



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1300507
Complainant:	aDawliah Electronic Appliances
Respondent:	Computer Works Services Company
Disputed Domain Name(s):	adawliah.com

1. The Parties and Contested Domain Name

The Complainant is aDawliah Electronic Appliances, of Kingdom of Saudi Arabia, Riyadh C.C.NO:18659, King Fahd road, behind Ministry of the Interior.

The Respondent is Computer Works Services Company of Kingdom of Saudi Arabia, Dhahran Airport, Eastern Province 31932.

The domain name at issue is aDawliah.com, registered by Respondent with GoDaddy.com, LLC (<http://www.godaddy.com>)

2. Procedural History

The Complaint was filed with the Hong Kong office of the Asian Domain Name Dispute Resolution Centre (the "Centre") on 20 June 2013. On 30 May 2013 the Centre transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On 31 May 2013 the Registrar transmitted by email to the Centre its verification response confirming that the Respondent is listed as the registrant of the disputed domain name and providing the Respondent's contact details. The Centre has verified that the Complaint satisfies the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy"), the Rules of Procedure under the Policy (the "Rules") and the Centre's Supplemental Rules. In accordance with the Rules, the Centre formally notified the Respondent of the Complaint and the proceeding commenced on 23 July 2013. In accordance with the Rules, the due date for the Response was 12 August 2013. No Response was received by the Centre till 02 September 2013.

The Centre appointed Dr. Moe Alramahi as the Panelist in this matter on 19 August 2013 but he was subsequently subjected to exceptional circumstances. The Panelist finds that it was properly constituted and has acted impartially in reaching its conclusion. The Respondent

3. Factual background

The Complainant's Adawliah group was founded in 1979, in the Kingdom of Saudi Arabia. The company employs over 1400 staff and it is a leading closed joint stock company. The group has attained its strong position rapidly in the Arab markets through a diversified business strategy in multiple fields. Currently, Adawliah group is proud to be the sole agent for more than 40 famous brands and 6000 unique products in various different sectors. Adawliah group website presence is currently on adawliah.com.sa

The Respondent Computer Works Services provides technical services in terms of website designing and has many clients in the Kingdom of Saudi Arabia. The disputed domain name <Adwaliah.com> was registered by the Respondent with godaddy.com on 11/12/1999 and its expiration date is 11/12/2013.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

- i. The Complainant's company Adawliah was founded in 1979, in the kingdom of Saudi Arabia. The group's headquarters are located in Al-khobar. The company runs operation in 7 countries. Adawliah employs over 1400 staff. Two certificates (in Arabic) of: a) company incorporation and; B) trade mark registration with the Saudi Ministry of Trade and Industry were both enclosed and verified.
- ii. The disputed domain name <Adawliah.com> is identical to the Complainant's trademark and service mark.
- iii. The Respondent has no rights or legitimate interests in respect of the disputed domain name <aDawliah.com> since ADawliah Company has registered the disputed name since 11 December 1999 with formal agreement between the Respondent and Complainant.
- iv. The Respondent's has registered <aDawliah.com> and is being used in bad faith and many times refused to retrieve domain administration to the Complainant. The Complainant cannot use the e-mails and website which it is claimed to have cost them lots of business opportunities, since they could not communicate with their partners and clients.
- v. The disputed domain name can easily mislead consumers into mistakenly believing that the disputed domain name is owned or operated by the Complainant, or that the Respondent has a certain relationship with the Complainant.

B. Respondent

The Respondent's contentions may be summarized as follows:

- i. The Respondent agreement with Complainant is only related to web site designing in respect of Complainant website.
- ii. The Respondent registered the disputed domain name <Adawliah.com> via Network Solutions originally. The Respondent maintains that the Complainant did not provide accurate information in their submission as they stated that they were the registrant of <Adawliah.com> and Respondent changed the password and did not want to give the Complainant back the domain name administrative.

- iii. The Respondent has not abused the domain name nor abused the trade mark of Adawliah.
- iv. The disputed domain name web site <adawliah.com> is not showing or referring to the Complainant's logo/identity/brand nor their products, it is under construction page for up-coming regional portal.
- v. The word Adawliah means (International) in the Arabic language, which is widely common use name. The Respondent do not mean or refer to Adawliah Electronics Company at all.
- vi. The Respondent did not register the domain name <adawliah.com> for the purpose of disrupting the business of the Complainant.
- vii. The Complainant is the real owner of <adawliah.com.sa> as per Saudi government rules and SaudiNIC rules. In <adawliah.com.sa> the Respondent were the technical website designing contactor, but the Complainant were the owner and administers.
- viii. The Complainant initiated this proceeding only when they did not want to continue in the website designing agreement. They requested to receive control over the disputed domain name <adawliah.com> when they decided to cancel the contract. Nonetheless, the Respondent offered to give the domain name to the Complainant if they paid the past dues of the website designing agreement (there are 2 payments are past dues).

5. Findings

The Respondent contends indirectly that since the dispute is of a contractual nature relating to the scope of the agreement between the parties in, which (the Respondent argues) the agreement has replaced the Policy as between the parties. However, the Registrar has a real interest in the proper operation of the Policy, which reduces its risk of exposure to litigation. There is no justification for depriving the Registrar of its contractual right that the Policy be applied on the basis of an antecedent agreement to which it was not a party and of which it was, no doubt, unaware. In any event, the Panelist rejects the Respondent's argument that the agreement overrides the Policy in relation to the disputed domain name.

