



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-0800008
Complainants:	(1) Wal-Mart Stores, Inc. (2) Wal-Mart China Co. Ltd.
Respondent :	Liangchenyong

1. The Parties and Contested Domain Name

The Complainants are (1) Wal-Mart Stores, Inc., a corporation organized and existing under the laws of the State of Delaware, USA, of 702 S.W. 811' Street, Bentonville, Arkansas 72716-0520, USA, and (2) Wal-Mart China Co. Ltd., a corporation organized and existing under the laws of China, of 12/F, Tower 3, szmc Square, 69 Nonglin Road, Futian District, Shenzhen, Guangdong Province 518040, China (together, referred to as “the Complainant” in this decision).

The Respondent is Liangchenyong of floor 11, 42 Xizhimenwai Street, Beijing, China.

The domain name at issue, <**walmartchina.cc**>, is registered with Web Commerce Communications Limited, dba Webnic.cc.

2. Procedural History

The Complaint was filed with the Hong Kong office of the Asian Domain Name Dispute Resolution Center (the “Center”) on August 15, 2008. On September 1, 2008, the Center transmitted by email to Web Commerce Communications Limited a request for registrar verification in connection with the domain name at issue. On September 2, 2008 Web Commerce Communications Limited transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy”), the Rules for Uniform Domain Name Dispute Resolution 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 September 18, 2008. In accordance with the Rules, the due date for Response was October 7, 2008. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 9, 2008.

The Center appointed Debrett G. Lyons as the sole panelist in this matter on October 10, 2008. The Panel finds that it was properly constituted and has acted impartially in reaching its conclusion.

3. Factual background

1. The Complainant is a retailer and owner of department stores in the United States and many other countries including China. It does business under the trademark WAL-MART.
2. The Complainant has not licensed or otherwise permitted the Respondent to use the trademark or to register or use any domain name incorporating the trademark.
3. The Respondent registered the disputed domain name on March 20, 2006.
4. The disputed domain name redirects Internet users to the third party website, www.shenhuaxjd.com, which promotes the sale of a wide variety of goods in competition with the Complainant.
5. The Complainant petitions the Panel to transfer the disputed domain name from the Respondent to the Complainant.

4. Parties' Contentions

A. Complainant

The Complainant asserts rights in the trademark WAL-MART and states that the disputed domain name is confusingly similar to the trademark.

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

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

The detail of the Complaint is included where necessary in Part 5 of this decision.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

5. Findings

Notwithstanding the fact that the Respondent did not offer a response to the Complaint, the Rules instruct the Panel to "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."

According to paragraph 4(a) of the Policy, the Complainant must prove that:

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

- (ii) the Respondent has no rights or legitimate interests in respect of the domain name;
and
- (iii) the domain name has been registered and is being used in bad faith.

The Panel is entitled to accept reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictoryⁱ. Having considered the Complainant's case and the available evidence, the Panel finds the following:

A. Identical or Confusingly Similar

The Complainant states that the first WAL-MART store was opened in the United States in 1962 and that since then the Complainant's business has grown enormously. The Complainant now operates over 6,800 stores and has more than 1.9 million employees spread over the US, Canada, China, Japan, Mexico, Argentina, Brazil, Germany, Puerto Rico, Costa Rica, Nicaragua, Guatemala, Honduras, El Salvador and the United Kingdom. The Complainant's global sales in the 2007-2008 US financial year exceeded US\$374 billion. The Complainant has been listed as the number one *Fortune 500* company almost every year since 2002. Each week, more than 180 million customers visit the Complainant's stores.

The Complainant operates department stores in China under the trademark and its Chinese character equivalent. The first Chinese store opened in Shenzhen in 1996. The Complainant now employs over 83,000 people in China in its 99 Supercenters, 2 Neighbourhood Markets and 101 Trust-Mart Hypermarkets storesⁱⁱ.

