



**(Hong Kong Office)**

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	<b>HK-2101450</b>
<b>Complainant:</b>	<b>Shenzhen Tang Pu Sen E-Commerce Co., Ltd.</b>
<b>Respondent:</b>	<b>Domain Admin</b>
<b>Disputed Domain Name(s):</b>	<b>&lt; sunguy.com &gt;</b>

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**1. The Parties and Contested Domain Name**

The Complainant is Shenzhen Tang Pu Sen E-Commerce Co., Ltd., of 5 / F, Building E, Xinxiong Industrial Zone, Gushu 1st Road, Xixiang Street, Baoan District, Shenzhen.

The Respondent is Domain Admin, of 4616 W Sahara Ave #180.

The domain name at issue is sunguy.com, registered by the Respondent with Domain Pro, LLC, of 10 Corporate Drive, Suite #300 Burlington, MA 01803.

**2. Procedural History**

The Complaint was filed with the Asian Domain Name Dispute Resolution Centre (the “Centre”) on April 19, 2021. The Complainant chose a sole panelist to review this case. The Complaint was filed in accordance with the Uniform Domain Name Dispute Resolution Policy (“the Policy”) which was adopted by the ICANN and came into effect on October 24, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”) which came into effect on September 28, 2013 and the Supplemental Rules thereof which came into effect on July 31, 2015.

On April 20, 2021, the Centre confirmed the receipt of the Complaint and Annexures, and transmitted by email to Domain Pro, LLC (the Registrar of the domain name) a request for registrar verification in connection with the domain name at issue. On April 28, 2021, the said Registrar verified to the Centre that, the Policy applies to the domain name at issue, the Respondent should be Domain Admin and the language used in the registration agreement was English.

On April 28, 2021, the Centre sent a deficiency notice to request the Complainant, to update the Respondent information in the Complaint on or prior to May 3, 2021. On April 28, 2021, the Complainant sent the revised Complaint to the Centre. On April 29, 2021, the Centre confirmed receipt of the amended Complaint.

On April 29, 2021, the Centre sent the formal Complaint Notice and Complaint to the Respondent and requested the Respondent to reply within 20 days (on or prior to May 19, 2021) in accordance with the Rules and Supplement Rules. The procedures for this case formally commenced on April 29, 2021.

On May 19, 2021, the Centre received a response from the Respondent, and forwarded the response to the Complainant on May 20, 2021. The Centre received a Supplemental statement from the Complainant on May 20, 2021 and then forwarded them to the Respondent on the same day.

On May 20, 2021, the Centre sent the Panelist candidate, Mr. Matthew Murphy, a Panelist Appointment Notice. On the same day, the Panelist candidate, Mr. Matthew Murphy, considered that it was properly constituted and submitted the acceptance notice as well as a statement of impartiality and independence. On May 20, 2021, the Centre notified both parties and the Panelist, Mr. Matthew Murphy, by email that Mr. Matthew Murphy was to be the sole panelist for arbitrating this case. The Centre then formally transferred the case to the Panelist. The Panelist agreed to deliver his decision with respect to the disputed domain name, on or prior to June 3, 2021.

On May 21, 2021, the Centre received a Supplemental statement from the Respondent and forwarded it to the Complainant and the Panelist on that same day.

### **3. Factual background**

#### *For the Complainant*

The Complainant, Shenzhen Tang Pu Sen E-Commerce Co., Ltd., claims that it was established in 2014 and is a company focusing on the mobile phone spare parts market. The Complainant claims that it designs and produces creative and innovative smartphone accessories on a global basis, and with its key products being accessories such as mobile phones, tablets, headphones and laptops. The Complainant claims that since 2017, the Complainant has been supplying “SUNGUY” branded products such as mobile phones, tablet computers, earphones and laptops on Amazon’s official website in the United States, Japan, the United Kingdom, Germany, France, Italy, Canada and other regions.

The Complainant claims that its sales of “SUNGUY” series of products on multiple sites of Amazon have been recognized by consumers in many countries and regions around the world. The Complainant claims that the brand “SUNGUY” has gained a certain level of popularity and has formed a unique corresponding relationship with the Complainant.

