



## ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (BEIJING OFFICE)

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### Decision Submission

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Decision ID	DE-0600061
Case ID	CN-0500069
Disputed Domain Name	www.rowa.com
Case Administrator	Xinmin Cui
Submitted By	Shaojie Chi
Participated Panelist	

Date of Decision	13-03-2006
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### The Parties Information

<b>Claimant</b>	Guangzhou Digital Rowa Technology Co., Ltd.
<b>Respondent</b>	Shang Chunfang

### Procedural History

On November 16, 2005, the Complainant submitted its Complaint to the Beijing Office of the Asian Domain Name Dispute Resolution Centre (the "Centre"), in accordance with the Uniform Domain Name Dispute Resolution Policy (the "Policy") adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN") on August 26, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") approved by ICANN on October 24, 1999, and Asian Domain Name Dispute Resolution Centre Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "ADNDRC Supplemental Rules") being effected on February 28, 2002.

On November 21, 2005, the Centre confirmed the receipt of the Complaint and notified the Registrar, STARGATE HOLDINGS CORP., of the domain name dispute.

On December 2, 2005, the Centre transmitted the Complaint to the Respondent.

On December 6, 2005, the Centre confirmed the receipt of the fees paid by the Complainant.

On December 8, 2005, the Centre received confirmation by the Registrar of information for the disputed domain name.

On December 16, 2005, the Centre confirmed the Claims by the Complainant and notified the parties, ICANN and the Registrar of the confirmation of Claims and the commencement of the proceedings.

On January 4, 2006, the Centre received the Response in e-form from the Respondent.

On January 5, 2006, the Centre transmitted the e-form Response to the Complainant.

On January 9, 2006, the Centre confirmed the appointment of the Panelist.

On January 10 & 13, 2006, the Centre received comment from the Respondent on the appointment of the Panelist.

On January 16, 2006, the Centre confirmed once again the appointment of the Panelist and notified the parties of the appointment on January 26, 2006.

On January 26, the Centre received a letter from the appointed Panelist for the resignation of the appointment due to certain reasons, and notified the disputing parties of the resignation of the Panelist.

On February 21, the Centre considered of the appointment of a new Panelist and contacted the candidate.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Mr. Chi Shaojie, on February 24, 2006, the Centre confirmed the appointment of Mr. Chi Shaojie as a new Panelist and notified the Complainant and the Respondent of the appointment.

As agreed upon by the parties, the Panel is composed of a Sole Panelist.

On February 25, 2006, the Centre transferred all the documents in hard copy to the Sole Panelist by post, and the latter confirmed the receipt of the mail.

The Sole Panelist finds that the Panel was properly constituted and appointed in accordance with the Rules and the ADNDRC Supplemental Rules.

Being agreed by the parties, the language of the proceedings is English, as being the language of the Domain Name Registration and Service Agreement, pursuant to Paragraph 11(a) of the Rules, and also in consideration of the fact that there is no express agreement to the contrary by the disputing Parties in the whole course of the proceedings.

## Factual Background

### For Claimant

The Complainant in this dispute is Guangzhou Digital Rowa Technology Co. Ltd.. As stated by the Complainant, it is also known as Digital Rowa and was established jointly by a public listed company TCL Stock (BVI) Co., Ltd. that is under the administration of TCL Group and another public listed company Guangzhou Southern Science City Development Stock Co., Ltd. that is under the control of Guangzhou Municipal Government. The Complainant insists that it has closest and extensive relations with TCL Group which is one of the top leaders in TV manufacturing business in China. With a registered capital of RMB 120million, the Complainant was set up and registered on May 28, 2003 to the need of the overall strategy of TCL Group and inherited all rights and interests of the mark “ROWA” and “ROWA in Chinese”. The Complainant alleged that it had been engaged specially in the R & D, production and marketing of ROWA series of high-class color TVs ever since its establishment. According to the Complainant, in 1970, the former holder of the mark “ROWA” and “ROWA in Chinese” – Guangzhou Broadcasting Equipment Factory first used the own-made kinescopes to produce color TV sets of 48cm which was regarded as the earliest color TV sets in Guangzhou. In June 1986, the English mark “ROWA” began to be used together with the mark “ROWA in Chinese” on TV sets. Since 1986, all the TV sets sold have been bearing the mark “ROWA in Chinese” and marking with the English word ROWA. Ever since then, ROWA TV has become well-known home and abroad. The total sales of ROWA TV in 2000 reached RMB 3 billion and ranked the fifth in China in terms of market share of TV. In order to keep the brand ROWA being more famous and the business in connection to ROWA brand expanding, the Complainant was specially formed to concentrate on the ROWA business.

