



Asian Domain Name Dispute Resolution Centre

hongkong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1801062
Complainant:	Visa International Service Association
Respondent:	STEVEN SMITH, VISA FUND MANAGEMENT
Disputed Domain Name(s):	visabank.org, visabanking.com, visabanking.net, visabanking.org, visb.org

1. The Parties and Contested Domain Name

The Complainant is Visa International Service Association, of 900 Metro Center Boulevard, Foster City, California 94404, U.S.A.

The Respondent is STEVEN SMITH, VISA FUND MANAGEMEN, of 51/F, Hopewell Centre, 183 Queens Road East, Wanchai, Hong Kong.

The domain names at issue are “visabank.org,” “visabanking.net,” “visabanking.org” and “visb.org” registered by Respondent with 101domain GRS Limited, of 4th Floor, International House, 3 Harbourmaster Place, IFSC, Dublin 1, Ireland.

The domain name at issue is “visabanking.com” registered by Respondent with REALTIME REGISTER B.V., of Ceintuurbaan 32a, 8024 AA Zwolle, THE NETHERLANDS.

2. Procedural History

A Complaint, made pursuant to the Uniform Domain Name Dispute Resolution Policy (“Policy”) implemented by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on October 24, 1999, and under ICANN Rules for Policy and Asia Domain Name Dispute Resolution Center (“ADNDRC”) Supplemental Rules for Policy, was received by ADNDRC Hong Kong Office on January 17, 2018. At the same day, the ADNDRC Hong Kong Office requested the Registrars by email for the provision of information at their WHOIS database in respect of the Disputed Domain Names, and the registration information was confirmed by the Registrars REALTIME REGISTER B.V. on January 18, 2018 and 101domain GRS Limited on January 24, 2018 respectively.

Having verified that the Complaint satisfied the formal requirements of Policy, the ADNDRC Hong Kong Office issued to the Respondent on January 26, 2018, a Notification

of the Commencement of the Proceedings to email address of the Respondent, advising the Respondent to submit a Response to the Complaint within 20 days scheduled time (on or before February 15, 2018).

On February 18, 2018, the ADNDRC Hong Kong Office notified the Complainant that it had not received the Response from the Respondent within the required period of time and would shortly appoint Panelist for this matter.

On February 20, 2018, the ADNDRC Hong Kong Office informed the parties by email that Dr. Lulin Gao would be the sole Panelist of this case and the Panel should render the Decision on or before March 6, 2018.

3. Factual background

For the Complainant

This Complaint is based on the Complainant's registrations for the VISA Trade Marks and the Complainant's common law rights generated as a result of use of the VISA Trade Marks by the Complainant, its parent Visa Inc. and its group companies (collectively "Complainant Group").

Visa Inc. is an American-based multinational financial services and global payments technology company connecting consumers, businesses, banks and governments in more than 200 countries and territories worldwide. The Complainant Group operates one of the world's leading retail electronic payments network, VisaNet, which facilitates authorization, clearing and settlement of payment transactions and provides a wide range of products, platforms and value-added services to financial institution and merchant clients. Visa Inc. has been listed on the New York Stock Exchange since 2008.

The Complainant Group has registered and maintains various domain names through which the general public across the world may obtain information about the Complainant Group's business. The domain names include but are not limited to the following:

Domain Name	Date of Creation
visa.com	7 March 1994
visa.us	20 April 2002
visa.com.hk	16 July 1998
visa.cn	17 March 2003
visa.com.cn	20 September 2000
visa.jp	30 March 2005
visa.co.jp	10 September 1996

The earliest registration date of the aforementioned domain names predated the registration of the Disputed Domain Names for over 20 years. Furthermore, all of the Complainant Group's registered domain names are being used for bona fide business purposes in connection to the Complainant Group's business. Attached as Annex 4 are the WHOIS records of the Complainant Group's aforementioned domain names. Attached as Annex 5 are screenshots of <usa.visa.com>, <visa.com.hk>, <visa.com.cn> and <visa.co.jp>. Attached as Annex 6 are a representative list of domain names of the Complainant Group.

