



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

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| Case No. | HK-1600867 |
| Complainant: | Kenneth Keung |
| Respondent: | Michael Armbruster |
| Disputed Domain Name(s): | <hymarkets.biz> |

1. The Parties and Contested Domain Name

The Complainant is Kenneth Keung, of 10th Floor, 9 Queen's Road Central, Hong Kong.

The Respondent is Michael Armbruster of Hymarkets, of 3rd Floor, 28 Throgmorton Street, London, UK.

The domain name at issue is <hymarkets.biz> ("Disputed Domain Name"), registered by Respondent with GoDaddy.com Inc ("Registrar").

2. Procedural History

The Complaint was filed with the Hong Kong Regional Centre for Arbitration (the "**Centre**") on 10 May 2016. On 23 May 2016, the Centre transmitted by email to the Registrar, a request for registrar verification in connection with the Disputed Domain Name. On 24 May 2016, the Registrar transmitted by email to the Centre its verification response disclosing the registrant for the Disputed Domain Name, which differed from the named Respondent in the Complaint. On 27 May 2016, the Center sent an email communication to the Complainant providing the name of the registrant as disclosed by the Registrar, notifying the Complainant of certain deficiencies in the Complaint, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on 31 May 2016.

The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the ADNDRC Supplemental Rules to the Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, the Centre formally notified the Respondent of the Complaint, and the proceedings commenced on 1 June 2016. In accordance with paragraph

5 of the Rules, the due date for the Response was 21 June 2016. The Respondent did not submit any Response or request for any additional time to submit a Response.

The Centre appointed Gabriela Kennedy as the sole panelist in this matter on 29 June 2016. The Panel finds that it was properly constituted.

3. Factual background

The Complainant is an individual based in Hong Kong.

The Respondent is based in the UK, and registered the Disputed Domain Name on 20 January 2016.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

- (a) The Complainant asserts that HYMARKETS is a brand name held by Henyep Holdings (BVI) Limited ("**Henyep**"), and that the FCA licence related to the domain name <hymarkets.com> is held by Henyep Capital Markets (UK) Limited (which changed its name to HYCM (Europe) Limited) ("**HYCM**").
- (b) The Complainant alleges that the Disputed Domain Name resolved to a website that unlawfully copied the Complainant's trade marks and content, and uses the Complainant's contact details, with the intent of confusing the Complainant's clients into depositing money into the Respondent's bank account.
- (c) The Complainant argues that the Respondent has no rights or legitimate interests in the Disputed Domain Name.
- (d) The Complainant claims to have received many enquiries from its customers who had been asked to deposit money via the Disputed Domain Name. The Complainant also alleges that the Respondent has been using various channels (e.g. video broadcasting, messaging applications, emails, etc) to confuse customers into believing that the Disputed Domain Name is associated with the Complainant.

B. Respondent

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

The fact that the Respondent has not submitted a Response does not automatically result in a decision in favor of the Complainant.

5. Findings

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements:

- (i) the Disputed Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- (iii) the Disputed Domain Name has been registered and is being used by the Respondent in bad faith.

A. Identical / Confusingly Similar

The Complainant contends that Henyep owns the "brand" HYMARKETS. No assertions or details have been provided by the Complainant as to whether or not this alleged ownership is in respect of registered or unregistered rights in the HYMARKETS trade mark. The Complainant also failed to provide any supporting evidence regarding the foregoing (e.g. trade mark registration certificates, etc). Instead, the Complainant merely makes a bare allegation that "Hymarkets is one of the brand name under Henyep Holdings (BVI) Limited [sic]."

Even if the Complainant did provide evidence that Henyep was the owner of the registered or unregistered rights in the HYMARKETS trade mark, Henyep is not a party to these proceedings and the Complainant has provided no explanation or evidence as to how he is associated with either Henyep or HYCM.

In light of the above, the Panel finds that the Complainant has failed to establish that he has any rights in the HYMARKETS trade mark.

The Panel finds that the Complainant has failed to satisfy paragraph 4(a)(i) of the Policy.

B. Rights and Legitimate Interests

As the Complainant has failed to satisfy paragraph 4(a)(i) of the Policy, the Panel does not need to consider the second requirement under paragraph 4(a)(ii) of the Policy.

C. Bad Faith

As the Complainant has failed to satisfy paragraph 4(a)(i) of the Policy, the Panel does not need to consider the third requirement under paragraph 4(a)(iii) of the Policy.

The Panel notes that even if this element was considered, the Panel would find that the Complainant had failed to establish bad faith registration and use. The Complainant did not provide any evidence in support of its allegations.

This decision does not preclude the Complainant from bringing court proceedings against the Respondent.

6. Decision

For the foregoing reasons, the Complaint is denied.

Gabriela Kennedy
Panelist

Dated: 13 July 2016