The Complainant claims that, “SUNGUY”, as its core trademark, has gained high brand recognition and social influence after years of publicity and use. As early as 2016, the Complainant began to apply for registration of the “SUNGUY” trademark with the official trademark offices in the areas where it mainly operates. As at the time of filing of the Complaint, the Complainant has obtained registration for the “SUNGUY” trademark in the United States, Japan, China, the European Union and the UK. The trademark registrations relied upon by the Complainant can be summarized as follows:

Trademark	Application date	Trademark number	Class	Country/Region
SUNGUY	March 16, 2016	5064270	9	USA
SUNGUY	December 28, 2018	6198470	9	Japan
SUNGUY	March 21, 2017	23223149	9	China
SUNGUY	December 10, 2020	018351652	28	EU
SUNGUY	December 10, 2020	UK00003566170	28	UK

*For the Respondent*

The Respondent, Domain Admin, is incorporated in Las Vegas, 4616 W Sahara Ave #180. The Respondent concedes that the “sunguy.com” domain name is “identical” to the “SUNGUY” trademark.

The Respondent, claims that, it owns thousands of common generic and descriptive words and phrase domain names in a variety of languages and is in the business of buying and selling such domain names. The Respondent claims that, it obtained and used the “sunguy.com” domain name consisting of generic or descriptive words to profit from the generic and descriptive value of the terms and without knowledge of or intention to take advantage of the Complainant’s rights for the “SUNGUY” trademark. The Respondent claims that, it did not have any knowledge on any of Complainant’s products or services prior to the filing of the Complaint.

The Respondent, claims that, it registered the “sunguy.com” domain name solely because it consisted of two common generic terms that are frequently used in conjunction with each other in the context of the related concepts of “sun” and “guy”. The Respondent claims that, the “sunguy.com” domain name was registered in good faith under the purpose of benefitting from the generic and descriptive character of a domain name.

**4. Parties’ Contentions**

A. Complainant

The Complainant’s contentions may be summarized as follows:

- i. The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant claims that, “SUNGUY” is its core trademark, it has gained a certain level of popularity and has formed a unique corresponding relationship with the Complainant, and that a Google search can prove this unique correspondence and relationship. The Complainant claims that, the main identifying part of the disputed domain name “sunguy.com” is “sunguy”, which is identical to the

Complainant's trademark "SUNGUY". In this case, the main features of the "SUNGUY" trademark can be identified in the disputed domain name, therefore, the Complainant believes that the registration of the domain name by the Respondent is likely to cause confusion among consumers.

The Complainant claims that "sunguy" is not a word commonly used in English, It is a creative word, and the Complainant has given it a new meaning through the extensive use of "sunguy" in commerce.

The Complainant further claims that the Complainant was already using the domain name "sunguymall.com" as it's official website before the disputed domain name was registered by the Respondent, and that the core elements of the domain name "sunguy" are likely to cause confusion among consumers.

- ii. The Respondent has no rights or legitimate interests in respect of the domain name.

The Complainant claims that it ran trademark searches with the China Trademark Office and made international queries as well, and it found that the Respondent does not own any trademark applications or registrations relating to "sunguy".

The Complainant claims that, it has never directly or indirectly authorized the Respondent to use the "SUNGUY" trademark and related domain name in any form. The Complainant also claims that, the Respondent is referred to as "Domain Admin", and obviously it is impossible for it to have the relevant rights or interests in the "sunguy.com" domain name, or with respect to the trademark "SUNGUY".

- iii. The disputed domain name has been registered and is being used in bad faith.

The Complainant claims that it has established a close correspondence with the trademark "SUNGUY" and the trademark has high visibility, and that herefore, the Respondent knew or should have known the Complainant's trademark prior to registering the domain name "sunguy.com", and the act of applying for registration of the domain name was in bad faith and is subject to Paragraph 4(b) of the Policy, in that the disputed domain name has been "maliciously registered".

The Complainant claims that the disputed domain name "sunguy.com" was offered for sale by the Respondent at price of USD4,099, which is far higher than the cost of registering the domain name. The Complainant claims that, the Respondent's use of the disputed domain name was in bad faith, consistent with the description in Paragraph 4(b)(i) of the Policy: 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.

## B. Respondent

The Respondent's Reply may be summarized as follows:

The Respondent concedes that the "sunguy.com" domain name is "identical" to the "SUNGUY" trademark.

The Respondent claims that the "sunguy.com" domain name is wholly comprised of the highly generic words of "sun" and "guy.", and that when combined, these words make up a "common phrase" with a clearly descriptive and well-known meaning. The Respondent claims that it has a right and legitimate interest in the "sunguy.com" domain name because it is in the business of acquiring and selling valuable generic and descriptive domain names.

