



Panelist's Decision

Case Number: HK-1100412 <rossmax.com>

Complainant: Rosssmax International Ltd.

Respondent: Alex Lee

Disputed Domain Name: rossmax.com

I. Complainant's submission and Respondent's response

1. The Complainant, Rosssmax International Ltd., is a Taiwanese corporation registered at 12F., No. 189, Kang Chien Rd., Taipei 114, Taiwan. The Respondent is Alex Lee, whose registered address is 7F-2, 228, Fu-Shing N. Rd., Taipei 104, Taiwan, and whose e-mail address is alex@e01.net.
2. On December 16, 2011, the Complainant submitted its complaint to the Hong Kong Office of the Asian Domain Name Dispute Resolution Center ("ADNDRC") in accordance with the Internet Corporation for Assigned Names and Numbers ("ICANN") Uniform Domain Name Dispute Resolution Policy ("Policy"), the Rules for ICANN Uniform Domain Name Dispute Resolution Policy ("Rules") and the ADNDRC Domain Name Dispute Supplemental Rules ("Supplemental Rules").

3. On December 21, 2011, ADNDRC sent an e-mail to the registrar of the disputed domain name <rossmax.com>, Spot Domain LLC, to confirm whether <rossmax.com> is registered with it and requested it to provide detailed information of the Registrant, Alex Lee. On December 22, 2011, Spot Domain LLC confirmed that <rossmax.com> is registered with it and provided Alex Lee's address, telephone number, fax number, e-mail address and other information to the ADNDRC.
4. The ADNDRC notified the Respondent, Alex Lee, of the complaint through e-mail on December 28, 2011 and requested the Respondent to submit a response within 20 days of his receipt of the e-mail, i.e. by January 17, 2012. On January 18, 2012, since the Respondent failed to submit a response within the time limit, the ADNDRC sent an e-mail to both parties to notify that it would appoint a panelist to arbitrate this matter shortly.
5. The ADNDRC appointed Nigel N. T. Li as the sole panelist for this matter ("Panelist") and provided the Panelist with the complaint and relevant annexure on January 26, 2012.
6. On February 7, 2012, the Panelist again requested the Respondent to submit its response through the ADNDRC within 20 days of his receipt of the second request for response and emphasized that the panelist's decision would be rendered shortly if no response was received. The Respondent replied that: "I am no longer the registrant of the domain name. rossmax.com expired at 01/07/2012." via e-mail on the same day and has submitted no other substantive response as of today.

II. Facts

(I) Facts claimed by the Complainant

1. The Complainant was founded in Taiwan in 1988, and is one of the largest companies specializing in manufacturing and selling blood pressure monitors and other home healthcare equipment in the world. In 1994, the Complainant received FDA approval to sell its products in the U.S.A. and has expanded counting Rossmax Japan, Rossmax Shanghai and Rossmax Innotek as subsidiaries in its group. In addition, the Complainant owns leading health and beauty chain stores in Taiwan and its initial public offering on the Taiwan Stock Exchange was approved in 2003. According to the 2005 Frost & Sullivan market survey, the Complainant ranked the world's second-largest manufacturer in the blood pressure management industry and owned a 12.9% share of the global market with annual revenue close to USD 30 million.
2. "Rossmax" is a combination of English characters that has no special meaning. It was created by the Complainant as its trade name to show the origin of its products and the difference between its products and those of its competitors. In order to protect its brand, the Complainant registered "Rossmax" as its trademark in Taiwan in 1997 and the trademark registration continues to be effective as of today. The "Rossmax" trademark was also registered by the Complainant in China in 2001 and in 21 other countries, such as Armania, Hong Kong, Switzerland, Morocco, Myanmar, Lebanon, Turkey, Iraq, Iran, India,

United Arab Emirates, Jordan, Thailand, Ukraine, Peru, Malaysia, Philippines, Mexico, E.U. and U.S.A.