The Complainant has registered numerous domain namesⁱⁱⁱ and the Complainant's trademark has been registered in 95 countries or regions including China^{iv}.

The Panel has no hesitation in finding that the Complainant has rights in the trademark acquired through both use and registration^v.

Applying the principles developed and now broadly accepted under the Policy, the Panel also finds the disputed domain name to be confusingly similar to the trademark. The disputed domain name wholly incorporates the Complainant's trademark. The omission of the hyphen and the addition of the country name and ccTLD are trivial and do nothing to defeat the Complainant's claim of confusing similarity^{vi}.

The Panel finds that the Complainant has satisfied the first element of the Policy.

B. Rights or Legitimate Interests

The Complainant has the burden to establish that the Respondent has no rights or legitimate interests in the domain name. Nevertheless, it is well settled that the Complainant need only make out a *prima facie* case, after which the onus shifts to the Respondent to demonstrate rights or legitimate interests^{vii}.

Paragraph 4(c) of the Policy states that any of the following circumstances which if found by the Panel to be proved based on its evaluation of the evidence, demonstrate rights or legitimate interests to a 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.

The Complainant has established its trademark rights. There is no evidence that the Respondent has similar rights, registered or not. The WHOIS data does not support any argument that the Respondent might be commonly known by the domain name. The Complainant has stated there to be no relationship between the parties.

The Respondent is not using, nor has it made demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services. Rather, the Respondent is using the domain name to re-direct Internet users to a third party website, www.shenhuaxjd.com, which is used to sell various home appliances competing with the Complainant's products. It is established by former decisions under the Policy that such action is not a *bona fide* offering of goods or services, nor is it a legitimate non-commercial or fair use of the domain name^{viii}.

The Panel finds that the Complainant has succeeded in making a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, and that the Respondent in failing to reply has not discharged the onus which fell to it as a result. The Panel finds that the Respondent has no rights or legitimate interests in the domain name and so the Complainant has established the second limb of the Policy.

C. Registered and Used in 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.

What is noteworthy about paragraphs 4(b)(i)-(iv) is that they are cases of both registration and use in bad faith. Paragraph 4(b) is not exhaustive and other instances of bad faith might be in evidence but, in those instances, the Panel must be able to find both bad faith registration and bad faith use. It is therefore logical to first test the facts against the Policy itself.

The Complainant's principal allegations are that the Respondent's conduct falls under paragraphs 4(b)(iii) and (iv).

Given the enormity of the Complainant's business in China alone, it is not clear to this Panel that the Respondent's primary intention could have been to disrupt the Complainant's business. The more compelling inference that can be drawn is that the Respondent registered the domain name to benefit from the Complainant's reputation. The Panel turns, then, to the Complainant's alternative submissions.

Paragraph 4(b)(iv) requires a use of the domain name creating a likelihood of confusion with the Complainant's mark as to the source of the online location to which Internet users are attracted. The Panel has already found the domain name to be confusingly similar to the trademark. The Panel finds that the likelihood of confusion as to source is therefore inevitable.

Paragraph 4(b)(iv) also requires an intention for commercial gain. What is required is evidence it is more likely than not, that intention existed. Given the arbitrary character of the Complainant's trademark, its public visibility, the lack of response from the Respondent and the use to which it has put the domain name, it is very difficult to ascribe the Respondent with any benign motivation. What is also clear from earlier cases is that use of a domain name in this same manner is almost invariably for commercial gain^{ix}.

The Panel finds that the Complainant has shown the Respondent's use of the disputed domain name falls squarely under paragraph 4(b)(iv) and was therefore used and registered in bad faith. Accordingly, the Panel finds that the Complainant has satisfied the third and final limb of the Policy.

6. Decision

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the domain name "walmartchina.cc" be transferred to the Complainant. The wording of the Complainant does not make it clear whether the transferee should be Wal-Mart Stores, Inc. or Wal-Mart China Co. Ltd and so the Panel directs the Complainant to notify the Center of the intended transferee and authorizes the Center to act on that notification.

