



# ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

— A charitable institution limited by guarantee registered in Hong Kong

(Hong Kong Office)

## ADMINISTRATIVE PANEL DECISION

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<b>Case No.</b>	HK-1100364
<b>Complainant:</b>	John Cassegrain S.A.S.
<b>Respondent :</b>	Martin Eriko

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### 1. The Parties and Contested Domain Name

The Complainant is Jean Cassegrain S.A.S., of 12, Rue Saint - Florentin, 75001 Paris, France, represented by Reed Smith Richards Butler, of 20/F Alexandra House, 18 Chater Road, Central Hong Kong..

The Respondent is Martin Eriko, of Beijing, Shanghai, Shanghai 100010, China.

The domain name at issue is <mylongchamp.com>, registered by the Respondent with GoDaddy.com, Inc., of 14455 North Hayden Rd., Suite 219, Scottsdale, AZ 85260, United States of America.

### 2. Procedural History

The Complaint was submitted in English to the Asian Domain Name Dispute Resolution Centre (the "Centre") on May 20, 2011. The Complaint is submitted in accordance with the Uniform Domain Name Dispute Resolution Policy (the "Policy") adopted by the Internet Corporation for Assigned Names and Numbers (ICANN); the Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "Rules") approved by ICANN; and the current Supplemental Rules of the Centre.

On May 23, 2011 the Centre requested the registrar, GoDaddy.com, Inc., to provide verification of the registrant details. On May 25, 2011, GoDaddy.com, Inc., replied confirming the registrant name, address and email address of record and confirming that the language of the registration agreement is English.

On June 3, 2011, Notification of Commencement of Proceedings was transmitted to the email address provided by the Respondent. Instructions on how to submit a Response were provided and the final date for the receipt of a Response was stated to be June 23, 2011.

On June 28, 2011 the Respondent was notified by email at the address of record that no Response had been received by the due date.

On July 12, 2011, Dr. Clive Trotman, having confirmed his independence and impartiality in this dispute, was appointed sole Panelist.

### **3. Factual background**

According to the Complainant, it is in the business of luxury fashion products, such as handbags and footwear. Its history dates back to 1948 and it has had a presence in the Far East since 1979 when it established its first shop in Hong Kong. The Complainant has 130 stores worldwide under the LONGCHAMP trademark and has been widely advertised in fashion magazines internationally. World wide sales are in the order of 3.5 billion HKD annually.

The Complainant is the owner of trademarks registered in the Peoples's Republic of China, being the stated domicile of the Respondent, including the following:

LONGCHAMP, registration No. 7103276, registration date October 14, 2010, class 9;

LONGCHAMP, registration No. 7103275, registration date July 7, 2007, class 14;

LONGCHAMP, registration No. 7103274, registration date July 7, 2007, class 16;

LONGCHAMP, registration No. 7103273, registration date June 13, 2010, class 19;

LONGCHAMP, registration No. 7103272, registration date October 7, 2010, class 25;

LONGCHAMP, registration No. 7103271, registration date August 28, 2010, class 35;

LONGCHAMP, registration No. G765750, registration date August 22, 2001, class 38, 42;

LONGCHAMP and device, registration No. 242938, registration date January 30, 1986, class 3;

LONGCHAMP and device, registration No. 552582, registration date May 20, 1991, class 9;

LONGCHAMP and device, registration No. 595335, registration date May 20, 1992, class 9;

LONGCHAMP and device, registration No. 242937, registration date January 30, 1986, class 14;

LONGCHAMP and device, registration No. 242936, registration date January 30, 1986, class 16;

LONGCHAMP and device, registration No. 178850, registration date June 15, 1983, class 18;

LONGCHAMP and device, registration No. 178847, registration date June 15, 1983, class 24;

LONGCHAMP and device, registration No. 178848, registration date June 15, 1983, class 25;

LONGCHAMP and device, registration No. 242939, registration date January 30, 1986, class 34.

The Complainant has also registered its trademarks in other countries including the European Community, France, Sweden, Andorra, United Kingdom, Denmark and Norway.

The Complainant is the owner of domain names including <longchamp.com> (created March 24, 1999), <longchamp.fr>, <longchamp.com.hk>, <longchamp.hk>, <longchamp.co.uk> and many others.

No factual information is available about the Respondent except for the registrant details of record.

The disputed domain name was apparently registered on February 14, 2011.

#### **4. Parties' Contentions**

##### **A. Complainant**

The Complainant's contentions may be summarized as follows:

The Complainant contends that it is the owner of and has rights in the registered trademarks LONGCHAMPS and LONGCHAMPS with device listed in Section 3 above.