The trademark “ROWA in Chinese” was first registered in China on April 5, 1982, in Class 9 covering TV and the registrant was Guangzhou Broadcasting Equipment Factory. On July 30, 1992, “ROWA” in English was registered in Class 9 and the registrant was Qingyuan ROWA Electronics Co., Ltd. Both of the registered marks were assigned to the Complainant. Due to the fact that the mark ROWA becomes more and more famous to the consumers, the Complainant registered the mark in several other classes to protect the interests of the Complainant.

The disputed domain name is “ROWA.COM” that is identical to the Complainant’s registered trademark ROWA, and the registration of the trademark ROWA and “ROWA in Chinese” is much earlier than that of the disputed domain name. The Respondent has no prior right and legitimate interest in the domain name, and registered and used the domain name in bad faith.

### For Respondent

The Respondent in this dispute is a natural person by the name of Shang Chunfang. It states that the Respondent is the owner of Wanji Oil Shop – Refined Oil WANJI AG – ROWA.COM which is a family-owned business. Refined Oil WANJI AG is located in the north of Shaanxi province, China, which was incorporated and registered as Wanji Oil Shop in China, with an intention to provide goods and services globally. Thus, the Shop needs an English mark which could be easily recognized in English speaking world, and registered the disputed domain name ROWA.COM which is composed of the four initial capital letters of Refined Oil WANJI AG..

Although the domain name ROWA.COM possesses similar English letters to the alleged trademark ROWA, the former is not identically or confusingly similar to the latter. As stated, the Respondent does have rights and legitimate interests in the disputed domain name that symbolizes the business owned by the Respondent. The mark ROWA in English claimed by the Complainant has nothing to do with the mark “ROWA in Chinese” due to the latter’s pronunciation. That is to say, the mark ROWA in English is rarely used. The Respondent did not register and use the disputed domain

name in bad faith.

## Parties' Contentions

### Claimant

The Complainant contends that:

It owns the registered trademark ROWA that is only the English translation of “ROWA in Chinese” and was first registered on July 20, 1992 in Class 9. The trademark “ROWA in Chinese” was first registered in 1982 in Class 9 too. The two marks were assigned to the Complainant

The two marks were put in use together in 1986, and have become well-known in China in connection to the products bearing the marks.

Having close relations to the TCL Group which is one of the top leaders in color TV in China, the Complainant was set up specially for the development of the market for TV sets bearing both marks of “ROWA in Chinese” and ROWA.

The Complainant, as the assignee of the two marks, is entitled to all the rights and interests in connection to the two marks.

Both the mark “ROWA in Chinese” and the mark ROWA were registered much earlier than the registration of the domain name ROWA.COM.

The domain name in dispute is identical to the mark ROWA and the Respondent has no rights or legitimate interests on the disputed domain name.

The Respondent intends to take advantages of the Complainant's registered marks “ROWA in Chinese” and ROWA, thus having registered the domain name in bad faith. Although the Respondent does not use the domain name yet, it will prevent the Complainant from registering the disputed domain name.

### Respondent

The Respondent contends that:

It is the owner of a legal entity registered as Wanji Oil Shop. To offer goods and service to international market, the Shop needs an English name acceptable and easily remembered by business in English-speaking world, the Shop registered the domain name in dispute in 1998 by taking the four initial capital letters of Refined Oil WANJI AG, which is a translation from the Chinese idiom Jing You Wan Ji.

The mark “ROWA in Chinese” alleged by the Complainant is actually pronounced as “Le Hua” or “Yue Hua” in accordance with the Chinese pronouncing habit, thus having nothing to do with the disputed domain name ROWA.COM.

Google search would produce about 896000 hits on <rowa>. There are many others using ROWA in their trade or domain names and having no connection with the Complainant.

The disputed domain name is not identical to the mark alleged by the Complainant, though they have similar English letters. Since the alleged mark has rarely been used, the consumers in China market do not know the word ROWA.

The business of the Respondent's has been using the domain name as a bona fide entity to offer goods and service ever since 1998, much earlier than the formation of the Complainant, thus being entitled to the legitimate rights and interests of the domain name in dispute.

