



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-1200446

Complainant: Lee YaoLung

Respondent: Yiqing Liu

Domain Name: beautyleg8.com

I. Parties and Disputed Domain Name

Complainant: Lee YaoLung (李耀龍)

Address: 12F.-7, No.123, Sec. 2, Sichuan Rd.,
Banqiao Dist., New Taipei City 220, Taiwan (R.O.C.)

Respondent: Yiqing Liu

Address: Qing Road No.92, Changsha, Hunan, 410000 China

Disputed Domain Name: Beautyleg8.com

Domain Name Registrar: eNom Inc.

II. Procedural History

On 5 July 2012, the Complainant submitted a complaint (the *Complaint*) to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (the *ADNDRC HK Office*), in accordance with the *Uniform Domain Name Dispute Resolution Policy* (the *Policy*) adopted by the Internet Corporation for Assigned Names and Numbers (*ICANN*) on 24 August 1999, the *Rules for Uniform Domain Name Dispute Resolution Policy Disputes* (the *Rules*), and *ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy Disputes* (the *ADNDRC Supplemental Rules*).

On 31 July 2012, after ADNDRC HK Office's significant efforts in looking for the correct domain name registrar, eNom.com confirmed that it is registrar of the domain name Beautyleg8.com (*Disputed Domain Name*).

On the same day, ADNDRC HK Office requested the Complainant (i) to correct the identity of the Respondent, (ii) to send a copy of the Complaint to the Domain Name

Registrar, and (iii) to convert the Complaint into English, the same language used by the relevant domain name registration agreement.

On 1 August 2012, the ADNDRC HK Office confirmed the receipt of the Complaint.

On 2 August 2012, the ADNDRC HK Office sent a copy of the Complaint to the Respondent.

On 27 August 2012, ADBDRC HK Office notified the Complainant that the Respondent failed to submit the response within the required period of time.

On 27 August 2012, ADNDRC HK Office appointed Mr. Yang, Xun as the sole panelist and informed the Complainant and the Respondent of the appointment of the panelist, and transferred the case file to the Panel on the same day.

The Panel decides that, in according to Paragraph 11(a) of the Rules, the language of this proceeding is English.

III. Factual Background

The Complainant is an individual named Lee, YaoLung. He asserts that he is operating a website at www.beautyleg.com.

The Respondent is YiQing Liu. According to WHOIS database and the confirmation from the Domain Name Registrar, the Respondent registered the Disputed Domain Name (beautyleg8.com) on 7 December 2011.

IV. Parties' Contentions

The Complainant

The Complainant claims that:

- (1) he registered and maintains a trademark "BEAUTYLEG" (the *Relevant Trademark*);
- (2) he also operates a website at www.beautyleg.com (*Complainant Website*), which offers photos and movies for a fee;
- (3) he has no connection with the Disputed Domain Name;
- (4) the Respondent registered and uses the Disputed Domain Name for a website at www.beautyleg8.com (*Respondent Website*) which offers photos and movies for free;
- (5) the photos and movies displayed at the Respondent Website were "stolen" from the Complainant Website;
- (6) the operation of the Respondent Website harms Complainant's interest.

The Respondent

The Respondent failed to submit a Response within the required period.

V. Findings

According to paragraph 4(a) of the Policy, a complainant must prove ALL of the following three conditions to establish its case:

Condition (1): the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

Condition (2): the respondent has no right or legitimate interest in respect of the disputed domain name; and

Condition (3): the respondent registered and is using the disputed domain name in bad faith.

Identity or Confusing Similarity to Trademark

Pursuant to the paragraph 4(a)(i) of the Policy, the first condition for a complainant to claim for the transfer of the Disputed Domain Name is that such Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the complainant has rights. In line with this condition, a complainant must prove: (i) it owns a trademark or service mark; and (ii) the disputed domain name is identical or confusingly similar to such trademark or service mark.

(1) Ownership of Trademark

The Complainant claims that he owns the Relevant Trademark “BEAUTYLEG.” This is supported by a scanned copy of the trademark registration certificate issued by the Taiwan Intellectual Property Bureau. This certificate indicates that the Complainant registered the Relevant Trademark with respect to e-commerce on 16 October 2008. The Panel concludes, based on the evidence on file, that the Complainant owns the Relevant Trademark.