3. The Complainant has strived to build brand awareness through regular worldwide expositions, local advertisements and media, TV commercials, road shows, and running special promotions in close collaboration with local distributors around the world. The Complainant's registered trademark "Rossmax" and its products are often discussed by consumers on the Internet on public forums and blogs. Both in 2009 and 2010, the Complainant's marketing budget was close to USD one million.
4. However, the Respondent has never used <rossmax.com> in connection with a bona fide offering of goods or services. Instead, the Respondent has used <rossmax.com> only as a "parked website" for other commercial websites. In addition, the Respondent has since the website's registration date made many attempts, through telephone and e-mail, to offer to sell <rossmax.com> to the Complainant. The Respondent has further offered <rossmax.com> for sale on a domain name transaction website, which is open for public bidding.
5. The Respondent has registered <rossmax.com> primarily for the purpose of selling or otherwise transferring its registration to the Complainant or competitors of the Complainant for a valuable consideration in excess of the Respondent's out-of-pocket costs directly related to <rossmax.com>.

(II) Facts claimed by the Respondent

No substantive response has been submitted by the Respondent.

(III) Facts known to the Panelist

1. According to the WHOIS's records, the Respondent registered the disputed domain name with Spot Domain LCC on January 4, 2004. The details are listed on the following website: http://www.domainsite.com/whois_result?type=domain&domain_name=rossmax.com&submit=Whois+Search (last visited March 3, 2012).
2. The Panelist has visited the following domain name transaction website in relation to the Respondent's offer of <rossmax.com> for sale, which is open for public bidding: <http://sedo.co.uk/search/details.php4?domain=rossmax.com&trackingRequestId=21034835&tracked=&partnerid=&language=e> (last visited March 3, 2012).
3. The disputed domain name was set to expire on January 7, 2012. However, to ensure that the disputed domain name will not expire during the coming proceedings, Spot Domain LCC has renewed it and the new expiration date is January 7, 2013.

III. Legal Grounds

(I) Complainant's legal grounds

1. The disputed domain name, <rossmax.com>, is identical or confusingly similar to the trademark in which the Complainant has

rights:

“Rossmax” is a combination of English characters that has no special meaning. It was created by the Complainant as its trade name to show the origin of its products and the difference between its products and those of its competitors. Since “rossmax” has no special meaning and is only generally used in reference to the Complainant, use of “rossmax” in the disputed domain name may therefore very likely cause confused association with the Complainant and the products and services it provides. The incorporation of the entirety of a mark in which the Complainant has rights amounts to confusing similarity between the mark and the disputed domain name.

2. The Respondent has no rights or legitimate interests in respect of <rossmax.com>:

The Respondent, Alex Lee, is an individual who has no business connection with the Complainant. He has never been authorized or licensed to use the Complainant’s trademark “Rossmax” and register it as part of the disputed domain name. The registration of the disputed domain name by the Respondent constitutes illegal infringement of the registered trademark in which the Complainant has rights.

3. The disputed domain name has been registered and used by the Respondent in bad faith:

There is no evidence to demonstrate that the Respondent registered the disputed domain name in connection with a bona fide offering of goods or services. The Respondent is not making a legitimate non-commercial or

fair use of the disputed domain name. Instead, the Respondent registered <rossmax.com> simply for the purpose of selling or otherwise transferring its registration to the Complainant or competitors of the Complainant for a valuable consideration in excess of the Respondent's out-of-pocket costs directly related to <rossmax.com>. Furthermore, the Respondent registered <rossmax.com> in order to prevent the owner of the trademark or service mark from using the mark in a corresponding domain name. By using <rossmax.com>, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website 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 the Respondent's website or location or of a product or service on the Respondent's website or location.

4. The disputed domain name, <rossmax.com>, is identical or confusingly similar to the trademark in which the Complainant has rights, the Respondent has no rights or legitimate interests in respect of <rossmax.com>, and <rossmax.com> has been registered and used by the Respondent in bad faith. For all the foregoing reasons and in accordance with Article 4 of the Policy, the Complainant requests the Panelist to order that the disputed domain name, <rossmax.com>, be transferred to the Complainant.

(II) Respondent's legal grounds

No substantive response has been submitted by the Respondent.

IV. The reasons for the Panelist's decision

(I) Procedural Issues

1. Before addressing the substantive issues of this matter, the Panelist first determines whether to decide the dispute solely on the basis of the complaint, while the Respondent has failed to submit any response.