When the Respondent registered the disputed domain name, TV was expensive and not popular. How could the Respondent, located thousands of miles away from where the Complainant is, know the English word was the translation of the Chinese mark Le Hua or Yue Hua? Refined Oil WANJI AG uses the registered domain name in good faith, and if the Respondent intended to take advantage of the reputation of the Complainant, it would have registered the domain name Le Hua.com.cn or Yue Hua.com.cn or rowa.cn, etc.

## Findings

### Identical / Confusingly Similar

Pursuant to Paragraph 4(a) (i) of the Policy, a complainant must prove that the domain name is identical or confusingly similar to a trademark or service mark to which the complainant is entitled. By adopting the evidence submitted by the Complainant and considering that there is no contrary evidences provided by the Respondent, the Panel holds: That the trademark 乐华牌 (with a pattern) was registered in April 5, 1982 by Guangzhou Broadcasting Equipment Factory (广州广播设备厂) covering the product of TV. The registration number is 155889. The trademark was assigned to the Complainant on September 14, 2004 and remains valid until the year 2013.

That the mark ROWA was registered on July 30, 1992 by Qingyuan Le Hua Electronics Co. Ltd. (清远市乐华电子有限公司) covering the products named in Class 9 under Trademark Classification, with a registration number of 604700, and was assigned to the Complainant on September 14, 2004. The mark is valid until July 29, 2012.

That Qingyuan Le Hua Electronics Co. Ltd. (清远市乐华电子有限公司) registered the mark 乐华 in Class 9 with a registration number of 1402310 and assigned the mark to the Complainant on September 14, 2004.

That the Complainant took over several other marks of ROWA registered in other Classes from the registrants of those marks.

That no evidence so far shows that a third party had ever claimed for any right or interest on either the mark 乐华牌 or the mark ROWA.

That the disputed domain name ROWA.COM comprises an identification part of ROWA that is identical to the mark ROWA entitled by the Complainant.

Based upon the above findings, the Panel is of the opinion that the first pre-requisite under the Policy is to identify whether the disputed domain name is identical or confusingly similar to a registered mark held by the Complainant. In this sense, the Panel rules that the identifying part of the disputed domain name is composed of four Latin letters, i.e. R, O, W, A, and the trademark to which the Complainant is entitled is composed of the same four Latin letters, i.e. R, O, W, A, thus it is as clear as a nose on a face that the two are identical with each other. Thus, the Complainant meets the first pre-requisite under Paragraph 4(a)(i) of the Policy.

### **Rights and Legitimate Interests**

Paragraph 4(c) of the Policy stipulates how a Respondent can effectively demonstrate rights or legitimate interests in the disputed domain name. The Respondent expounds several reasons to support its claim that it is entitled to the registered domain name. The Panel studies carefully what the Respondent explained in detail and comes to an conclusion that the allegations put forward by the Respondent can hardly be accepted by the Panel due to the following considerations:

(1) The Respondent argues that it is the owner of Wanji Oil Shop which made itself known as Refined Oil Wanji AG due to the international-market-oriented consideration. The name Refined Oil Wanji AG is from a Chinese idiom of Jing You Wan Ji. Though the Panel can not fully understand what the Respondent says about the development of ROWA in terms of Refined Oil Wanji AG, it cannot consent to the sayings by the Respondent due to:

(i) The Panel notices that the Respondent is in charge of a proprietor business translated by itself as Wanji Oil Shop, which is an entity making and selling industrial oil products, lubricants and paper products, phone cards and running internet bar, etc., as indicated in the business license in Chinese. The registered capital of the business is RMB 3000. The Respondent alleges that by thinking of the Chinese idiom of Ying You Wan Ji the so-called Wanji Oil Shop intended to use the trade name of Refined Oil Wanji AG to expand its business to world market. The Panel does not see any linkage of the Respondent's business to world market due to the lack of sufficient evidences. Especially, the Panel does not understand based upon its professional experiences why the Respondent uses the word Refined Oil in its claimed trade name to be accessible to international buyers or sellers. As stated by the Respondent, it thought of the name Refined Oil Wanji AG for the recognition by English-speaking community. However, the Sole Panelist as someone having been using English as one of his working languages for more than 30 years has the first impression on the word Refined Oil as the product refined from petroleum. As is known in China, not all ordinary businesses, irrespective of large or small, incorporated or individual-run, are licensed to make and sell the very product of refined oil. When the Respondent alleges that it uses the name Refined Oil Wanji AG, it aims at making it known to the customers in the English-speaking countries what the Shop makes and sells, it could be misunderstood that the Shop is the maker or seller of petrol or something related to refined oil. What is more, when the Respondent alleges the name of Refined Oil Wanji AG, it fails to submit an exhibit of the license to make or sell refined oil. Whatever expounding the Respondent may make, there is one thing very clear that most people from the English-speaking world may understand the words "Refined Oil" in the same way as the Panelist does due to the fact that they are hardly accessible to the could-be expounding by the Respondent when they see the domain name ROWA.COM in connection to the proposed trade name of Refined Oil Wanji AG by the Respondent.

