



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

— A charitable institution limited by guarantee registered in Hong Kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1200438
Complainant:	3M Company
Respondent:	beijingguanglanxingkejijouxiangongsi, nizhongbiao

1. The Parties and Contested Domain Name

The Complainant is 3M Company, a company incorporated in the United States and having its principal place of business at 3M Center, Bldg. 220-9E-01, 2501 Hudson Road, St. Paul, Minnesota 55144, U.S.A., represented by Chang Tsi & Partners, Unit 2508A, Jinmao Tower 88 Century Avenue 200121, P. R. China.

The Respondent is beijingguanglanxingkejijouxiangongsi, nizhongbiao, of Room 505, No. 54, Fengtai Road, Fengtai District, Beijing City and Room 4-301, Hongda Park, Xihongmen Town, Beijing City, respectively (unrepresented).

The contested domain name is <bjs3m.com>, registered with Web Commerce Communications Limited dba WEBNIC.CC, of Lot 2-2, Incubator 1, Technology Park Malaysia, 57000 Kuala Lumpur, Malaysia (“the Registrar”)

2. Procedural History

The Complaint was filed with the Hong Kong office of the Asian Domain Name Dispute Resolution Center (the “Center”) on June 8, 2012. On June 12, 2012 the Center transmitted by email to the Registrar a request for verification in connection with the domain name at issue. That same day the Registrar verified particulars and so the Center was able to satisfy itself that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy”), the Rules of Procedure under the Policy (the “Rules”), and the Center’s Supplemental Rules.

In accordance with the Rules, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on June 21, 2012. In accordance with the Rules, the due date for Response was July 11, 2012.

A Response was not filed and on July 12, 2012, the Respondent was notified of its default under the Policy.

The Center appointed Debrett G. Lyons as sole panelist in this matter on July 26, 2012. The Panel finds that it was properly constituted and has acted impartially in reaching its conclusion.

3. Factual background

A. For Complainant

1. The Complainant is a well known science and technology enterprise which trades globally under the trade mark 3M.
2. In 1984, the Complainant established a subsidiary Chinese trading company, 3M China Ltd.
3. The Complainant holds numerous international trade mark registrations for 3M including Chinese Registration No.: 283503 dated April 10, 1987.
4. The Complainant has not licensed or otherwise permitted the Respondent to use the trade mark or to register or use any domain name incorporating the trade mark.
5. In response to a Cease and Desist Letter issued on behalf of the Complainant, the Respondent acknowledged awareness of the Complainant's business and of the 3M trade mark.
6. The Complainant petitions the Panel to order transfer the contested domain name from the Respondent to the Complainant.

B. For Respondent

7. The Respondent registered the contested domain name on July 17, 2008.
8. The contested domain resolves to a website which sells and offers for sale of 3M labeled products.
9. Ni Zhongbiao claimed in pre-Complaint correspondence between the parties to be the legal representative of the Respondent and claimed that he was a former employee of the Complainant's factory in Guangdong Province.

4. Parties' Contentions

A. Complainant

The Complainant asserts rights in the trade mark 3M and states that the contested domain name is confusingly similar to the trade mark.

The Complainant alleges that the Respondent has no rights or legitimate interests in the contested domain name.

The Complainant alleges that the Respondent registered and used the contested domain name in bad faith.

B. Respondent

Respondent failed to submit a Response in this proceeding.

5. Findings

Paragraph 4(a) of the Policy states 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;
- 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

Paragraph 4(a)(i) of the Policy requires a two-fold enquiry – a threshold investigation into whether a complainant has rights in a trade mark, followed by an assessment of whether the contested domain name is identical or confusingly similar to the trademark.

The Complainant has provided conclusive evidence that it is the owner of valid and subsisting international trademark registrations for 3M. Panel finds that the Complainant has trade mark rights in that name.

