



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

— A charitable institution limited by guarantee registered in Hong Kong

(Hong Kong Office) Administrative Panel Decision Case No. HKcc-0700002

| | |
|--------------------|---|
| Complainant | : Cosmetic Care Asia Limited |
| Respondent | : KongFacai |
| Domain Name | : mariefrance.cc |
| Registrar | : Web Commerce Communications Limited DBA |

1、 Procedural History

On 7 December 2007, the Complainant submitted a Complaint in the English language to the Hong Kong Office of the Asian Domain Name Dispute Resolution Center (the ADNDRC) and elected this case to be dealt with by a one-person panel, in accordance with the Uniform Domain Name Dispute Resolution Policy (the Policy) approved by the Internet Corporation for Assigned Names and Numbers (ICANN), the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the ADNDRC Supplemental Rules). On 8 December 2007, the ADNDRC sent to the complainant by email an acknowledgement of the receipt of the complaint. All correspondence to and from the HKIAC described herein was in the English language.

On 8 December 2007, the ADNDRC transmitted by email to the Registrar, Web Commerce Communications Limited DBA, a request for registrar verification in connection with the disputed domain name. On 10 December 2007, the Registrar transmitted by email to the ADNDRC its verification response, confirming that the Respondent is listed as the registrant and providing the contact details. On 24 January 2008, the ADNDRC transmitted the Complaint to the Respondent and notified the Respondent of the commencement of the action. The Respondent failed to submit a Response within the specified period of time. Accordingly, the ADNDRC notified the Respondent's default on 10 March 2008.

Since the Respondent did not mention the Panel selection in accordance with the time specified in the Rules, the ADNDRC Supplemental Rules, and the Notification, the ADNDRC informed the Complainant and Respondent that the

ADNDRC would appoint a one-person panel to proceed to render the decision.

On 9 May 2008, Mr. Jeffery Elkinson was selected as the sole panelist. In view of possible conflict of interest in the present case, Mr. Elkinson withdrew from acting as the Panelist on 16 May 2008. The ADNDRC proceeded to appoint a substitute Panelist. Having received a Declaration of Impartiality and Independence and a Statement of Acceptance, the ADNDRC notified the parties that the Panel in this case had been selected, with Dr ZHAO Yun acting as the sole panelist. The Panel determines that the appointment was made in accordance with Rules 6 and Articles 8 and 9 of the Supplemental Rules.

On 24 May 2008, the Panel received the file from the ADNDRC and should render the Decision within 14 days, i.e., on or before 10 June 2008.

Pursuant to Paragraph 11 (a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding. The language of the current disputed domain name Registration Agreement is English, thus the Panel determines English as the language of the proceedings.

2、 Factual Background

For the Complainant

The Complainant in this case is Cosmetic Care Asia Limited, a corporation registered in the British Virgin Islands. The Complainant is the owner of several trademarks including “Marie France”.

For the Respondent

The Respondent, KongFacai, is the current registrant of the disputed domain name <mariefrance.cc> according to the Whois information.

3、 Parties' Contentions

Complainant

The Complainant, its affiliated companies and authorized licensees are Asia's leading providers of slimming services to customers in Asia under the “玛花”，“玛花纤体”，“Marie France Bodyline” and/or Woman Silhouette Device brands. The Complainant, its affiliated companies and/or authorized licensees have been involved in the provision of the services for about 20 years. As a result of widespread promotion, the Complainant's trademarks have become renowned in Asia and the Complainant has acquired a strong reputation and significant goodwill in its business by virtue of use of the trademarks in relation to the services well before the registration of the disputed domain name. The Complainant has obtained trademark registrations in a number of countries

worldwide for “Marie France”, “Marie France & Woman Silhouette Device”, “Marie France Bodyline” and/or “Marie France Bodyline & Woman Silhouette device” in relation to a variety of goods and services. In addition to trademark registrations, the Complainant and its affiliated companies have also registered various “mariefrance” domain names, and have been advertising and marketing their goods and services over the internet at these registered domain name addresses prior to the registration of the disputed domain name.

Identical or confusingly similar

The disputed domain name is identical and/or confusingly similar to the Complainant’s trademarks.

No right or legitimate interest

The Respondent has no right or legitimate interest in respect of the disputed domain name and holds no licence in relation to the use of the trademarks. The Complainant has not otherwise permitted the Respondent to use the trademarks or to apply to use any domain name incorporating the trademarks. The Respondent has no affiliation with the Complainant. Its use of the disputed domain name would mislead the public into thinking that the disputed domain name address is associated with the Complainant’s business or approved by the Complainant especially as the nature or type of services offered on the website at the disputed domain name address is substantially similar to the nature or type of services offered by the Complainant and its affiliated companies on the websites of the Complainant and its affiliated companies.

Registration and use in bad faith

In light of the confusingly similar nature or type of services offered on the websites to that of the Complainant’s group, and the use of the Complainant’s trademarks on various pages of the website, the Complainant submits that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the websites, by creating a likelihood of confusion that the website is associated or approved by the Complainant.