The Complainant Group's services have always been carried on, supplied and marketed continuously and substantially under and/or by reference to the VISA Trade Marks registered in various jurisdictions around the world. Accordingly, the VISA Trade Marks have acquired distinctiveness through extensive use by the Complainant Group in commerce, so that the VISA Trade Marks are immediately recognisable to consumers as being associated with the Complainant Group and its business.

The Complainant Group has received numerous accolades from various professional magazines, publications and prestigious institutions globally, including Fortune 500, BrandZ, Forbes and Ethisphere Institute. The recognition by these professional publications shows the Complainant Group's global presence and leading position in the trade. Attached as Annexes 7 to 9 are extracts of rankings, press coverage and publications featuring the Complainant Group and/or the VISA Trade Marks.

For the Respondent

The Respondent registered the domain name "visabank.org" with 101domain GRS Limited on November 21, 2016.

The Respondent registered the domain name "visabanking.com" with REALTIME REGISTER B.V. on May 6, 2015.

The Respondent registered the domain names "visabanking.net" and "visabanking.org" with 101domain GRS Limited on May 11, 2015.

The Respondent registered the domain name "visb.org" with 101domain GRS Limited on March 6, 2017.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

i. The Disputed Domain Names are identical/confusingly similar to VISA Trade Marks

The Disputed Domain Names <www.visabank.org>, <www.visabanking.com>, <www.visabanking.net>, and <www.visabanking.org> incorporate the Complainant's "VISA" trade mark in its entirety. The prominent and distinctive part of the Disputed Domain Names is "VISA". The other parts of the Disputed Domain Names, "bank" and "banking", are generic and descriptive words associated with the Complainant's area of business, namely, financial services. As a result, "bank" and "banking" do not negate the confusing similarity between the Disputed Domain Names and the Complainant's VISA Trade Marks.

As regards the Disputed Domain Name <www.visb.org>, the Complainant submits that "VISB" is confusingly similar to "VISA" aurally and visually since there is only a one-letter difference and both words commence with and comprise three identical

English characters “VIS”. As such, an average consumer would regard the two words as confusingly similar and the likelihood of confusion between the two is high.

The Complainant therefore submits that the Disputed Domain Names are identical and/or confusingly similar to its registered trademarks in which the Complainant has rights or interests.

ii. The Respondent has no rights or legitimate interests in respect of the Disputed Domain Names

1. Unauthorized use

The Complainant Group has not licensed, consented to or otherwise authorized the Respondent's use of its VISA Trade Marks for any reason whatsoever, nor is the Respondent an authorized representative or partner of the Complainant Group.

2. The name of the Respondent

The Respondent's name (STEVEN SMITH / VISA FUND MANAGEMENT) consists of VISA which was used without the Complainant Group's authorization nor is the Respondent an authorized representative or partner of the Complainant Group. There is no justification or apparent need for the Respondent to use “VISA” in its company name, and/or to use “visa” or the confusingly similar “visb” in the Disputed Domain Names.

3. Passing off by the Respondent

The Disputed Domain Names (both <www.visabank.org> and <www.visabanking.com>) currently resolve to a website hosted on <www.visabank.org> (the “Respondent's Website”). On the Respondent's Website, financial and banking services are being offered under the name “VISA BANK”, which distinctive part “VISA” is identical to the Respondent's VISA Trade Mark. The Respondent's Website is clearly used to mislead consumers into believing that the Respondent's Website is endorsed by or operated by the Complainant Group. Screenshots of the Respondent's Website dated 10 January 2018 and printouts from the Respondent's Website dated 17 January 2018 are attached as Annex 10. The Complainant submits that the registration of the Disputed Domain Names is a clear indication of the Respondent's illegitimate attempt to pass off its business as the Complainant's business and create confusion.

On the Respondent's Website, it is represented that “VISA BANK” has offices in Hong Kong, London and Dubai. It is also represented that it is “Hong Kong's most international bank” and that the shares of “VISA BANK” trade on the UK and Hong Kong Stock Exchanges. The foregoing claims are clearly untrue as “VISA BANK” is not registered as a bank in Hong Kong and it is not listed in the UK or Hong Kong. The Complainant notified the Hong Kong Monetary Authority (“HKMA”) and the Hong Kong Securities and Futures Commission (“SFC”) in December 2017 of the Respondent's Website as a fraudulent website. The HKMA and the SFC subsequently accepted the complaints and issued online press release and alert on 21 December 2017 to alert members the public of that VISA BANK is not authorized to carry on banking business and is an unlicensed entity under Hong Kong's Securities

and Futures Ordinance. Attached as Annex 11 are printouts of the HKMA's press release and SFC's alert. Further, the HKMA has referred the case to the Hong Kong Police Force for further investigation.