The Respondent claims that the "SUNGUY" trademark is not "well-known" and that the Respondent had never heard of the "SUNGUY" trademark until it read the Complaint. The Respondent claims that it registered the "sunguy.com" domain name solely because it consisted of two common generic terms that are frequently used in conjunction with each other in the context of the related concepts of "sun" and "guy". It claims that registration of a domain name for the purpose of benefitting from the generic and descriptive character of a domain name, is good faith registration.

The Respondent claims that the Complainant never alleged or provided any evidence to prove that the Respondent carried out bad faith registration as per Paragraph 4(b) of the Policy.

The Respondent further claims that the Complainant submitted the Complaint in bad faith, in that the Complaint constitutes an abuse of the administrative proceedings provided in the Paragraph 15(e) of the Rules, "[i]f after considering the submissions the Panel finds that the complaint was brought in bad faith...the Panel shall declare its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceedings."

## 5. Findings

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent's domain name is 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.

## **Unsolicited Supplemental Filing**

The Complainant submitted a supplemental filing on May 20, 2021. Accordingly, the Respondent filed a point-by-point reply to certain claims made in the supplemental filing by the Complainant on May 21, 2021.

As it is well stated in a previous case, “panels generally frown on receiving additional submissions -- particularly after a panel has been fully appointed and the case provided to it for decision -- for the simple reason that such submissions tend to complicate the process, delay decision of the underlying dispute and run counter to the goals, embodied in the Policy, of providing a dispute resolution mechanism that is relatively simple, expeditious and cost-effective to the parties. Nevertheless, situations may well arise where either party believes it needs such a filing to adequately present its case and presents sufficient justification for that filing. It is in those instances, as here, that a panel in assessing the underlying circumstances of a case will determine, in its sole discretion and on a case-by-case basis, whether to accept such a submission or not.” - see: WIPO AutoNation Holding Corp. v. Rabea Alawneh, D 2002-0058.

In the current case, the Panel has decided to accept and admit the supplemental filings submitted by both the Complainant and the Respondent.

### **A) Identical / Confusingly Similar**

The Complainant, by submitting its trademark registration information, has proved that it is entitled to ownership of the “SUNGUY” trademark. Obviously, the disputed domain name “sunguy.com” completely incorporates the Complainant’s “SUNGUY” trademark. As to the gTLD designation “.com” in the disputed domain name, it should be ignored when it comes to decide confusingly similarity - see: Rohde & Schwarz GmbH & Co. HG v. Pertshire Marketing, Ltd., WIPO Case No. D2006-0762. Thus, the disputed domain name and the Complainant’s “SUNGUY” trademark possess the similarity that is sufficient to cause confusion.

It is noted that the Respondent has already agreed during these proceedings that the disputed domain name is identical to the “SUNGUY” trademark.

In conclusion, the Panelist finds that the Complainant has satisfied Paragraph 4(a)(i) of the Policy.

### **B) Rights and Legitimate Interests**

The Respondent has repeatedly submitted that the disputed domain name is composed of generic or descriptive words “sun” and “guy”, and claimed that “the holding for resale of domain name consisting of dictionary words or common phrase” should be enough to show that has the necessary rights and legitimate interests in respect of the disputed domain name.

The Panelist agrees with the Respondent that the disputed domain name “sunguy.com” could be deemed as a combination of generic/descriptive terms. As a trademark, “SUNGUY” may be considered to have some level of inherent distinctiveness, albeit being the combination of two ordinary words. However, the distinctiveness of the “SUNGUY” trademark is not the core issue in this case. In the domain name “sunguy.com”, although there is no space in

between the letters making up “sunguy” to divide them into words, it would be natural for anyone who possesses a certain knowledge of English to identify and pronounce it as “sun” “guy”. Thus, the disputed domain name can be considered as a combination of two generic/descriptive words “sun” and “guy”, which is identical to the Complainant’s trademark “SUNGUY”.

So, the core question is whether the disputed domain name composed of a combination of generic/descriptive words and the offering for sale thereof automatically entitles the Respondent to have legal rights and interests in that domain name.

“Panels have recognized that merely registering a domain name comprised of a dictionary word or phrase does not by itself automatically confer rights or legitimate interests on the respondent; panels have held that mere arguments that a domain name corresponds to a dictionary term/phrase will not necessarily suffice. In order to find rights or legitimate interests in a domain name based on its dictionary meaning, the domain name should be genuinely used, or at least demonstrably intended for such use, in connection with the relied-upon dictionary meaning and not to trade off third-party trademark rights.” (WIPO Jurisprudential Overview 3.0, 2.10.1)

Clearly, the Complainant confirmed that it had never authorized the Respondent to use the “SUNGUY” trademark and/or disputed domain name in any way or form. There is no evidence showing that the Respondent has been commonly known by the disputed domain name, nor owned any trademark relating to “sunguy”. More importantly, the Respondent has not “genuinely used, or at least demonstrably intended for such use, in connection with the relied-upon dictionary meaning”. Instead, the Respondent has revealed itself as the “FindYourDomain.com” in its Reply, and claimed that its legitimate interest in the domain name is the business of selling this generic and descriptive domain names. In other words, the Respondent considers its legal interest in the disputed domain name lie in the selling of the “sunguy.com” itself.