2. Article 1 of the Policy reads:

“Proceedings under Paragraph 4 of this Policy will be conducted according to the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules of Procedure"), which are available at <http://www.icann.org/en/dndr/udrp/uniform-rules.htm>, and the selected administrative-dispute-resolution service provider's supplemental rules.”

According to Article 5 of the Rules, the respondent shall submit a response within twenty (20) calendar days of the date of commencement of the administrative proceeding. However, if the respondent does not submit a response, in the absence of exceptional circumstances, the Panelist shall decide the dispute on the basis of the complaint. Furthermore, Article 14 of the Rules indicates that in the event that a Party, in the absence of exceptional circumstances, does not comply with any of the time periods established by these Rules or the Panelist, the Panelist shall proceed to a decision on the complaint.

3. In this case, ADNDRC notified the Respondent of his right to submit a response to the complaint within a time limit on December 28, 2011 and February 7, 2012 but the Respondent has not submitted any response as of today. In sum, according to Articles 5 and 14 of the Rules, the Panelist shall render a decision on the basis of the complaint, as well as the fact that the Respondent has failed to submit or advance

any response.

(II) Substantive Issues

Article 4(a) of the Policy reads:

You are required to submit to a mandatory administrative proceeding in the event that a third party (a "complainant") asserts to the applicable Provider, in compliance with the Rules of Procedure, that

(i) your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

(ii) you have no rights or legitimate interests in respect of the domain name; and

(iii) your domain name has been registered and is being used in bad faith.

In the administrative proceeding, the complainant must prove that each of these three elements are present.

On the basis of the complainant, the annexes attached and Article 4 of the Policy, the Panelist hereby decides:

1. The disputed domain name, <rossmax.com>, is identical to the trademark in which the Complainant has rights:

- (1) According to the complaint, the Complainant was founded in Taiwan in 1988, and is one of the largest companies specializing in manufacturing and selling blood pressure monitors and other home healthcare equipment in the world. In 1994, the Complainant received FDA approval to sell its products in the U.S.A. and has expanded counting Rossmax Japan, Rossmax Shanghai and Rossmax Innotek as subsidiaries in its group. In addition, the Complainant

owns leading health and beauty chain stores in Taiwan and its initial public offering on the Taiwan Stock Exchange was approved in 2003. According to the 2005 Frost & Sullivan market survey, the Complainant ranked the world's second-largest manufacturer in the blood pressure management industry and owned a 12.9% share of the global market with annual revenue close to USD 30 million.

- (2) "Rossmax" is a combination of English characters that has no special meaning. It was created by the Complainant as its trade name to show the origin of its products and the difference between its products and those of its competitors. In order to protect its brand, the Complainant registered "Rossmax" as its trademark in Taiwan in 1997 and the trademark registration continues to be effective as of today. The "Rossmax" trademark was also registered by the Complainant in China in 2001 and in 21 other countries, such as Armania, Hong Kong, Switzerland, Morocco, Myanmar, Lebanon, Turkey, Iraq, Iran, India, United Arab Emirates, Jordan, Thailand, Ukraine, Peru, Malaysia, Philippines, Mexico, E.U. and U.S.A. The Complainant owns trademark rights to "Rossmax" in various jurisdictions worldwide.
- (3) In making an enquiry as to whether a domain name is identical or confusingly similar to a trademark, the domain extension, <.com> in this case, should be disregarded (Rohde & Schwarz GmbH & Co. KG v. Pertshire Marketing Ltd., WIOP Case No. D2006 0762; Wistron Corporation v. Zhongshang Zhaojun Du, HK- 0900264). The most distinctive part of the disputed domain name, "rossmax," is identical with the registered trademark owned by the Complainant.

(4) Since “rossmax” has no special meaning and is only generally used in reference to the Complainant, use of “rossmax” in the disputed domain name would therefore very likely cause confused association of the disputed domain name with the Complainant and the products and services it provides. In sum, the disputed domain name, <rossmax.com>, is identical to the trademark in which the Complainant has rights in satisfaction of paragraph 4(a)(i) of the Policy.

