



Asian Domain Name Dispute Resolution Centre

seoul

(Seoul Office)

ADMINISTRATIVE PANEL DECISION

Case No. KR-1700167

Complainant: Mediana Co.,Ltd.

Respondent: Du Ye Yu

Disputed Domain Name(s): mediana-ultrasound.com

1. The Parties and Contested Domain Name

The Complainant is Mediana Co.,Ltd. of 132, Donghwagongdan-ro, Munmak-eup, Wonju-si, Gangwon-do, Korea.

The Respondent is Du Ye Yu of Long Gang Bu Ji Gui Fang Yuan Wu Qi 19 Dong Yi Tao Ji BZuo 606, Shen Zhen Shi, Guang Dong, China.

The domain name at issue is 'mediana-ultrasound.com', registered by HICHINA ZHICHENG TECHNOLOGY LTD. of Alibaba Building No.9, Wangjing East Garden 4th Area, Chaoyang District, Beijing 100102, China

2. Procedural History

The Complaint was filed with the Seoul Office of the Asian Domain Name Dispute Resolution Center (ADNDRC)[“Center”] on September 27, 2017, seeking for a cancel of the domain name in dispute.

On October 20, 2017, the Center sent an email asking for the detailed data of the registrant. On October 31, 2017, HICHINA ZHICHENG TECHNOLOGY LTD. transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on November 1, 2017 inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on November 1, 2017.

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 Centre's Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, the Centre formally notified the Respondent of the Complaint. The proceedings commenced on November 3, 2017 and the due date for the Response was November 23, 2017. No Response was filed by the due date.

On November 29, 2017, the Center appointed Prof. Moonchul Chang as the Sole Panelist in the administrative proceeding and with the consent for the appointment, impartiality and independence declared and confirmed by the Panelist, the Center, in accordance with paragraph 7 of the Rules, organized the Panel of this case in a legitimate way.

On December 27, 2017, the panelist gave the respondent an opportunity to submit further response regarding the language issues until January 10, 2018. No further Response was filed by the due date.

3. Factual background

The Complainant is Mediana Co., Ltd, a Korean corporation which is manufacturing and selling 'defibrillator and patient monitor' among medical devices.

The Complainant owns trademark for MEDIANA registered in 2010 in the Republic of Korea and filed in 2017 in the United States of America.

According to the publicly available Whois information the disputed domain name <mediana-ultrasound.com> was registered on June 11, 2015.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

(i) The disputed domain name <mediana-ultrasound.com> is confusingly similar to the Complainant's trademark MEDIANA. It incorporates the Complainant's MEDIANA mark in entirety with the addition of hyphen and a generic word "ultrasound" which does not sufficiently distinguish the disputed domain name from the trademark. "MEDIANA" is the dominant feature of the disputed domain name, causing confusing similarity to the Complainant's trademark;

(ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has not authorized the Respondent to use the MEDIANA mark for registration of any domain name incorporating the mark. There is no conceivable legitimate interest in the use of the disputed domain name by the Respondent.

(iii) The disputed domain name was registered and is being used by the Respondent in bad faith. Firstly, the Respondent registered the disputed domain name which entirely incorporates the Complainant's MEDIANA trademark without the Complainant's permission. Secondly, the Respondent registered the disputed domain name for the purpose of disrupting the business of the Complainant. The Respondent intentionally attempted to attract internet users to his website by creating confusion with the Complainant's website trademark. Finally, the Respondent previously registered the numerous domain names which previous UDRP panels ordered to be transferred to the Complainant.

B. Respondent

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

5. Language of Proceedings.

According to paragraph 11(a) of the Rules, the language of the administrative proceeding shall be the language of the Registration Agreement unless the Panel determines otherwise. In this present case, the language of the Registration Agreement for the disputed domain name is Chinese.

However, the Complaint was filed in English. Complainant requests that the language of proceeding be English for the following reasons: (i) The fact that the content of Respondent's website was written in English demonstrates Respondent's familiarity with the English language; (ii) The Complainant was incorporated in the Republic of Korea and is not familiar with the Chinese language; and (iii) The Complainant would be disadvantaged by translating this Complaint into Chinese due to time consuming and costly translation. The Center formally notified the Respondent of the Complaint and also gave the Respondent opportunity to comment on the language of the proceeding. However the Respondent did not respond to the Center's notification on the language of administrative proceeding.

The spirit of paragraph 11 of the Rules is to ensure fairness in the selection of language by giving full consideration, *inter alia*, to the parties' level of comfort with each language, the expenses to be incurred, and the possibility of delay in the proceeding in the event translations are required and other relevant factors.

