



**(Hong Kong Office)**

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	<b>HK-18010172</b>
<b>Complainant:</b>	<b>PCCW-HKT DataCom Services Limited</b>
<b>Respondent:</b>	<b>Robert Stewart</b>
<b>Disputed Domain Name(s):</b>	<b>&lt;pccglobai.com&gt;</b>

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

The Complainant is PCCW-HKT DataCom Services Limited, of 39/F PCCW Tower Taikoo Place, 979 King's Road, Quarry Bay Hong Kong.

The Respondent is Robert Stewart, of 1714 E. Pekin Rd, Lebanon, Ohio 45036 US.

The domain name at issue is <pccwglobai.com>, registered by Respondent with GoDaddy.com, LLC, of 14455 North Hayden Rd, Suite 219, Scottsdale AZ 85260, United States.

**2. Procedural History**

The Complaint was filed in English with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (ANDRC) on September 20, 2018, regarding the domain name <pccwglobai.com>. On September 20, 2018, the Registrar transmitted by email to the Center its verification response identifying the Respondent listed as the registrant and providing the contact details. On September 21, 2018, the ANDRC transmitted an email to the Complainant concerning the information of the Respondent. On September 24, 2018, the Complainant submitted an amended Complaint. On September 26, 2018, the ANDRC verified that the amended 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 on October 5, 2018 the Respondent was notified of the Complaint.

The due date of the Response was October 25, 2018. The Respondent did not file a formal Response and on October 30, 2018 the ANDRC informed the Respondent of its default. The ANDRC appointed Jonathan Agmon as the sole panelist in this matter on November 1, 2018.

**3. Factual background**

The Complainant, PCCW-HKT DataCom Services Limited, was formed in August 2000 when its holding company PCCW Limited acquired Hong Kong Telecom (HKT), formerly Hong Kong Telephone Company Ltd (founded in 1925). The Complainant is a telecommunications service provider and leading operator in fixed-line, broadband and mobile communication services in Hong Kong. The Complainant is headquartered in Hong Kong with a presence in China as well as other parts of the world. In 2015, the Complainant reported revenues in excess of HK 34 billion.

The Complainant is the owner of numerous trademarks for the mark, PCCW, including:

- PCCW (Registration No. 2002B14787) registered in Hong Kong on September 5, 2000;
- PCCW Global (Registration No. 300781236) registered in Hong Kong on December 15, 2006;
- PCCW Global (Registration No. 3529691) registered in U.S. on November 11, 2008;
- PCCW Global (Registration No. 005570304) registered in European Union on September 10, 2008

The disputed domain name <pccwglobai.com> was registered on May 31, 2018. The disputed domain name does not resolve to any active website.

The Respondent appears to be an individual living in U.S.

#### **4. Parties' Contentions**

##### **A. Complainant**

The Complainant's contentions may be summarized as follows:

- i. The Complainant argues that the disputed domain name is identical or confusingly similar to a trademark or service in which the Complainant has rights. The Complainant holds national and international trademark registrations for the mark PCCW and the mark is wholly incorporated into the disputed domain name with an intentional misspelling.
- ii. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the domain name. The Respondent is not commonly known by the disputed domain name and is not authorized by the Complainant to register domain names incorporating the Complainant's mark. The Respondent was also using a privacy shield to hide its identity in its registration.
- iii. The Complainant further contends that the disputed domain name has been registered and is being used in bad faith. At the time of registration of the disputed domain name, the Respondent knew, or at least should have known, of the existence of the Complainant's marks and that registration of domain names containing well-known trademarks constitute bad faith. The disputed domain name is confusingly similar to the Complainant's marks and the Respondent has made no use of the disputed domain name. The Respondent intends to cause confusion among internet users as to the source of the disputed domain name.

##### **B. Respondent**

The Respondent did not file a formal response to the Complainant's contentions. However, on October 25, 2018, the ADNDRC received an email which appears to originate from Ms. Nazil Saka from Rapid7, a company based in Boston, Massachusetts, United States. Ms. Saka, appears to be an attorney for Rapid7. The email states that the disputed domain name was purchased by security consultants of Rapid7 as part of a physical social engineering engagement with the Complainant pursuant to a services agreement where "PCCW Global obtained pentesting services from Rapid7." Ms. Saka offered to transfer the disputed domain over to the Complainant at no cost and stated she believes that the UDRP complaint is without merit because "we did not register or use the domain name in bad faith and therefore this is not a cybersquatting issue."

## 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

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant has provided evidence of its trademark registrations in U.S., European Union and Hong Kong, where the Respondent is based.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The disputed domain name <pccwglobal.com.com> integrates the Complainant's PCCW GLOBAL trademark nearly in its entirety (see *Wal-Mart Stores, Inc. v. Kuchora, Kal, WIPO Case No. D2006-0033*; *Hoffmann-La Roche Inc. v. Andrew Miller, WIPO Case No. D2008-1345*).

It is well established that a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 1.9. Here, the addition of the intentional misspelling of "global" does not avoid confusing similarity.

Consequently, the Panel finds that the Complainant has shown that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights.

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

Once the Complainant establishes a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the Respondent to show that it has rights or legitimate interests in respect to the disputed domain name. (See WIPO Overview 3.0, section 2.1.)

