



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-1200017 <beautyleg.cc>
Complainant:	Lee Yao Lung
Respondent :	Zhang Noname

1. The Parties and Contested Domain Name

The Complainant is:

Lee Yao Lung
12F.-7, No. 123, Sec. 2, Sichuan Rd.
Banqiao Dist., New Taipei City 220
Taiwan (ROC)

The Respondent is:

Zhang Noname
Shan Xi Sheng
Xi An, Shanxi 710075
China

The domain name at issue is:

<beautyleg.cc>

which is registered with GODADDY.COM, LLC.

2. Procedural History / Chronology

On 5 July 2012, the Complainant lodged a “Complaint in Accordance with the Uniform Domain Name Resolution Policy” (hereinafter referred to as “Form C”) with the Hong Kong office of the Asian Domain Name Dispute Resolution Centre (hereinafter referred to as “ADNDRC-HK”) concerning the domain name <beautyleg.cc> in accordance with:

- the Uniform Domain Name Dispute Resolution Policy (hereinafter referred to as “Policy”) adopted by the Internet Corporation for Assigned Names and Numbers (hereinafter referred to as “ICANN”);
- the Rules for the Uniform Domain Name Dispute Resolution Policy (hereinafter referred to as “Rules”); and,

- the Asian Domain Name Dispute Resolution Centre Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (hereinafter referred to as “Supplemental Rules”).

According to Form C, the Complainant elected to have this dispute decided by one Panelist.

ADNDRC-HK contacted the registrar of the disputed domain name, GoDaddy.com, LLC by e-mail dated on or about 6 July 2012. GoDaddy.com, LLC replied by e-mail dated on or about 10 July 2012 stating that:

- the *Registrant* of the contested domain name is Zhang Noname with the identical address as the Respondent above;
- the disputed domain name was created on 15 September 2009;
- the contested domain name was registered through GoDaddy.com, LLC;
- the Policy applies to the disputed domain name; and,
- the language of the registration agreement for the contested domain name is English.

On 25 July 2012, ADNDRC-HK notified the Respondent in this matter by e-mail of the complaint filed by the Complainant. The Respondent timely filed its response on Form R but in the Chinese language.

On 17 August 2012, the undersigned, then a potential Panelist for this dispute, confirmed his availability to act as a Panelist and his ability to act independently and impartially between the parties to this dispute. Subsequently, on 24 August 2012, ADNDRC-HK via several e-mails:

- appointed the undersigned as the sole member of the Panel in this dispute;
- transmitted electronically the relevant documents; and
- requested that a decision be rendered by 7 September 2012.

The Panel finds that it was properly constituted and appointed in accordance with the Rules and the Supplemental Rules. Therefore, this Panel has jurisdiction over this domain name dispute. The proceeding is in English, being the language of the Domain Name Registration and Service Agreement and pursuant to Paragraph 11(a) of the Rules.

On 24 August 2012, the Panel issued Administrative Panel Procedural Order #1 which required the Respondent to provide its response in the English language by 31 August 2012. The Respondent duly complied. As a result of this procedural order, the deadline for submission of the Panel’s decision has commensurately been extended to 14 September 2012.

3. Factual Background

3.1 For the Complainant

The Complainant has not provided information other than that discussed in the following sections.

3.2 For the Respondent

The Respondent has not provided information other than that discussed in the following sections.

4. Parties' Contentions

4.1 For the Complainant

From the very limited documentation provided by the Complainant, its contentions may be surmised from the Form C as follows:

- <BEAUTYLEG> is the Complainant's trademark which is registered with the Taiwan Intellectual Property Office.
- <beautyleg.com> is the Complainant's registered domain name since 11 June 2000.
- <BEAUTYLEG> is a cyber magazine available to readers upon payment.
- The Respondent's <beautyleg.cc> is using Complainant's <BEAUTYLEG> content by copying and re-distributing the same for free on the <beautyleg.cc> web site.
- The Respondent's actions are detrimental to <BEAUTYLEG> and are in bad faith.

4.2 For the Respondent

Likewise, the even more limited documentation provided by the Respondent leads one to deduce the following from Form R:

- The Complainant's <BEAUTYLEG> trademark is not registered in mainland China.
- The Respondent's <beautyleg.cc> has been filed with the Ministry of Industry and Information Technology of China, Internet Content Provider registration number 11062953.
- The Respondent has no special intention to make reference to the Claimant's trademark or website.
- All content on the Respondent's <beautyleg.cc> web site are from internet public sources and are not obtained as stated by the Complainant.