In consideration of the above circumstances and in the interest of fairness to both parties, the Panel decides, under paragraph 11(a) of the Rules, that English shall be the language of the administrative proceeding in this case.

6. Findings

Paragraph 15(a) of the Rules instructs the Panel to decide the Complaint on the grounds of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Moreover, under paragraph 14(b) of the Rules, it is established that: "If a Party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, these Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate."

In light of the above, the Panel may draw such inferences from the Respondent's failure to comply with the Rules as it considers appropriate (see paragraph 14(b) of the Rules).

Under paragraph 4(a) of the Policy, the Complainant must prove each of the following:

- 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

The disputed domain name <mediana-ultrasound.com> incorporates the Complainant's MEDIANA mark in entirety and adds with hyphen "-" and a generic word "ultrasound". The dominant feature of the disputed domain name is "MEDIANA" and the word "ultrasound" is a generic term and only a descriptive suffix.

The generic Top-Level Domain (gTLD) suffix ".com" can be disregarded under the confusing similarity test (see *DHL Operations B.V. v. zhangyl*, WIPO Case No.

D2007-1653). Numerous UDRP panels have held that where a domain name substantially incorporates a complainant's trademark, this is sufficient to make the domain name "confusingly similar" within the meaning of the Policy (see *Amazon.com, Inc. v. MCL International Limited*, WIPO Case No. D2000-1678).

Accordingly, the Panel finds that the first element under paragraph 4(a) of the Policy has been met by the Complainant.

B) Rights and Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the overall burden of proof is on the Complainant. However, once the Complainant presents a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, the burden of production shifts to the Respondent (see *Belupo d.d. v. WACHEM d.o.o.*, WIPO Case No. D2004-0110; *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. D2003-0455).

Firstly, the Complainant contends that the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services. Although the Respondent did neither manufacture nor sell the ultrasonic medical devices, the Respondent had previously operated the website advertising the ultrasonic medical devices and passing off Complainant's trademark in the website. According to the evidence the Complainant presented to this Panel, the Respondent's website <mediana-ultrasound.com> was almost identical to the Complainant's website <mediana.co.kr>. Shortly after the Complaint was submitted, the Respondent's website was closed.

Secondly, the Respondent failed to come forward with any appropriate allegations or evidence that might demonstrate its rights or legitimate interests in the disputed domain name to rebut the Complainant's *prima facie* case.

Thirdly, there is no evidence that the Respondent has used, or has made demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services or is making a legitimate noncommercial or

fair use of the disputed domain name. In addition there is no evidence to suggest that the Respondent has been commonly known by the disputed domain name.

Accordingly, the Panel concludes that the Complainant has satisfied the second element under paragraph 4(a) of the Policy in the present case.

C) Bad Faith

Paragraph 4(a)(iii) of the Policy requires that the disputed domain name "has been registered and is being used in bad faith". As this requirement is conjunctive, the Complainant must establish both bad faith registration and bad faith use of the disputed domain name. In addition, the circumstances listed in paragraph 4(b) of the Policy are not exclusive, and other circumstances may likewise lead to a finding of bad faith registration and use.

Firstly, having considered that the disputed domain name entirely incorporates Médiana mark and the Respondent passed off the Complainant's trademark in his website, it is highly unlikely that the Respondent failed to notice the presence of the trademark in the disputed domain name at the time of the registration.

Secondly, the Respondent intentionally attempted to attract internet users to his website by using the confusingly similar disputed domain name. Shortly after the Complaint was submitted to the Center, the registrant name was changed from Nexperian Holding Ltd to Du Ye Yu and the Respondent's website was closed. The mere fact of diverting users in this misleading manner and changing the registrant name to false name suggests of bad faith.

Thirdly, there is also a history of prior bad faith findings in the case involving the Respondent such as in *Mou Limited v. Nexperian Holding Ltd*, WIPO Case No. D2017-1079 and in *The Spike's Holdings v. Nexperian Holding Ltd.*, FA1706001736008. Having considered the Respondent's registration of multiple confusingly similar domain names incorporating third party's trademarks, the Panel finds that these registrations constitute a typical pattern of cybersquatting in bad faith. Based on the foregoing, the Panel is satisfied that bad faith registration and use have

been established with respect to the disputed domain name in accordance with paragraph 4(b) of the Policy.

Accordingly, the Panel concludes that the Complainant has satisfied the third element under paragraph 4(a) of the Policy in the present case.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name < mediana-ultrasound.com > be cancelled.

Moonchul Chang

Sole Panelist

Dated: January 15, 2018