The Disputed Domain Names <www.visabanking.net> and <www.visabanking.org> do not resolve to an active site and <www.visb.org> currently resolves to an empty directory. However, it is clear that the Respondent has registered a series of VISA-related Disputed Domain Names to pass off as the Complainant's business and ride on VISA's goodwill and that the registrations were made in bad faith. Screenshots of these websites dated 11 January 2018 is attached as Annex 12.

iii. The Disputed Domain Names have been registered and are being used in bad faith

The Complainant submits that the Disputed Domain Names have been registered and are being used by the Respondent in bad faith because:

1. Lack of rights or legitimate interests

The Respondent has no rights or legitimate interests in the Disputed Domain Names, which is in itself evidence of bad faith.

2. The Complainant's reputation

It is obvious from the Respondent's registration and use of a series of 5 VISA-related domain names that it intends to ride on VISA's goodwill and reputation.

The Disputed Domain Names incorporate the Complainant's VISA Trade Mark. The word "VISA" has no meaning in terms of financial services and is distinctive of the Complainant Group and its business. It is inconceivable that the Respondent was not aware of the Complainant's VISA Trade Marks which is globally well-known at the time the Respondent registered the Disputed Domain Names. The Respondent registered the Disputed Domain Names solely to take advantage of the Complainant Group's reputation in the VISA Trade Marks and thereby make undue profits/advantage by provision of financial services and collecting sensitive personal information.

3. Intention to cause confusion

As mentioned above, the Disputed Domain Names are confusingly similar to the VISA Trade Marks. The Disputed Domain Names are also confusingly similar to the Complainant Group's trade name.

Furthermore, the Respondent's Website was clearly used with the intention to cause confusion to the public that the Respondent's Website is related to the Complainant Group or is authorized by the Complainant Group for commercial gain by offering financial services.

B. Respondent

The Respondent did not make any response by the scheduled time.

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.

A) Identical / Confusingly Similar

Pursuant to Paragraph 4(a) (i) of the Policy, the Complainant must prove that the Disputed Domain Name is identical or confusingly similar to a trademark in which the Complainant has rights to. In order to meet this requirement, the Complainant provided copies of trademark registration certificates and records certifying its entitlement to the registered trademarks "VISA" before the Respondent registered the Disputed Domain Names. For instance, the Complainant registered the "VISA" trademarks in Hong Kong (Reg. No.1991B2844; Reg. Date: October 6, 1986) (Reg. No. 300557127; Reg. Date: December 29, 2005) (Reg. Nos. 199405070, 199602861, 199405071; Reg. Date: March 2, 1992), (Reg. No. 200401038; Reg. Date: August 19, 2002), and other jurisdictions such as United States of America, etc. Thus, the Panelist is of the view that the Complainant enjoys the prior trademark right to "VISA." As such, what the Panelist needs to do is to make a conclusion on the identity or confusing similarity between the Complainant's registered trademarks "VISA" and the Disputed Domain Names.

With respect to the Disputed Domain Names "visabank.org," "visabanking.com," "visabanking.net" and "visabanking.org," the identifying parts of these Disputed Domain Names are "visabank" or "visabanking" which are normally identified as adding the word "bank/banking" after the trademarks of the Complainant by ordinary consumers. Comparing "visa" with the trademark "VISA" of the Complainant, the Panelist finds they are identical except for the upper or lower case, which shall not distinguish the Disputed Domain Names from the Complainant's trademarks "VISA." Moreover, the combination of "visa" and "bank/banking" does not create a new meaning, which can distinguish itself from the Complainant's "VISA." Further, the evidence provided by the Complainant reveals that the Complainant's trademark "VISA" has enjoyed certain high reputation on financial services all over the world. The combination of "visa" and "bank/banking" may easily mislead the general public into believing that the Disputed Domain Names are used or authorized to use by the Complainant or the Respondent has certain relations with the Complainant.