In the present case, the Complainant has demonstrated *prima facie* that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant has provided evidence that it owns various trademark registrations in Hong Kong, U.S. and European Union long before the registration of the disputed domain name and that it is not affiliated with nor has it licensed or otherwise permitted the Respondent to use the Complainant's marks. (See *LEGO Juris A/S v. DomainPark Ltd*, *David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master*; WIPO Case No. D2010-0138; *Sportswear Company S.P.A. v. Tang Hong*, D2014-1875)

The Complainant also provided evidence that the Respondent is not commonly known by the disputed domain name which shows a lack of rights or legitimate interests. (See WIPO Overview 3.0, section 2.3). The WHOIS information shows that the disputed domain name is registered under the Respondent's name which bears no resemblance to the disputed domain name (See *Moncler S.p.A. v. Bestinfo*, D2004-1049; *World Natural Bodybuilding Federation, Inc. v. Daniel Jones TheDotCafe*, D2008-0642). Moreover, the Respondent was using a privacy WHOIS service at the time of filing the Complaint which has been found to evince a lack of legitimate interest (See *Jackson National Life Insurance Company v. Private WhoIs www.jacksonnationallife.com N4892*, D2011-1855).

The Respondent did not submit a formal Response to the Complaint and did not provide a credible explanation or evidence to show rights or legitimate interests in the disputed domain name sufficient to rebut the Complainant's *prima facie* case. The email received on behalf of the Respondent alleging that the disputed domain name was taken by the Respondent, in his role as a security consultant under a contract with the Complainant was not supported by any evidence. The so-called services agreement between Rapid7 and the Complainant was not provided. The informal response email does not provide any explanation why the Respondent would require the disputed domain name for "pentesting." The Panel has doubts if the email is even genuine. If indeed, an attorney from Rapid7 would provide a response to the Complaint on behalf of the Respondent (even an informal one) there is little doubt that a reasoned and well supported response would have been filed, explaining the relationship between the Respondent and the Complainant, attaching relevant documents and correspondences. This was not the case here and it is unlikely that the Complainant would allow the Respondent to provide it with pentesting services without even knowing his name.

In addition, for reasons set out in more detail in the section below, the Panel does not consider the Respondent's use of the disputed domain name to be *bona fide* within the meaning of paragraphs 4(c)(i) or 4(c)(iii) of the Policy.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

### **C) Bad Faith**

The Complainant must also show that the Respondent registered and is using the disputed domain name in bad faith (see Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence which shows that the Respondent registered the disputed domain name long after the Complainant registered its trademark. According to the evidence filed by the Complainant, the Complainant has owned registrations for the PCCW GLOBAL mark since the year 2006 and for the PCCW mark since the year 2000. In view of the evidence filed by the Complainant, and the use of the PCCW GLOBAL trademark in numerous countries, it is suggestive that the Respondent was aware of the Complainant's marks and therefore suggestive of the Respondent's bad faith in these particular circumstances that the trademark, owned by the Complainant, was registered long before the registration of the disputed domain name (See *Sanofi-Aventis v. Abigail Wallace*, WIPO Case No. D2009-0735). In fact, the informal email from the Rapid7 suggests that the Respondent (either as a consultant of Rapid7 or in any other capacity) was aware of the Complainant.

Furthermore, it is clear that the disputed domain name is intentionally misspelled by the Respondent by substituting a similar-looking letter in the Complainant's mark, PCCW GLOBAL, with PCCW GLOBAI. When both names are spelled in small letters, internet users will be confused and misled to the Respondent's website. To this end, prior UDRP panels have established that attracting Internet traffic by using a domain name that is identical or confusingly similar to a registered trademark may be evidence of bad faith under paragraph 4(b)(iv) of the UDRP. The informal email from Rapid7 failed to explain why such misspelling of the disputed domain name occurred or even why the Respondent required the disputed domain name to begin with. If indeed, the Respondent was acting under the authority of the Complainant there was no reason to misspell the Complainant's name in the disputed domain name.

In the present case, the disputed domain name resolves to an inactive page. It is established that under certain circumstances the non-use of a disputed domain name would not prevent a finding of bad faith registration and use under the Policy. (*Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003). The various factors that can be taken into account include the (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the implausibility of any good faith use to which the domain name may be put. (See WIPO Overview 3.0, section 3.3)

The Complainant provided evidence showing that its mark is distinctive. The evidence shows that the acronym "Pacific Century Cyber Works" – PCCW has a significant degree of distinctiveness such that it is unlikely that the Respondent

would not spontaneously decide to register without knowledge of the Complainant beforehand. Rapid7's email on behalf of the Respondent shows that this is the case.

The Respondent has also failed to provide a formal response explaining his use of the Complainant's marks and the Panel considers this failure, especially the failure to provide any evidence to support the arguments made in the informal email, especially those which would support good faith use of the disputed domain name. The Respondent's argument that he acted with the permission of the Complainant is a strong one. It could have changed the outcome of this case if any evidence to support such contention would have been brought forth. Alas, it was not.

The Complainant has further provided evidence of phishing activities performed from the IP address to which the disputed domain name is resolved to. The Respondent would have been able to show that such activities were done in accordance with an agreement between the Complainant and Rapid7 with ease but chose not to do so. The use of a domain name for phishing activities have been long held to be clear evidence of bad faith registration and use of a disputed domain name.

Accordingly, having regard to all the circumstances, the Panel considers the Respondent's passive holding of the disputed domain names to be in bad faith. The Respondent has failed to come forward with any evidence of any contemplated good-faith use of the disputed domain names, and the Panel is unable to conceive of any such use given the particular circumstances of this case.

Based on the evidence presented to the Panel, including the registration of the disputed domain name long after the registration of the Complainant's PCCW GLOBAL mark, the confusing similarity between the disputed domain name and the Complainant's mark and the Respondent's failure to bring any evidence to sustain his arguments, the Panel concludes that the disputed domain name was registered and is being used in bad faith.

Accordingly, having regard to the circumstances of this particular case, the Panel finds that the Complainant has met its burden under paragraph 4(a)(iii) of the Policy.

## **6. 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 <pccwglobai.com> be transferred to the Complainant.

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Jonathan Agmon  
Panelist

Dated: November 16, 2018