The Complainant contends that the disputed domain name is confusingly similar to its trademarked name. The domain level designation ".com" is a technicality and of no consequence in the determination of confusing similarity. The Complainant's trademark is well-known and well advertised. The prefix "my" added to the trademark LONGCHAMPS in order to create the disputed domain name is not distinguishing and does not avoid confusing similarity with the trademark.

The Complainant further contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not affiliated with the Complainant, is not a licensee of the Complainant and is not authorized by the Complainant to use the trademark LONGCHAMP.

The Respondent's use of the disputed domain name is through a website that features the Complainant's trademark and attempts to portray the website as an authorized LONGCHAMP retail outlet, which it is not. Goods such as bags resembling the Complainant's products are offered at unrealistically low prices and are counterfeit. Thus the Respondent's use of the disputed domain name cannot be legitimate.

The Complainant further contends that the disputed domain name was registered and is being used in bad faith. Its use for the offering of counterfeit LONGCHAMP bags suggests registration in bad faith and demonstrates that the Respondent has attempted to benefit unfairly from the reputation of the Complainant's trademark. The Respondent has created the likelihood of confusion between the disputed domain name and the

Complainant's trademark as to the source, sponsorship, affiliation or endorsement of the corresponding website.

The Complainant requests the Panel to order the transfer of the disputed domain name to the Complainant.

## **B. Respondent**

The Respondent has not replied to the Complainant's contentions.

## **5. Findings**

Paragraph 1 of the Rules states: "Respondent means the holder of a domain-name registration against which a complaint is initiated". Paragraph 2 of the Policy imposes upon the registrant an on-going contractual obligation to ensure that statements in the Registration Agreement are complete and accurate. The Panel is satisfied that the registrant in this case is the Respondent and the Panel may reasonably conclude that the physical address provided by the Respondent is incomplete, inaccurate and incapable of facilitating physical delivery. It is noted that most or all emails sent by the Centre to the Respondent have received a response of apparent non-delivery. The Panel is satisfied that the Centre has discharged its obligations under paragraph 2 of the Rules in sending written notice of the dispute to the electronic address provided by Respondent.

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

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

### **A) Identical / Confusingly Similar**

The disputed domain name is <mylongchamps.com>. The gTLD designation ".com" is normally of no consequence in the determination of confusing similarity under the Policy and will be disregarded. What remains may be read as "my Longchamps", in which the Complainant's trademark LONGCHAMPS features prominently together with the prefix word "my", which is commonly used for Internet and website naming purposes. The Panel finds that the prefix "my" creates no distinction and that the disputed domain name is confusingly similar to the Complainant's trademark within the meaning of paragraph 4(a)(i) of the Policy.

### **B) Rights and Legitimate Interests**

The Complainant has asserted that it has not licensed or authorised the Respondent to use the Complainant's trademark in any way. The Respondent has not availed himself of the opportunity to rebut the Complainant's *prima facie* case in the terms of paragraph 4(c) of the Policy or otherwise. The Panel finds no evidence whereby the Respondent could reasonably claim that his use of the disputed domain name for a supply of goods or

services could be *bona fide*, since according to the evidence the corresponding website trades on the well-known trademark of the Complainant. There is no evidence to suggest that the Respondent has been commonly known by the disputed domain name or has made a non-commercial or fair use of it. The Panel finds for the Complainant in the terms of paragraph 4(a)(ii) of the Policy.

### **C) Bad Faith**

The Complainant must prove under paragraph 4(a)(iii) of the Policy that the disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy lists four illustrative alternative circumstances, without limitation, that shall be evidence of the registration and use of a domain name in bad faith. The fourth is pertinent to the present case:

“(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 website or location.”

According to the evidence, including a screenshot of the website, the Respondent has established a website corresponding to the disputed domain name displaying the claim “Longchamp Paris” for the purpose of trade in products such as bags that are disclaimed by the Complainant as counterfeit. The Respondent would rely for his business on the attraction of Internet visitors to the corresponding website through its appearance in search engine results, which in turn would succeed because of the Respondent’s appropriation of the Complainant’s trademark and the initial interest confusion of the visitor. On the balance of probabilities, it is found not to be realistically plausible that the Respondent has established this activity for any other purpose than the intention of commercial gain. Thus the Respondent is found by the Panel to have used the disputed domain name for commercial gain to attract visitors to his on line location by confusion within the meaning of paragraph 4(b)(iv) of the Policy, constituting bad faith use, and to have registered the disputed domain name in bad faith for that purpose.

## **6. Decision**

For all the reasons stated above and in accordance with paragraph 4(i) of the Policy and paragraph 15 of the Rules, the Panel orders the transfer of the disputed domain name <mylongchamp.com> to the Complainant.



Dr. Clive Trotman  
Sole Panelist

Dated: July 14, 2011