The Panel also finds that the contested domain name is confusingly similar to the trade mark. The top-level domain name “.com” can be disregarded for the purposes of comparison (*see State Farm Mut. Auto. Ins. Co. v. Periasami Malain*, FA 705262 (Nat. Arb. Forum June 19, 2006) (“Complainant’s registrations with the United States Patent and Trademark Office of the trademark, STATE FARM, establishes its rights in the STATE FARM mark pursuant to Policy, paragraph 4(a)(i).”) The contested domain name wholly incorporates the Complainant’s trade mark and merely adds the letters “bjs” which would be readily understood by the Chinese public as an abbreviation for the (Pingyin) Chinese pronunciation of “Beijing City”. The Panel finds confusing similarity because it considers it more likely than not that the Chinese public (being a significant part of the internet audience) would perceive the domain name as two terms, “bjs” and “3m” and would draw the inference that there existed a business relationship with the Complainant (*see ADNDRC Case Nos. CN-0800190; CN-1000343; CN-1000344*, in which the panels decided that the challenged domain names <3mzj.com>, <3mfj.com> and <3mdg.com> are confusingly similar to the Complainant’s “3M” trademark.)

Panel finds that the Complainant has established the first limb of the Policy.

B) Rights and Legitimate Interests

Paragraph 4(c) of the Policy states that 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 rights or legitimate interests to a domain name for purposes of paragraph 4(a)(ii) of the Policy:

- (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 trade mark or service mark at issue.

The Complainant need only make out a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, after which the onus shifts to the Respondent to rebut that case by demonstrating those rights or interests (see *Do The Hustle, LLC v. Tropic Web*, D2000-0624 (WIPO Aug. 21, 2000); see also *Hanna-Barbera Prods., Inc. v. Entm't Commentaries*, FA 741828 (Nat. Arb. Forum Aug. 18, 2006); see also *AOL LLC v. Gerberg*, FA 780200 (Nat. Arb. Forum Sept. 25, 2006).

The publicly available WHOIS information identifies Respondent as “**beijingguanglanxingkejiyouxiangongsi, nizhongbiao**” and so there is no *prima facie* evidence that Respondent might be commonly known by the disputed domain name. There is no evidence that Respondent has any trade mark rights and a search of the Chinese national trade mark register made by the Complainant fails to show and such rights. There is no evidence that Complainant has authorized Respondent to use the trademark and Complainant denies any such authorization.

There is no evidence that the disputed domain name has been used in connection with a *bona fide* offering of goods or services prior to notice of the dispute. Complainant provides evidence that the domain name resolves to a website that offers 3M trade marked goods for sale.

The Panel finds that the Complainant has established a *prima facie* case and so the onus shifts to the Respondent to establish a legitimate interest in the domain name. In the absence of a Response, that onus is not rebutted and so Panel finds that the Respondent has no rights or interests and so finds that Complainant has satisfied the second limb of the Policy.

For the sake of completeness, the Panel notes here that the facts, even if proven as part of a timely filed Response, that the Respondent may have once been employed by the Complainant, or that it might be a reseller of Complainant's goods, do not of themselves establish rights or legitimate interests for the purposes of this aspect of the Policy.

C) Bad Faith

Paragraph 4(b) of the Policy sets out the circumstances which shall be evidence of the registration and use of a domain name in bad faith. They are:

- (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 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 your website or location or of a product or service on your website or location.

Paragraphs 4(b)(i)-(iv) of the Policy are all cases of *per se* registration and use in bad faith. It is logical to first consider their possible application to the facts and in that regard the Complainant asserts that the Respondent's actions fall under paragraphs 4(b)(iii) and 4(b)(iv).

The Panel does not find it necessary to address the controversial issue of whether the Respondent can be properly regarded as a "competitor" of the Complainant for the purposes of paragraph 4(b)(iii) since it is manifestly obvious to the Panel that the Respondent's conduct is squarely within paragraph 4(b)(iv).

The Panel finds that the Respondent registered and used the contested domain name in bad faith and so finds that the Complainant has satisfied paragraph 4(a)(iii) of the Policy.

6. Decision

Having established all three of the elements required under the Policy, the Panel decides that relief shall be **GRANTED**. The Panel Order that the domain name <bjs3m.com> be transferred from the Respondent to the Complainant.

Debrett G. Lyons

Panelist

Dated: August 5, 2012