5. Findings

The Rules at paragraph 15 allows a Panel to decide a complaint in accordance with the Policy, the Rules and any rules and principles of law that the Panel deems applicable. This Panel will now proceed to do so.

The ICANN Policy at Paragraph 4(a) provides that each of the following three findings must be made in order for a Complainant to prevail:

- i. That the domain name of the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and,
- ii. That the Respondent has no rights or legitimate interest in respect of the domain name; and,
- iii. That the domain name has been registered and used in bad faith.

Based upon the pertinent requirements under the Policy, Rules and the Supplemental Rules, the Panel in this matter shall determine whether Complainant has satisfied each of the foregoing criteria. Before doing so, however, it should be noted that neither party has provided substantive information about their respective businesses and the use of the disputed domain name. Only the skimpiest of information has been provided on the Form C and Form R. Supporting documents submitted by the Complainant consists of a photocopy from the Taiwan trademark office indicating that Complainant has trademarked <BEAUTYLEG> for uses such as on-line shopping/marketing and television shopping/marketing for the time period from 16 October 2008

to 15 October 2018. The Respondent provided no supporting document to evidence its claim that <beautyleg.cc> is registered with the Ministry of Industry and Information Technology.

5.1 Respondent's domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights.

The disputed domain name is <beautyleg.cc>. Apart from the generic top-level domain suffix <.cc>, the disputed domain name is comprised of <beautyleg> which is Complainant's mark. The disputed domain name contains Complainant's mark in full, with the Respondent's <.cc> replacing the Complainant's <.com>.

The Panel in the case of *Trendy International Investment Limited v Pri*, Beijing ADNDRC Case No: CN-1100433 (2011), found that the <.com> merely indicates the registration of the disputed domain name under the gTLD and is not distinctive. This Panel considers the Respondent's <.cc> merely indicates the registration of the disputed domain name under the gTLD and is not distinctive.

The panel in *Diageo Ireland v Guinnessclaim*, WIPO Case No. D2009-0679 (July 26, 2009) stated:

The disputed domain name ... incorporates the GUINNESS mark in its entirety and adds only the non-distinctive term "claim" to the mark. The addition of a non-distinctive or generic term to Complainant's mark is insufficient to avoid confusion.

Likewise and for similar reasons, in the case of *Alibaba Group Holding Limited v Xushien*, Hong Kong ADNDRC Case No: HK-1100373 (2011), the panel ordered the disputed domain name <E-ALIBABA.NET> be transferred to the Complainant. See also the decisions in *Hitachi, Ltd v. Ningbo Hitachi Garment & Apparel Co., Ltd.*, Beijing ADNDRC Case No: CN-1100439 (2011) (ordering the transfer of the disputed domain name <NBHITACHI.COM> to the Complainant); *Swatch Ltd v Jianyu Zhang*, Hong Kong ADNDRC Case No. HK-1000299 (2010) (ordering the transfer of the disputed domain name <SWATCH.PRO> to the Complainant; and, *精工爱普生株式会社 v. Hua Xiao Hao*, Beijing ADNDRC Case No: CN-1100438 (2011) (ordering the transfer of the disputed domain name <OKEPSON.COM> to the Complainant).

This Panel agrees with the analyses contained in the above cited cases. This Panel finds that <beautyleg.cc> is comprised of two sub-parts: <beautyleg> and <.cc> where the latter sub-part is a generic term which contributes little if any distinctiveness to the mark. This Panel finds the former sub-part is identical or confusingly similar to Complainant's trademark and would cause confusion among the consuming public with Complainant's trademark. Complainant has met the first requirement under Paragraph 4(a) of the Policy.

5.2 Respondent has no rights or legitimate interest in respect of the domain name.

For the purposes of Paragraph 4(a)(ii), Paragraph 4(c) of the Policy provides that a Respondent may establish rights to or legitimate interests in the disputed domain name by demonstrating any of the following:

- i. before any notice to the Respondent, the Respondent's 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. the Respondent has been commonly known by the domain name, even if the Respondent has acquired no trademark or service mark rights; or,
- iii. the Respondent is 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.