(ii) When the Respondent contends that while it registered the disputed domain name it designed the name Refined Oil

Wanji AG in order to be easily remembered and accepted by English-speaking business community in the world. It is worth being mentioned that when somebody from English-speaking business community sees the name by the first sight, it may most probably take the Refined Oil Wanji AG as a Germany company selling petroleum product, including refined oil or something due to the letters AG.. In business world, AG, when being used in a company name, is normally understood as the abbreviation of Aktiengesellschaft which is one of the economic organizational patterns in Germany, Austria or Switzerland, and is the English equivalent of share company. GmbH and AG are the most adopted business patterns in Germany. The Panel can hardly see the convincing reason behind the Respondent' s explanations on why the word AG was taken by Respondent in its alleged world-market-oriented publicity.

(2) The Respondent argues that Google search reveals hundreds of thousands of company or domain names using the word 乐华 or “ROWA” , thus the Complainant does not enjoy exclusive right on the two marks. It is needless to say that the owner of a registered mark is entitled exclusively to the rights and interests under the mark. The appearance of the word 乐华 or “ROWA” in other' s trade or domain names does not legally mean the mark owner cannot claim on the rights and interests under the marks. In case the Complainant claims against the companies using either 乐华 or “ROWA” in their trade or domain names, the jurisdiction is attributable to the tribunal to which the Complainant claims. So, the Panel needs not say anything on whose priority it is in terms of the conflict of two claimed rights. It is meaningful that what the Respondent needs to concentrate is to prove its entitlement to the disputed domain name. However, the Panel has seen nothing clearly in relation to the alledged entitlement to the disputed domain name by the Respondent in spite of its explanations on the development of Refined Oil Wanji AG.

(3) The Complainant submits that it was set up by TCL Group due to the latter' s overall strategy of developing the products bearing the marks 乐华 and ROWA, and took over all the marks of 乐华 and ROWA from companies concerned. The Respondent argues that the Complainant was organized in 2003, much later than the Respondent' s registration of the disputed domain name. Thus, the Respondent should enjoy prior right on the name ROWA. The Panel holds that when the Complainant had the assignments of those marks of 乐华 or ROWA, it got all the rights and interests in connection to those assigned marks, including those originated from very beginning of the coming into being of those marks. As a matter of fact, no evidence shows that any of the assignors of those marks in Chinese or English has ever claimed any remaining rights and interests under the assigned marks, be it in Chinese or English. That is to say, all the rights and interests produced from the very beginning of the birth of the assigned marks were all shifted to the assignee, i.e. the Complainant, when the assignments were approved and publicized by the Chinese Trademark Office. Therefore, the Panel thinks that the Complainant is entitled to claim all the rights and interests under the assigned marks.

(4) The Respondent claims that the mark ROWA has never been used by the Complainant on TV products in China, thus, how could the Chinese consumers know the mark ROWA in connection to the Complainant? The Complainant states that the mark 乐华 was first created and used, and the mark ROWA is a translation of the mark 乐华. The two were put together in use in 1986. The Panel notices the history told by the Complainant on the development of 乐华 and ROWA, and thinks it reasonable the saying by the Complainant of the mark ROWA being a translation of the mark 乐华 due to the time sequence as proved by the trademark registration certificates. However, the Panel can hardly hold it a fact that the two marks were put together in use in 1986 due to the lack of any evidence. Nevertheless, the Complainant submits plenty of exhibits to show the two were used together in recent years. Based upon those exhibits, the Panel holds that with extensive promoting activities by the Complainant in the past years, the general consumers may have noticed that the mark of 乐华 with which they are familiar has an English equivalence of ROWA. Since ROWA has only four letters, it is not so difficult for the general public to remember as a symbol of the famous mark 乐华. With further economic and cultural development and the popularization of English language in China, more and more people will be more attentive of the relations between 乐华 and ROWA.