Similar to the approach cited in the “WIPO Jurisprudential Overview 3.0, 2.10.1” above, although the business of selling generic and descriptive domain names is not illegal nor in violation of the UDRP Policy, the mere sale of the generic and descriptive domain names alone does not suffice to support a respondent’s legal rights and interests in its domain name - otherwise, professional domain dealers who are in the business of selling domain names would be invincible under the UDRP Policy. In the current case, it is not convincing that the Respondent has generated legal interest from selling the disputed domain name upon considering the bad faith factors discussed below.

In conclusion, the Panelist finds that the Complainant has satisfied Paragraph 4(a)(ii) of the Policy.

### **C) Bad Faith**

It is noted that that the Respondent revealed itself as “FindYourDomain.com” in its Reply and Supplement statement, and claimed in the Reply that “an important strategy employed by Respondent is identifying and acquiring domain names that are composed of combinations of common descriptive and generic terms in a variety of languages”. Such facts indicate that the Respondent herein is a professional domain dealer, and it is likely that it was/is familiar with the UDRP Policy as the adoption of the said strategy is to avoid legal disputes arising under the UDRP Policy, as much as possible.

The Respondent claimed that “the SUNGUY Marks are not well known” and it “never heard of the SUNGUY Marks until it read the Complaint.”

“As for Respondent’s claim that it was not specifically familiar with Complainant’s trademark, even if the Panel would credit that assertion, that assertion is not enough to avoid a finding of bad faith registration. Although there may be no obligation that a domain name registrant conduct trademark or search engine searches to determine whether a domain name may infringe trademark rights, a sophisticated domainer who regularly registers domain names for use as PPC landing pages cannot be willfully blind to whether a particular domain name may violate trademark rights. In this context, a failure to conduct adequate searching may give rise to an inference of knowledge. Furthermore, if a party elects to conduct such searches to show its absence of bad faith, the searches should be properly done to make it likely that any existing trademark rights will be found. Respondent’s search fails that standard because the database Respondent used included only registrations (and not pending applications, which, though not determinative, are indicative of potential trademark rights) and was updated only on an annual basis (and thus was not current, which is particularly important in the context of the Internet, where new websites are created and can become quite popular in rapid time; indeed, an even more thorough search would also include search engine searches to see what new websites may exist that use a name identical or confusingly similar to the domain name at issue even in the absence of a trademark application or registration). The USPTO website has a free, regularly-updated database of trademark applications and registrations (see <http://www.uspto.gov/main/trademarks.htm>), and is easily searchable, even by non-lawyers. Similarly, Yahoo! and Google offer highly effective search engines to determine the most relevant references on the Internet in response to a particular search term.” - see: *mVisible Technologies, Inc. v. Navigation Catalyst Systems, Inc.*, WIPO Case No. D2007-1141.

Regarding the degree of the adequate searching obligation conducted by a registrant as a professional domain dealer, the Panelist considers that it would be unreasonable and unnecessary to request such registrant to conduct trademark searches using various trademark registration databases for every jurisdiction, prior to registering a domain name, but a simple search of a country’s trademark database where he/she/it lives and/or a general online search for brands in use, may well assist in showing good faith.

In the current case, it appears that the Respondent carries out due diligence when acquiring domain names. According to the “Annex 1 Declaration of Tom Salbego” submitted by the Respondent, an individual Tom Salbego claimed to be the Director of Communications for FindYourDomain.com (“FYD”, the Respondent’s name revealed in the Reply) stated that “I generally conduct due diligence on domain names acquired by FYD to confirm that acquired domain names do not violate the rights of any third parties and I conducted such due diligence when acquiring the novatela.com and my due diligence did not indicate any reasonably likelihood that the domain name violated the rights of any third parties.” Accordingly, it is reasonable for the Panelist to infer that if the Respondent conducts due diligence regularly, it should have known that a search in the USPTO trademark database would be the easiest and quickest way to see if any prior trademark right appears to exist regarding a targeted domain name.