With respect to the Disputed Domain Name "visb.org," the identifying part "visb" of the Disputed Domain Name and the Complainant's trademark "VISA" have three identical letters and only the last letters are different, and they are similar in terms of words combination. Given the reputation of the Complainant's trademark "VISA," the registration and use of the Disputed Domain Name is likely to cause confusion among the relevant public.

Therefore, the Panelist finds that the Disputed Domain Names are confusingly similar to the Complainant's trademark "VISA," and the Complainant has satisfied the first condition under Paragraph 4(a) (i) of the Policy.

B) Rights and Legitimate Interests

The Complainant argues that the Respondent has not licensed, consented to or otherwise authorized the Respondent's use of its VISA trademarks for any reason nor is the Respondent an authorized representative or partner of the Complainant thereof.

The Respondent did not make any response within the scheduled time, nor did make any explanation or provide any evidence to prove its trademark rights, legitimate interests or any other legal rights to the Disputed Domain Names.

Accordingly, the Panelist concludes that the Complainant has provided preliminary evidence required by Paragraph 4(a) (ii) of the Policy and the burden of proof is transferred to the Respondent, who must overcome the burden of proof by showing its rights or legitimate interests of the Disputed Domain Names. However, the Respondent failed to respond to the Panelist and failed to submit any evidence in support of its contention. Hence, the Panelist cannot come to a conclusion that the Respondent has rights or legitimate interests in respect of the Disputed Domain Names based on the evidence in hand.

Accordingly, the Panelist finds the Complainant has satisfied the second condition under Paragraph 4(a) of the Policy.

C) Bad Faith

The Complainant also needs to establish the Respondent's bad faith as set forth in the Paragraph 4(a) (iii) of the Policy. Under Paragraph 4(b) 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.

First, the Complainant submits evidence proving that it is engaged in the area of financial services and its “VISA” trademarks have gained certain reputation in the world prior to the registration dates of the Disputed Domain Names. Considering that the Complainant’s trademark is inherently distinctive and that the Respondent has never had any rights or legitimate interests in the said trademark, the Panelist holds that it could not be a mere coincidence that the Respondent registered the domain names that are confusingly similar to the Complainant’s prior trademarks. The Respondent fails to make a response to the complaint to provide justifiable reason for registering the Disputed Domain Names.

Second, based on the evidence submitted, the Disputed Domain Names “visabank.org” and “visabanking.com” were resolved to a website hosted on “www.visabank.org.” The printouts of the website of the Respondent indicate that (1) the Respondent obviously used the Complainant’s trademark “VISA” on the top of the website; (2) the Respondent provides banking and financial services which is closely related to the Complainant’s business; and (3) the Respondent introduced that it is “Hong Kong’s most international bank” and that “VISA BANK” shares trade on the UK and Hong Kong Stock Exchanges, while it was alerted as a suspected fraudulent website by the Hong Kong Monetary Authority and unlicensed entities by Hong Kong Securities and Futures Commission. Moreover, the Disputed Domain Names “visabanking.net,” “visabanking.org,” and “visb.org” which are confusingly similar to the Complainant’s trademark “VISA” are likely to cause confusion as to the source of the websites.

In consideration of the distinctiveness and reputation of the Complainant’s prior trademarks, the Respondent knows or should have known the Complainant’s prior trademarks, while the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by him/her of the Disputed Domain Names. The Panelist may infer that the use of the Disputed Domain Names by the Respondent is obviously for obtaining unjustified commercial gain and to unjustly attract Internet users to its web sites, which is likely to cause confusion in respect of the source, sponsorship, affiliation, or endorsement between the web sites of the Respondent and the Complainant. This is exactly the circumstances as set forth in Paragraph 4(b) (iv) of the Policy.

Accordingly, the Panelist finds that the Complainant has satisfied the third condition under Paragraph 4(a) of the Policy and the Respondent registered the Disputed Domain Names in bad faith.

6. Decision

For all the forgoing reasons, the Panel has decided that the Complainant has proved sufficiently the three elements of Paragraph 4(a) of the Policy. Accordingly, the Panel directs that the Disputed Domain Names “visabank.org,” “visabanking.com,” “visabanking.net,” “visabanking.org” and “visb.org” be transferred to the Complainant.

Dr. Lulin GAO
Panelist

Dated: March 2, 2018