Rights or Legitimate Interests of the Respondent

The Complainant argues that the Respondent does not have any rights or legitimate interests in respect of the disputed domain name.

And the Respondent fails to submit any defense.

The Panel considers that, Paragraph 4(c) of the Policy stipulates how a Respondent can effectively demonstrate its rights or legitimate interests with

regard to the disputed domain name, as an argument against the Complainant's claim. And the Panel can not come to the conclusion that the Respondent has any legitimate right or interest in respect of the disputed domain name owing to the fact that the Respondent has not claimed any such a right or interest and nothing so far could lead the Panel to conclude otherwise. Accordingly, the Panel is entitled to infer that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Based upon the above reasoning, the Panel finds that the Complainant has legal rights and legitimate interests in connection to the disputed domain name. In contrast, the Panel does not see any chance for the Respondent to claim any of such a right or legitimate interest regarding the disputed domain name. Therefore, the Panel thinks that the Complainant meets the second requirement as set forth under the Policy.

Bad Faith

The Complainant also needs to establish the Respondent's bad faith as set forth in the Paragraph 4(a)(iii) of the Policy. Under Paragraph 4(b) of the Policy, the following circumstances in particular shall be considered as evidence of the registration and use of a domain name in bad faith:

- "(i) Circumstances indicating that you have registered or you have 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 trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) You have 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, provided that you have engaged in a pattern of such conduct; or
- (iii) You have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (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 alleges that, the Respondent knew the Complainant's mark "NVIDIA" and the sole purpose of registration of Disputed Domain Name was to resell it for financial gain. So the Respondent registered the disputed domain name out of bad faith.

However the Respondent fails to submit any defense.

The panel notices that the evidence provided by Complainant revealed that the Respondent said he is an investor and he sold the Disputed Domain name to the Complainant for a price of US\$56,000, which in fact much exceeds the out-of-pocket costs in registering and maintaining the Disputed Domain Name. Since the Complainant provides the relevant emails to prove the above facts while the Respondent has not filed any response to deny this, the Panel holds that the Complainant's statement on the Respondent's offer of high price for sale to the Complainant is true.

Meanwhile, based on the Complainant's evidence and statement that the Disputed Domain has not been used after its registration. Since the Respondent has not raised any response or evidence to deny this, the panel is of the view that it is a fact, which may help prove that the Respondent has no good faith purpose in registering and using this domain.

Therefore, it is obvious that the evidence adduced by the Complainant has shown that the registration and use of the dispute domain name by the Respondent is caught by the circumstance as set out in 4 (b)(i).

Based on the above reasoning, the Panel comes to the conclusion that the Complainant has established the criteria of bad faith, thus meeting the third requirement under the relevant articles of the Policy.

Based on all the above findings and comments, the Panel rules that the Complainant fulfills all conditions provided in Paragraph 4(a)(i)(ii) (iii) of the Policy, hence its claims shall be held.

5. 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 "nvidia.mobi" is confusingly similar to the

Complainant's registered trademark "NVIDIA"; and

b) that the Respondent has no right or legitimate interest with regard to the disputed domain name; and

c) that the domain name was registered and subsequently used in bad faith.

As such, the Panel requires that the registration of the domain name "nvidia.mobi" be transferred to the Complainant.

Panelist: Gao Lulin

-

Dated: November 12, 2007