In addition, the website contains hyperlinks to the official websites of the Complainant and its affiliated companies in Taiwan, Singapore, Malaysia, Switzerland and South Korea without the Complainant’s authorization. These hyperlinks appear at the footnotes of each webpage of the website. The Complainant submits that the Respondent’s unauthorized use of these hyperlinks constitutes an attempt to create an impression to Internet users that the Complainant and its affiliated companies’ operations are those of the Respondent, misleading the public into thinking that the website is associated, approved, endorsed or operated by the Companies or its associated companies. The operation of the website clearly indicates that the Respondent is using the domain name in bad faith.

The Complainant’s affiliated companies have been providing the services to customers in China since 2003. There are currently 25 branches of their

business in the major cities of China. 3 out of the 25 branches are located in Guangzhou where the Respondent resides. In light of the widespread promotion of the services and the number of branches in China, the Complainant has acquired a strong reputation and significant goodwill in its business by virtue of use of the trademarks in China. The Complainant submits that in light of the fact that “Marie France” is not a trademark that is not commonly used in trade, the Respondent is using the disputed domain name and the goodwill of the “Marie France” trademark to attract members of the public to its homepage, and is therefore using the domain name in bad faith. The fact that the Respondent only registered the domain name in January 2007 would demonstrate that the Respondent is taking unfair advantage of the goodwill of the trademarks which the Complainant and its affiliated companies have built up from the 20 years of widespread promotion and use throughout Asia.

On 14 June 2007, the Complainant sent a letter to the Respondent through its external counsel in the PRC. In that letter, the Complainant protested against the Respondent’s unauthorized registration of the domain name and requested that the Respondent cancel the registration of the domain name and close down the website. Although the Respondent has not responded to the Complainant’s request in the letter, the website is no longer in operation since end of June 2007.

In accordance with Paragraph 4(b)(i) of the Policy, the Complainant requests the Panel to issue a decision to transfer the Disputed Domain Name to the Complainant.

Respondent

The Respondent failed to submit a Response within the specified time period.

4、 Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: “A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.”

Paragraph 4 (a) of the Policy requires that the Complainant should prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- 1) the domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- 2) the Respondent has no rights or legitimate interests in respect of the domain name; and
- 3) the domain name has been registered and is being used in bad faith.

Identical/Confusingly Similar

The evidence submitted by the Complainant shows that the Complainant owns several trademarks, including “Marie France”, in a number of countries worldwide. The registration date of the trademark “Marie France” is earlier than that of the disputed domain name, which was on 4 January 2007. The Panel finds that the Complainant enjoys the indisputable prior rights and interests in the trademarks, including “Marie France”.

As the suffix “.cc” only indicates that the domain name is registered under this ccTLD and is not distinctive, the Panel has no problem in finding that the disputed domain name <mariefrance.cc> is identical with the Complainant’s trademark “Marie France”.

The Panel therefore holds that the Complaint fulfills the condition provided in Paragraph 4 (a)(i) of the Policy

Rights and Legitimate Interests

The Complainant contends that the Respondent does not have rights to or legitimate interests in the disputed domain name. The Complainant’s assertion is sufficient to establish a *prima facie* case under Policy 4 (a)(ii), thereby shifting the burden to the Respondent to present evidence of its rights or legitimate interests.

The Respondent fails to submit a Response, neither does it put forward any evidence to show any positive interests that it relies on. No evidence shows that the Respondent has acquired any trademark rights or other proprietary interests relevant to support its claim to the dispute domain name. The registration of a certain domain name does not of itself confer upon the registrant rights or legitimate interests in the domain name or in the subject matter of the domain name.

The Panel therefore finds that the Complaint fulfills the condition provided in Paragraph 4(a)(ii) of the Policy.

Bad Faith

Under Paragraph 4 (b) of the Policy, the following are relevant examples a Panel may take as evidence of registration and use 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 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.

The Complainant and its affiliated companies have been providing slimming services for many years. The Panel agrees with the Complainant that the trademark "Marie France" is not a name commonly used in trade. Through years of use of promotion, the Complainant's trademarks have achieved a strong reputation throughout the world. As such, the public has come to recognize and associate the Complainant's trademarks as originating from the Complainant and no other. There are 25 branches in China; 3 branches are located in Guangzhou, where the Respondent resides. The above facts entitle the Panel to infer that the Respondent should be aware of the existence of the Complainant and its trademarks. This inference can be further substantiated by the evidence showing that the website of the disputed domain name contains hyperlinks to the official websites of the Complainant and its affiliated companies in certain Asian regions. The action of registering the disputed domain name *per se* has constituted bad faith.

The Panel concludes that the Respondent has registered and used the domain name in bad faith. Accordingly, the Panel finds that the Complaint satisfies the condition provided in Paragraph 4 (a) (iii) of the Policy.

5、 Decision

Having established all three elements required under the ICANN Policy, the Panel concludes that relief should be granted. Accordingly, it is ordered that the <mariefrance.cc> domain name should be TRANSFERRED from the Respondent to the Complainant.

ZHAO Yun
Sole Panelist

DATED: 26 May 2008