(2) Identity or Confusing Similarity

The Complainant claims that Disputed Domain Name infringes the Relevant Trademark. The Panel does not have the authority to determine whether the Disputed Domain Name is infringing. The right question should be whether the Disputed Domain Name is identical or confusingly similar to the Relevant Trademark.

The Panel notices that the distinctive part of the Disputed Domain Name is “BeautyLeg8”, which consists of one digit (“8”) and the word “BeautyLeg.”. The word part of the Disputed Domain Name has the same alphabet combination as the Relevant Trademark. The Panel agrees with the Complainant that, in cyber space, it is customary to use a single digit or alphabet letter to stand for a word (e.g., “4” stands for “for” and 2 stands for “to”) and, as such, that the digit “8” may be used to stand for the English word “Bar.” As such, it is a fair interpretation that the Disputed Domain Name stands for “Beauty Leg themed bar.” Consequently, the digit “8” unlikely adds any distinctiveness to the Disputed Domain Name. The Panel is of the view that the Disputed Domain Name

is confusingly similar to the Relevant Trademark.

In light of the above, the Panel concludes that the Complainant has the right in the Relevant Trademark to which the Disputed Domain Name is confusingly similar. Thus, Condition (1) under paragraph 4(a) of the Policy is satisfied.

Lack of Right or Legitimate Interest of Respondents

Pursuant to paragraph 4(a)(ii) of the Policy, the second condition for a complainant to claim for the transfer of the disputed domain name is that the respondent has no right or legitimate interest in the disputed domain name. Although the Respondent failed to respond to the Complaint or raise any evidence to defend itself, the Panel is not in a position to decide in favor of the Complainant.

(1) The Complainant Fails to Raise Sufficient Evidence

It is well established in all modern countries that, as a general rule in civil cases, he who asserts a wrong has been committed must prove it. The Policy gives a complainant a more efficient and speedier procedure than court litigations to claim back a domain name which a bad faith third party hi-jacked. We cannot see why a complainant should undertake less burden of proof than it would have in court litigations. In other words, the Panel believes that, a complainant must, first and preliminarily, prove the conditions set out in paragraph 4(a) of the Policy, including the respondent's lack of right or legitimate interest in the relevant domain name.

The Panel understands that it is difficult to completely prove a negative assertion. A complainant in a domain name dispute will probably not be able to exclude all possibilities where the respondent may have any right or interest in the disputed domain name. The Policy has never required that the complainant satisfy a "completeness" standard in proving any of the conditions under paragraph 4(a) of the Policy. As a domain name dispute is a civil dispute in nature, the "Preponderance of Evidence" standard should apply. This standard requires, as described in the *Miller v. Administration of Pensions 1947] 2 All ER 372*, that the complainant must prove its assertion "more probably than not."

As a result, if the respondent fails to respond to the complaint or raise any defense, the complainant will likely satisfy the burden of proof by raising whatever "weak" evidence because, based on the available evidence before the panel, there is greater than 50% chance that the complainant's position is true. The typical evidence for proving the lack of right or interest in a disputed domain name include: (i) the distinctive part of the domain name is created by the complainant and the complainant has never assigned it to the respondent; and (ii) a trademark search in the jurisdiction where the respondent is doing its business indicating that the respondent does not own any trademark relevant to the disputed domain name.

However, in this case, the Complainant fails to raise any evidence to prove the Respondent's lack of right or interest. He even fails to assert that the Respondent does not have the right or legitimate interest. Given that neither the Complainant nor the Respondent has made any statement or raised any evidence in relation to this Condition (2) set out in paragraph 4(a)(ii), the Panel has no reason to believe that the Complainant

has greater chance to satisfy this Condition (2) under paragraph 4(a) of the Policy.