Although a Complainant has the ultimate burden of proving all three elements of Paragraph 4(a) of the Policy, previous panels have consistently held that Paragraph 4(c) shifts the burden of proof to a Respondent once a Complainant has established a *prima facie* showing. *Document Technologies, Inc. v International Electronic Communications Inc.*, WIPO Case No. D2000-0270 (June 6, 2000); *Inter Ikea System BV v Isaac Goldstein*, Hong Kong ADNDRC Case No. HK-1000320 (2010); *Trendy International Investment Limited v Pri*, Beijing ADNDRC Case No: CN-1100433 (2011); and, *Seiko Epson Corp v Yao Fenglei*, Beijing ADNDRC Case No. CN-1000370 (2010). This Panel will follow established precedent.

The Complainant has failed to establish that the Respondent's <beautyleg.cc> web site contained links to other online trading platforms unrelated to the Complainant's brand or its business. The Complainant asserts in its Form C that the disputed domain name impinges upon the Complainant's business, i.e., "but 'beautyleg.cc' has stolen photos form [*sic*] our website...", and that these alleged stolen photos are being offered for free on the Respondent's website. (The Complainant's site is stated to be a pay-for-view site.) The Complainant failed to provide any evidence to support this allegation, e.g., screen captures of the offending material. Nor has the Complainant indicated the scope of its brand internationally or the degree of impingement by the Respondent. Consequently, the Complainant has not made a *prima facie* showing of infringement of its trademark.

For the sake of completeness, this Panel will determine whether the Respondent has met the burden of establishing one or more of the criteria contained in Paragraph 4(c) of the Policy.

The first of these criteria concerns the use of, or demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services. The Respondent's response to this dispute is that all the contents on its website "are from Intent public resources"; that the trademark <BEAUTYLEG>, and implicitly the domain name <beautyleg.com>, is not registered in mainland China; and that the Respondent has registered <beautyleg.cc> with the relevant mainland Chinese authority such that the use of this domain name is in accordance with mainland Chinese laws. The Respondent has not provided any evidence that the disputed domain name is being used in connection with a *bona fide* offering of goods or services. Indeed, this Panel does not know the purpose of the Respondent's web site or the Respondent's commercial activities relating to the disputed domain name. The Respondent has not produced evidence of any use of the disputed domain name or any demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services.

The second of these criteria requires the Respondent to have been commonly known by the domain name, even if the Respondent has acquired no trademark or service mark rights. The Respondent has produced no evidence that it has been commonly known by the disputed domain name <beautyleg> or <beautyleg.cc> even though the latter has been allegedly registered by the Respondent with the Ministry of Industry and Information Technology of China since an

unspecified date. (Godaddy.com, LLC indicates that <beautyleg.cc> was created on 15 September 2009, nearly one year after the Complainant's trademark registration in Taiwan.)

The third and last of these criteria requires the Respondent to prove 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. Respondent has failed to produce any evidence which can satisfy this criterion other than to state that it had no special intention to make reference to the Complainant's mark.

In *Rohde & Schwarz GmbH & Co. KG v Pertshire Marketing, Ltd.*, WIPO Case No. D2006-0762 (Aug. 21, 2006), the panel determined:

The Respondent filed no Response. There has been no other communications from the Respondent in connection with this case. There is nothing in the nature of the website to which the disputed domain names revert that suggests that the Respondent might have a right or legitimate interest in the disputed domain names themselves. Without a Response, there is nothing else in the case file that indicates that the Respondent has such rights or legitimate interests.

As such, the Respondent has not established a right or legitimate interest in the disputed domain names. Neither is there any other evidence, from all the evidence of this case, that points to any right or legitimate interest of the Respondent.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interest in the disputed domain names.

For the foregoing reasons, this Panel finds that the Complainant has satisfied the second element of Paragraph 4(a) of the Policy, *i.e.*, the Respondent has no rights or legitimate interests in the disputed domain name.

5.3 The domain name has been registered and used in bad faith.

The Complainant in the present case has not authorized the Respondent to use the <beautyleg> name or any derivations or permutations thereof in any way. Furthermore, the Complainant is required to demonstrate that the Respondent's actions amount to bad faith.

A Complainant is required to establish a Respondent's bad faith as set out under Paragraph 4(a)(iii) of the Policy. Additionally, Paragraph 4(b) of the Policy sets out circumstances, in particular but without limitation, which shall be considered as evidence of the registration and use of a domain name in bad faith:

- i. circumstances indicating that a Respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to a Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of said Respondent's documented out-of-pocket costs directly related to the domain name; or
- ii. a Respondent has 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 said Respondent has engaged in a pattern of such conduct; or
- iii. a Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

- iv. by using the domain name, a Respondent has intentionally attempted to attract, for commercial gain, Internet users to said Respondent's web site or other on-line location, by creating a likelihood of confusion with a Complainant's mark as to the source, sponsorship, affiliation, or endorsement of said Respondent's web site or location or of a product or service on said Respondent's web site or location.