The Respondent indulges in the registration of domain names as part of the service provided. As such, the Respondent has admitted registering the disputed domain name <Adwaliah.com> with godaddy.com on 11/12/1999 and its expiration date is 11/12/2013, but it stated that the registration of domain name has no relation to the website designing agreement. Nevertheless, the Respondent has offered to surrender disputed domain name <Adwaliah.com> only if the Complainant pay the allegedly outstanding dues in respect of website designing agreement with Respondent.

In accordance with 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

(i)

As noted in paragraph 4.1 above, the Complainant has provided evidence of its trade mark registrations with the Kingdom of Saudi Arabia Ministry of Trade and Industry and evidence of company certificate of incorporation in the same country. It has also provided some limited evidence of the history of its business, and its website under the Saudi country code <.sa>. Accordingly, the Complainant has satisfied the first part of paragraph 4(a)(i) of the Policy, namely that it has rights in a trade or service mark.

The next question is whether the disputed domain name is identical or confusingly similar to the Complainant's marks. In this regard, it is clear that the domain name <adawliah.com> and registered trade mark <adawliah> are both identical. The Panelist is therefore satisfied that the disputed domain name is identical to trade mark in which the Complainant has rights.

B) Rights and Legitimate Interests

Paragraph 4(a)ii of the Policy above directs that the Complainant must prove that: "The Respondent has no rights or legitimate interests in respect of the Domain Name."

The Policy enumerates several ways in which a respondent may demonstrate rights or legitimate interests (Policy, para. 4(c)), namely:

- (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 non-commercial 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.

It is clear, and not disputed, that the Respondent has made no active use of the domain name since they were registered more than 13 years ago in 1999. Nor has the Respondent used any corresponding name in relation to any genuine commercial or other activity. The Respondent asserts that he registered the domain name for up-coming regional portal. However, the Respondent has registered the disputed domain name after the Complainant's first use of the mark <adawliah>, and could not have ignored that the domain name <adawliah.com> had been previously registered by Complainant.

The Respondent asserts that the word <Adawliah> means 'International' in the Arabic language, which is widely common use name and that he did not mean or refer to the Complainant's mark at all. But the Respondent does not offer any evidence concerning its intent to use the domain name in connection with a bona fide offering of goods or services.

The Complainant initiated this proceeding only when they did not want to continue in the website designing agreement. They requested to receive control over the disputed domain name <adawliah.com> when they decided to cancel the website designing contract with the

Respondent. The Respondent offered the disputed domain name to the Complainant only if they paid the allegedly outstanding past dues of the website designing agreement. Therefore, Respondent brings no evidence that it is making a legitimate noncommercial or fair use of the domain name.

These elements indicate that Respondent is not making a legitimate noncommercial use of the domain name without intent for commercial gain to misleadingly divert consumers. Therefore, in accordance with paragraph 4(a)(ii) of the Rules, the Panelist is satisfied that the Respondent has no rights or legitimate interests in respect of the domain name.

C) Bad Faith

The Policy paragraph 4(b) sets forth four non-exclusive criteria for Complainant to show bad faith registration. Those criteria include the statement that:

- (i) “circumstances indicating that you [the Respondent] 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.”

It will be noted that, under paragraph 4(a)(iii) of the Policy, both registration and use of the domain name in bad faith are required. Of the factors listed in paragraph 4(b) above, (i)-(iii) relate specifically to registration (and acquisition) of the name, while (iv) relates to use following registration. However, in view of the fact that these factors are stated to be inclusive, it follows that there can be other factors that can be relied upon to point to bad faith, both in registration and in use. In this regard, it is worth noting an early decision of an Administrative Panel to the effect that registration in bad faith followed by a passive holding of a domain name, when there is no way in which it could be used legitimately, can amount to use in bad faith (*Telstra Corporation Ltd v Nuclear Marshmallows* WIPO Case No. D2000-0003. In addition, it would be both mistaken to confine paragraphs (i)-(iii) solely to the time of registration: presumably, it would also be a use of a disputed domain name in bad faith to do so, after registration, with one of the purposes outlined in those paragraphs. Support for this view is to be found in several early Panel decisions: see, for example, *Estee Lauder Inc v estelauder.com, estelauder.net and Jeff Hanna*, WIPO Case No. D2000-0869 and *E & J Gallo Winery v Hanna Law Firm*, WIPO Case No. D2000-0615.

In the present proceeding, the Respondent's business also includes the registration of domain names as part of the service provided. As such, the Respondent has admitted registering the disputed domain name <Adwaliah.com> with godaddy.com on 11/12/1999 and its expiration date is 11/12/2013, but it stated that the registration of domain name has no relation to the website designing agreement. It is further noted that the Complainant's first use of the trade mark could not have ignored that the domain name <adawliah.com> had been previously registered by Complainant.

The Panelist is persuaded that the Respondent has therefore sufficient knowledge of the complainant's trade mark. Thus, the Respondent's argument the disputed domain name <adawliah.com> is not showing or referring to the Complainant's logo/identity/brand nor their products since it is under construction page for upcoming regional portal could not be accepted. The fact is that the Respondent was willing to give the disputed domain name to the Complainant only if they paid the allegedly past dues of the website designing agreement.

Therefore, according to the Policy paragraph 4(a)(iii), it appears that Respondent has registered and used the domain name in dispute in bad faith.

6. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panelist orders that the disputed domain name <aDawliah.com> be transferred to the Complainant.

Dr. Moe Alramahi
Sole Panelist

Dated: 28 October 2013