(5) The Panel attaches sufficient significance to what the Complainant says on the expansion of its business with regard to the linkage of the marks 乐华 and ROWA to its products, and the accompanying evidences, especially to the potentiality of export market. No wonder, the Chinese consumers will pay more attention to the brand in Chinese of a product, while the overseas consumers will attend more to the brand in English of the product. Irrespective of being Chinese or English, the goodwill and reputation of the maker of the product is symbolized by the trademark on the product. As alleged by the Respondent, it registered the disputed domain name ROWA with an intention to enter into English-speaking market. But the question is, how could the English-speaking consumers link the word ROWA to the Respondent when it fails to prove any export of its products to world market, while the Complainant offers to sell and sells a series of home appliances bearing the mark ROWA in foreign markets.

Standing on all the above-mentioned factors, the Panel holds that the Respondent fails to persuade the Panel to agree with the Respondent' s statement that it has rights or legitimate interest in the disputed domain name, prior to the claimed rights and interests by the Complainant.

### **Bad Faith**

In addition to the proving of the above two pre-requisites, the Complainant has also to establish bad faith on the part of the Respondent in registration and use of the disputed domain name as set forth in the Paragraph 4(a)(iii) of the Policy.

Under the Paragraph 4(b)(i) of the Policy, the following circumstances, in particular, shall be considered as evidence of the registration and use of a domain name 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 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 web site 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 web site or location or of a product or service on your web site or location.

The Complainant says: " Although the complained party does not use the disputed domain name yet, it will stop the complainant from registering the said domain name and cut off the relationship between complainant and consumers on line. Therefore, the complained party's registration of the disputed domain name is obviously in bad faith." The Respondent contends that at the time it registered the domain name it did not even know the mark ROWA and the owner situating thousands of miles away and speaking another different dialect. The disputing parties are in totally different business fields. How could the Respondent use the domain name in bad faith? If the Respondent had intended to take advantage of the Complainant's trademark, it should have registered "Le Hua.com.cn" or something alike. The Respondent registered the disputed domain in 1998 when the concept of website was brand-new in China, thus the purpose of the registration is for the Respondent's own use only.

The Panel's comments are as follows:

(1) As alleged by the Respondent, its purpose of registering the disputed domain name was for its own use in English-speaking world. As indicated, the consumers in overseas market tend to pay attention to the brand in English or other foreign language of the products to be sold in the market. As revealed by the exhibits submitted by the Complainant, its electronic products, esp. TV sets, bearing the mark ROWA have big (esp. potential) market overseas, i.e. the brand name ROWA may become well-known to foreign consumers in certain markets. On the other hand, when the Respondent submits that it registered the domain name was for the accessibility of foreign consumers to the Respondent's business, it fails to verify the statement by any evidence. Thus, the Panel can hardly believe what is said by the Respondent is true, or the Respondent registered the disputed domain name is in good faith as alleged by the Respondent.

(2) Objectively speaking, the existing registration of the disputed domain name prevents the Respondent from registering the same domain to facilitate the accessibility of the English-speaking consumers on website to the electronic commodities bearing the mark ROWA, leading to the negative result in terms of consumers benefits. Logically speaking, there is always a casual relation between a conduct and the result by the conduct. In case of a negative result, it is generally hard to hold that the conductor intends to conduct in good faith.

(3) Commercially speaking, the Complainant has spent plenty of monetary and human resources to promote its products bearing the mark ROWA. It is fair and equitable to let the Complainant enjoy what it pays for. If the Complainant cannot be entitled to what it pays for due to the existing registration of the disputed domain name, while the Respondent let the disputed domain name being dormant, the Panel can hardly hold that the Respondent did not register and use the domain name in bad faith.

Based upon the above reasoning, the Panel holds that the third pre-requisite under Paragraph 4(a) of the Policy is met. Since the three pre-requisites set forth in the Paragraph 4(a) are all met, the Complainant's claim of the transfer of the disputed domain name shall be supported.

## Status

www.rowa.com

Domain Name Transfer

## Decision

In light of all the foregoing findings and in accordance with Paragraphs 4(a), 8(a) of the Policy and 5(e) of the Rules, the

Panel holds:

a) That the disputed domain name “ROWA.COM” registered by the Respondent is identical to the trademark ROWA owned by the Complainant; and

b) That the Respondent has no rights or legitimate interest in respect of the disputed domain; and

c) That the domain name is registered and used in bad faith.

As such the Panel requires that the registration of the “ROWA.COM” domain name be transferred to the Claimant.

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