The Panel in *Inter Ikea System BV v Isaac Goldstein*, Hong Kong ADNDRC Case No. HK-1000320 (2010) noted that the foregoing examples of bad faith are not exhaustive. The principal purpose of the Policy is to "curb the abusive registration of domain names in circumstances where the registrant is seeking to profit from and exploit the trademark of another." (citing to *Telstra Corporation Limited v Nuclear Marshmallows*, WIPO Case No. D2000-003 and *Match.com, LP v Bill Zag and NWLAWS.ORG*, WIPO Case No. D2004-0230)

This Panel adopts the analysis used in the *Inter Ikea System BV v Isaac Goldstein* case:

... Respondent registered the Disputed Domain Name in bad faith because the Trademark is distinctively identifying the Complainant and the Respondent could not have failed to know of the Trademark before registering the Disputed Domain Name.

In the absence of any evidence provided by the Respondent legitimizing his use of the Disputed Domain Name, the Panel cannot conclude otherwise than by stating that the registration and use of the Disputed Domain Name was made in bad faith. See *Aventis Pharmaceuticals Products Inc. v. PBS Publishing LLC*, WIPO Case No. D2003-0122.

... Respondent registered the Disputed Domain Name and uses it for the purposes of monetary gain by providing links to sites which are unrelated to the ones of the Complainant or are in some cases even competing with the products of the Complainant. Such use of the Disputed Domain Name can only be explained by the intent of the Respondent to attract Internet traffic by capitalizing on the Complainant's Trademark. This type of use of the Disputed Domain Name constitutes sufficient evidence of the bad faith of the Respondent under paragraph 4(b)(iv) of the Policy. See *Rhino Entertainment Company v DomainSource.com, Inc.*, WIPO Case No. D2006-0968 and *Imperial Chemicals Industries PLC v RareNames*, WIPO Case No. D2006-0124.

The Complainant claims that:

"BEAUTYLEG" is cyber magazine, it's pay site, but "beautyleg.cc" stolen our photos, and spread in free, it is harm our company's business, and use in bad faith.

The Complainant appears to be, at best, making a claim based upon Paragraph 4(b)(iii) and/or Paragraph 4(b)(iv). The Complainant has not provided sufficient information about its site or that of the Respondent upon which a Panel can render a decision. As the Complainant is asserting a claim, the Complainant must carry the burden of proof. The Complainant has produced no proof that the <beautyleg.cc> site provides links to electronic trading platforms detrimental or disadvantageous to the Complainant, other than the assertion quoted at the beginning of this paragraph.

The Respondent, on the other hand, did not adduce evidence that it was unaware of the existence of the Complainant or its products or services at the time of registration. This Panel notes that

the Respondent's Form R included an offer to delete any material on its website which infringes upon the Claimant's copyright while insisting that the disputed domain name "is still to be in my possession." This Panel therefore concludes that the registration and use of the disputed domain name was not made in bad faith because the Complainant did not provide sufficient evidence. *Inter Ikea System BV v Isaac Goldstein*, Hong Kong ADNDRC Case No. HK-1000320 (2010).

Because the assertions by both the Complainant and the Respondent are relatively balanced, this Panel finds that the Complainant has failed to carry its burden of proof in establishing bad faith pursuant to Paragraph 4(a)(iii) of the Policy.

6. Panel Decision

For the reasons set out in the foregoing paragraphs, this Panel is satisfied that the Complainant has not sufficiently proved the existence of all three elements of Paragraph 4(a) of the Policy. Accordingly, the Panel does **NOT** order the transfer of the disputed domain name to the Complainant.

A concluding remark: it is not for a Panel to discern a Complainant's cause of action or to construct a claim for the Complainant. Likewise, it is not for a Panel to research and devise a defence for a Respondent. These are the obligations of the disputing parties. A Panel is neutral and impartial. A Panel relies upon the parties to provide sufficient information and evidence to present a reasonable claim and a reasonable defence. A Panel should not be forced to operate in a near vacuum.

Stephen D. Mau

Stephen D. Mau
Panelist

Dated: 14 September 2012