Debrett G. Lyons
Sole Panelist

Date: October 23, 2008

ⁱ See *Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc.*, FA 95095 (Nat. Arb. Forum July 31, 2000) (holding that the respondent's failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true); see also *Talk City, Inc. v. Robertson*, D2000-0009 (WIPO Feb. 29, 2000) ("In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.").

ⁱⁱ Located in the Chinese provinces of Shenzhen, Dongguan, Shantou, Foshan, Maoming, Kunming, Yuxi, Chengdu, Mianyang, Chongqing, Fuzhou, Xiamen, Zhangzhou, Jinjiang, Quanzhou, Dalian, Shenyang, Shantou, Harbin, Daqing, Qiqihar, Changchun, Shenyang, Changsha, Yueyang, Loudi, Jinhua, Jiaying, Quzhou, Ningbo, Beijing, Shanghai, Nanchang, Langfang, Jinan, Qingdao, Yantai, Weifang, Tianjin, Nanjing, Taiyuan, Datong, Wuxi, Wuhu, Guiyang, Wuhan, Xiangfan and Nanning.

ⁱⁱⁱ walmart.com; wal-mart.com; wal-martstores.com; wal-martchina.com; walmartfacts.com; walmart.cn; walmart.com.cn; wal-mart.cn; wal-mart.com.cn

^{iv} For example, US Federal Trademark Registration No. 1,322,750 from February 26, 1985; Chinese Trademark Registration No. 837822 from June 22, 1994.

^v See *State Farm Mut. Auto. Ins. Co. v. 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 ¶ 4(a)(i)."); see also *Mothers Against Drunk Driving v. phix*, FA 174052 (Nat. Arb. Forum Sept. 25, 2003) (finding that the complainant's registration of the MADD mark with the United States Patent and Trademark Office establishes the complainant's rights in the mark for purposes of Policy ¶ 4(a)(i)).

^{vi} The Panel follows the consensus view of panelists in earlier decisions under the Policy in holding that those differences do not prevent a finding of confusing similarity. See *Diesel v. LMN a/k/a L. M. Nordell*, FA 804924 (Nat. Arb. Forum Nov. 7, 2006) (finding <vindiesel.com> to be identical to complainant's mark because "simply eliminat[ing] the space between terms and add[ing] the generic top-level domain ("gTLD") '.com' ... [is] insufficient to differentiate the disputed domain name from Complainant's VIN DIESEL mark under Policy ¶ 4(a)(i)"); see also *Wal-Mart Stores, Inc. v Tauer*, WIPO Case No. D2000-1076 affirming the same point; see also *Rollerblade, Inc. v. McCrady*, WIPO Case No. D2000-0429 finding that the top level of the domain name such as ".net" or ".com" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar; see also *Wal-Mart Stores, Inc. v MacLeod d/b/a For Sale*, WIPO Case No. D2000-0662 holding confusing similarity when the domain name includes the trademark, or a confusingly similar approximation, regardless of the other non-distinctive terms in the domain name.

^{vii} See *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. D2000-0624; *Hanna-Barbera Prods., Inc. v. Entm't Commentaries*, NAF Case No. 741828; *AOL LLC v. Gerberg*, NAF Case No. 780200.

^{viii} See, for example, *Bank of America v. Azra Khan*, National Arbitration Forum Case No. 124515 (finding that the respondent's diversionary use of the domain name to www.magazines.com was not a *bona fide* offering of goods or services, was not noncommercial use, and was not fair use); see also *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. D2001-0903.

^{ix} See, for example, *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. D2002-1064; *Ticketmaster Corporation v. Amjad Kausar*, WIPO Case No. D2002-1018; *Yahoo! Inc. v. DFI Inc.*, National Arbitration Forum Case No. 147313; *Showboat, Inc. v. Azra Khan*, National Arbitration Forum Case No. 125227.