



## ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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### Decision Submission

English Print

Decision ID	DE-0800146
Case ID	HK-0700150
Disputed Domain Name	www.desciclopedia.org
Case Administrator	Dennis CAI
Submitted By	Jeffrey Elkinson
Participated Panelist	Jeffrey Elkinson
Date of Decision	07-08-2008

### The Parties Information

<b>Claimant</b>	Carl Austin Bennett
<b>Respondent</b>	Domain Park Limited

### Procedural History

On the 21st December 2007, the Complainant, Carl Austin Bennett, submitted a complaint to the Asian Domain Name Dispute Resolution Centre (ADNDRC), and chose the Hong Kong Office of the ADNDRC to administer the domain name dispute proceedings referred to in the Complaint. The Complaint is made and will be dealt with pursuant to the Rules for the Uniform Domain Name Dispute Resolution Policy ( “The Rules” ), the Policy being the Uniform Domain Name Dispute Resolution Policy as approved by ICANN on the 24th October 1999 ( “the Policy” ), together with the Supplemental Rules in effect as of the 28th February 2002. The requisite administrative fee having been paid, the Respondent was notified on the 28th April 2008 and Respondent was given 20 calendar days from that date to submit a response to the Complaint in accordance with the Rules and Supplemental Rules referred to above.

A Response was received on the 30th April 2008. Both parties were satisfied to have one Panelist deal with the matter and the parties having been notified that I had been appointed and after I had confirmed my independence and impartiality in respect of this matter, I find that the Panel has been properly constituted and appointed in accordance with the Rules referred to above and note that I have not received any requests from either Complainant or Respondent regarding further submissions, waivers or extensions of deadlines.

### Factual Background

#### For Claimant

(Refer to the Parties' Contentions)

#### For Respondent

(Refer to the Parties' Contentions)

### Parties' Contentions

#### Claimant

The Complainant's position is that the disputed domain name has been registered in bad faith and in contravention of trademarks and usage that the Complaint has had. Complainant says that the desciclopédia name has been in operation since February 2006 and says that it is estimated by alexa.com to be one of the three hundred most popular sites in Brazil and which reaches an audience worldwide. Complainant says that in respect of the named desciclopédia, the application for a trademark was filed on the 11th October 2007 and formalized on the 5th November 2007 and has been used since the 8th February 2006. Complainant says that it has used a related domain name on "uncyclopedia" since the 23rd January 2006 and that a trademark was formalized on the 23rd August 2006 in respect of this name.

Complainant says that Respondent is infringing upon the trademarks in order to attract web traffic intended for his legitimate website and that Respondent is directing users to a series of paper click key word "advertisements" using the disputed domain name website.

Complainant states that the dispute domain name has been registered in bad faith and in contravention of its trademarks and that there has been bad faith on the part of Respondent which Complainant says is evidenced by registration of a name with the intent to sell it to the Complainant or a competitor. Complainant refers to a listing offering the disputed domain name for sale at an undisclosed price. Complainant further says that Respondent has a long history of this type of conduct.

### **Respondent**

Respondent says that it had no knowledge of any existing mark and that the trademark had been filed more than six months after the registration of the disputed domain name. Respondent says that the contents of the parked pages does not violate the existing trademark and that the domain is parked pending development and that they had never approached Claimant or offered the domain for sale albeit that they accept the parking company has an enquiry form stating that the domain "may be for sale."

### **Findings**

I find that:-

- (i) The disputed domain name which was registered by the Respondent is identical and confusingly similar to the trademark or service in which the Complainant has rights;
- (ii) The Respondent has failed to demonstrate any right or legitimate interest in respect of the disputed domain name.
- (iii) The disputed domain name has been registered and used in bad faith by the Respondent.

### **Identical / Confusingly Similar**

The Complainant has provided sufficient evidence of its right in the mark desciclopédia in providing the documentation relating to the Canadian trademark data from the Canadian Trademarks Database, a Canadian government run database. I find that the domain name registered by the Respondent is identical and confusingly similar.

### **Rights and Legitimate Interests**

Respondent has accepted that domain is parked pending development and Respondent does not take issue with the nature of the content alleged by Complainant save to say that it does not violate the existing trademark.

### **Bad Faith**

Given what I have set out above, I am satisfied that there is bad faith on the part of the Respondent in maintaining a domain name in the face of there being an existing website using the disputed name, albeit .com. It clearly is in breach of Complainant's registered rights in the name.

### **Status**

www.desciclopedia.org

Domain Name Transfer

**Decision**

I conclude that the disputed domain name "desciclopédia.org" is effectively identical to the mark used by the Complainant in the course of its business, that the Respondent has no rights or legitimate interests in respect of the domain name and that the disputed domain name has been registered and used in bad faith. Therefore, pursuant to paragraph 4(i) of the Policy, I hereby order that the Registration of the domain name "desciclopedia.org" be transferred to the Complainant, Carl Austin Bennett.  
DATED this 28th day of June, 2008.

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JEFFREY P. ELKINSON  
PANELIST

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