Although the Complainant is not an American company, it owns a US Trademark Registration - No. 5064270 “SUNGUY”, which was filed for registration on March 16, 2016 and registered on October 18, 2016. The “sunguy.com” domain name was first registered



on March 22, 2021. If the Respondent had run a trademark search of the USPTO trademark database prior to the registration of the disputed domain name herein, it would be impossible for them not to find the Complainant's registered trademark. Further, a simple Google search for "sunguy" may well have revealed the business of the Complainant and its "SUNGUY" brand.

In a word, the Respondent's due diligence statement is in contradictory with its claim that it "never heard of the SUNGUY Marks until it read the Complaint." Thus, it is reasonable to infer that the Respondent should have known of the Complainant's trademark and the registration of the disputed domain name is in bad faith.

With respect to the bad faith use, "where a respondent has registered a domain name consisting of a dictionary term because the respondent has a good faith belief that the domain name's value derives from its generic qualities, that may constitute a legitimate interest and the offer to sell such a domain name is not necessarily a sign of bad faith. Where, in contrast, a respondent registers large swaths of domain names for resale, often through automated programs that snap up domain names as they become available, with no attention whatsoever to whether they may be identical to trademarks, such practices may well support a finding that respondent is engaged in a pattern of conduct that deprives trademark owners of the ability to register domain names reflecting their marks." - see: *Mobile Communication Service Inc. v. WebReg, RN, WIPO Case No. D2005-1304*.

Further, "It is evident that Respondent is in the business of selling domain names through its web page "www.domaincollection.com," and that in order to profit from such business, Respondent is offering the domain names for valuable consideration in excess his out-of-pocket costs directly related to the domain name. The contested domain name is one of the many domain names offered for sale through Respondent's web page. By offering the contested domain name through a publicly accessible website, Respondent is offering it for sale to Complainant, any of Complainant's competitors, and others. The above circumstances fall within the exemplification of registration and use of a domain name in bad faith pursuant to paragraph 4(b)(i) of the Policy." - see: *VENTURUM GmbH v. Coventry Investments Ltd., DomainCollection Inc., WIPO Case No. D2003-0405*.

The Respondent herein is obviously a professional domain dealer in the business of selling domain names composed of combinations of common descriptive and generic terms. It may be good faith for the Respondent to sell other domain names that have value deriving from their generic qualities, assuming that they do not infringe any third party's prior trademark rights. However, it is not the case in this particular domain name dispute.

As mentioned above, if the Respondent had carried out due diligence, then it should have known that "SUNGUY" had been registered as a trademark in the USA from October 18, 2016, which is earlier than the registration date of the disputed domain name herein on March 22, 2021. Nevertheless, the Respondent registered it and has marked it with sales price of USD4,099 which is clearly greater than its out-of-pocket costs regarding the registration and holding of disputed domain name. Even though such offer to sell is made on a third party's public platform, the offer is still open to the Complainant, the Complainant's competitors, and others, as the cited domain name dispute case precedents mentioned above discuss. Thus, the disputed domain name is used in bad faith.

In conclusion, the Panelist finds that the Complainant has satisfied Paragraph 4(a)(iii) of the Policy.

## **D) Reverse Domain Name Hijacking**

“Paragraph 1 of the Rules defines reverse domain name hijacking as "using the Policy in bad faith to attempt to deprive a registered domain-name holder of a domain name." See also Paragraph 15(e). To prevail on such a claim, a Respondent must show that the Complainant knew of the Respondent’s unassailable right or legitimate interest in the disputed domain name or the clear lack of bad faith registration and use, and nevertheless brought the Complaint in bad faith. See, e.g., Sydney Opera House Trust v. Trilynx Pty. Ltd. (WIPO Case No. D2000-1224) and Goldline International, Inc. v. Gold Line (WIPO Case No. D2000-1151). Since the complainant has succeeded in establishing the elements entitling it to relief under the Policy, this claim must be rejected.” - see: Myer Stores Limited v. Mr. David John Singh, WIPO Case No. D2001-0763.

Similar to WIPO Case No. D2001-0763, the Complainant has succeeded in establishing the elements entitling it to relief under the Policy in this present case, and the Panelist finds that Respondent’s reverse domain name hijacking claim is not supported by the facts in this case.

## **6. Decision**

Pursuant to Paragraph 4(a) of the Policy and Article 15 of the Rules, the Panelist orders that the disputed domain name < sunguy.com > be transferred to the Complainant.



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Matthew Murphy  
Panelist

Dated: May 29, 2021