(2) Respondent's Possible Interest in the Disputed Domain Name

Moreover, based on the evidence available to the Panel, the Respondent likely has interest in the Disputed Domain Name. The right or legitimate interest in a domain name may rely on factual grounds other than trademark rights and trade name rights. In the *Pinnacle Intellectual Property v. World Wide Export, WIPO Case No. D2005-1211*, the panel found that the respondent was engaged in the business of selling pharmaceutical products and concluded that the name "CanadaMedicineShop" was an apt choice for the respondent's business and that the respondent had accordingly a legitimate interest in the name. In other words, as a general rule, the respondent should be presumed to have legitimate interest in the name which is merely a description of the business in which the respondent is engaged.

The Complainant has provided the Panel a snapshot of the homepage of the Respondent Website. The homepage contains primarily pictures of young women with focuses on their beautiful long legs. It appears to the Panel that the Respondent Website offers information, images, and other contents relating to beauties and their legs. As such, the distinctive part of the Disputed Domain Name is no more than a description of content of the Respondent Website. As the Complainant selects the word "BeautyLeg" to describe the Complainant Website, may the Respondent who offers same or similar contents (as the Complainant does) choose a similar domain name for his own website? In fact, the word "BeautyLeg" is "so obvious a term for [such business] that it is [likely to be] used by Respondent and Complainant in their websites for competing commercial purpose and approximately in the same manner." The Panel finds that the Respondent's use of the word "BeautyLeg" in its descriptive or generic sense is not illegitimate. See *Macro Rafael Sanfilippo v. Estudio Indigo WIPO Case N. D2012-1064*.

In light of the above, the Panel concludes that the Respondent likely has legitimate interest in the Disputed Domain Name and that the Complainant failed to satisfy Condition (2) under paragraph 4(a) of the Policy.

Respondent's Bad Faith

Pursuant to paragraph 4(a)(iii) of the Policy, the third condition for a complainant to claim for the transfer of the disputed domain name is that the respondent registered and is using the domain name in bad faith.

The Policy requires that the complainant satisfy all three conditions under paragraph 4(a) to claim back the disputed domain name. The Complainant failed to establish Respondent's lack of rights and legitimate interests in the disputed domain name and, therefore, the Panel does not need to deal with the bad faith element.

Nevertheless, the Panel would like to take this opportunity to discuss, for future reference for similar issues, the distinction between the (i) "bad faith" in registering or using the disputed domain name (as set in paragraph 4(a)(iii) of the Policy) and (ii) the misbehavior on the relevant website as provided for under other laws.

The Policy grants the panel the authority only to determine domain name cases in

accordance only with the Policy (and the supplemental rules enacted thereunder). The panel has no authority to determine any other issues, such as intellectual property infringement. As a result, with respect to the determination under paragraph 4(a)(iii) of the Policy, the panel is required to look into facts and opinions only surrounding and in relation to the “bad faith” in registering and using the relevant domain names. Any misbehavior which is not in the vicinity of the registration or the use of the disputed domain names, no matter how serious it is, is irrelevant and a panel must not consider it.

The Complainant claims that (i) the Respondent stolen his pictures and videos from the Complainant Website which is a pay-website; and (ii) the Respondent distributes these pictures and videos for free, which causes damages to the Complainant’s business. If all what the claims were proved to be true, technically, the Respondent would be found to have committed a copyright infringement under the laws of most of the civilized jurisdictions. Such infringement (if proved) is a bad behavior but it is not a “bad faith” activity as defined in the Policy since the Disputed Domain Name plays no role in the claimed infringement. The Panel understands that the distribution of the pictures and videos from Complainant Website for free will reduce Complainant’s income. However, an employee who embezzled corporate funds would be doing the same thing — reducing the company’s income” — but would not be a domain name hi-jacking.

An IP infringement and a hi-jacking of domain name could come from one single offensive motion (e.g., to confuse the public). In this case, the proof of infringement may help the proof of bad faith in registering and using the domain name. However, the Complainant does not assert this type of offensive motion, and there is no evidence on file could possibly support this.

In light of the above, the Panel concludes that nothing on file suggests that the Respondent registered and is using the Disputed Domain Name in bad faith and that the Complainant fails to satisfy Condition (3) under paragraph 4(a) of the Policy.

VI. Conclusion

For all the foregoing reasons, in accordance with paragraphs 4(a) of the Policy and Article 15 of the Rules, the Panel decides that the Complainant’s claim is rejected.

Sole Panelist



Yang, Xun
3 September 2012