2. The Respondent has no rights or legitimate interests in respect of

<rossmax.com>:

(1) Article 4(c) of the Policy reads:

Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii):

(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

(2) Pursuant to Article 4(c) of the Policy, the Respondent, Alex Lee, shall demonstrate his rights or legitimate interests to the disputed domain name for purposes of Paragraph 4(a)(ii). The evidence shows that the Complainant registered “Rossmax” as its trademark in Taiwan in 1997

and in 2001 began registering the trademark in other countries. But the Respondent registered the disputed domain name in 2004, which is after the Complainant's registration of the trademark. Furthermore, the Respondent has been requested by the Panelist to submit his substantive response in the specified time limit but has failed to do so. There is no evidence showing that he has any business connection with the Complainant or is an employee/agent of the Complainant, a distributor of the Complainant's products or services, or authorized or licensed to use the Complainant's trademark "Rossmax" and register it as part of the disputed domain name. In sum, the Panelist has no ground to find that the Respondent has any rights or legitimate interests to the disputed domain name, which is in satisfaction of paragraph 4(a)(ii) of the Policy.

3. The disputed domain name has been registered and used by the Respondent in bad faith:

(1) Article 4(b) of the Policy reads:

For the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be 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.

- (2) The Complainant claims that the Respondent has since the website's registration date made many attempts, through telephone and e-mail, to offer to sell <rossmax.com> to the Complainant. The Respondent has further offered <rossmax.com> for sale on a domain name transaction website, which is open for public bidding: <http://sedo.co.uk/search/details.php4?domain=rossmax.com&trackingRequestId=21034835&tracked=&partnerid=&language=e> (last visited March 3, 2012). Although the Respondent has been requested to submit his response within the specified time limit, he has failed to submit any substantive statement to negate the claims stated in the complaint. Meantime, the evidence in front of the Panelist shows that the Respondent has registered <rossmax.com> primarily for the purpose of selling or otherwise transferring its registration to the Complainant or competitors of the Complainant for a valuable consideration in excess of the Respondent's out-of-pocket costs directly related to <rossmax.com>. The disputed domain name has been registered and used by the Respondent in bad faith, in satisfaction

of paragraph 4(b)(i) of the Policy.

- (3) Furthermore, the Complainant's search using the Respondent's contact address and telephone number on the WHOIS database for the disputed domain name demonstrates that there are two other registrants with the same contact address and telephone number as the Respondent, namely, Alia Li and Alex Michaels. Whether the registrants are one person, two persons or three persons, by using the same contact address and telephone number, they are not considered entirely independent or unrelated registrants. The Respondent has failed to disprove the Complainant's claim that the Respondent used the various contact information to register a large number of domain names, some of which are trademarks or service marks of famous business entities in Taiwan or around the world, and offered to sell these domain names for profits. Above related facts lead to the conclusion that the motivation behind the Respondent's conduct includes preventing trademark owners from reflecting their trademarks in corresponding domain names, in satisfaction of paragraph 4(b)(ii) of the Policy.
- (4) The Complainant claims that the Respondent has never used the disputed domain name in connection with a bona fide offering of goods or services on the Internet but has used the disputed domain name only as a parked advertising website. By clicking on the online advertisements shown on the Respondent's website, potential consumers would be directed to other commercial websites, including those of Microlife WatchBP and Omron, which also manufacture and sell similar blood pressure monitors, heart monitors and other home healthcare medical equipment. In return, the

Respondent may receive commercial gains for the revenue generated by hosting the commercial advertisements. As the Respondent has failed to submit any evidence to negate the above claims, it can be concluded that the Respondent, by using the dispute domain name, has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website or other on line location, by creating a likelihood of confusion with the Complainant's mark as to the source of a product on the Respondent's website, in satisfaction of paragraph 4(b)(iii) of the Policy.

- (5) In sum, the disputed domain name has been registered and used by the Respondent in bad faith as defined under paragraph 4(a)(iii) of the Policy.

V. The conclusion of Panelist's decision

The disputed domain name, <rossmax.com>, is identical to the trademark in which the Complainant has rights, the Respondent has no rights or legitimate interests in respect of <rossmax.com>, and <rossmax.com> has been registered and used by the Respondent in bad faith. For all the foregoing reasons and in accordance with Article 4 of the Policy, the Panelist hereby orders that the disputed domain name, <rossmax.com>, be transferred to the Complainant.

Sole Panelist: Nigel N. T. Li

Date: March 9, 2012

