



Asian Domain Name Dispute Resolution Centre

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

| | |
|-------------------------------|-----------------------------|
| Case No.: | HK-1901227 |
| Complainant: | Marquee Holdings Ltd |
| Respondent: | Dewi domino |
| Disputed Domain Names: | <w88hero.com> <w88hero.net> |

1. The Parties and Contested Domain Name

The Complainant is Marquee Holdings Ltd, of Akara Bldg, 24 De Castro Street, Wickhams Cay 1, Road Town, Tortola, British Virgin Islands.

The Respondent is Dewi domino, of 11P/F Burgundy Corporate Tower, 252 Sen, gil puyat ave, makati, METRO MANILA 1200, PHTel No.

The domain names at issue are <w88hero.com> and <w88hero.net>, registered by Respondent with NameSilo, LLC, of 1300 E. Missouri Avenue, Suite A-110, Phoenix, AZ 85014.

2. Procedural History

On 22 February 2019, the Complainant filed a Complaint in the English language with the Hong Kong Office (“HK Office”) of Asian Domain Name Dispute Resolution Centre (“ADNDRC”) and elected a three-member panel for the dispute in this matter pursuant to the Uniform Domain Name Dispute Resolution Policy (the “Policy”) and the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”) approved by the Internet Corporation for Assigned Names and Numbers (“ICANN”), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the ADNDRC Supplemental Rules) approved by ADNDRC.

On 22 February 2019, the HK Office sent to the Complainant by email an acknowledgement of the receipt of the Complaint. All correspondence to and from the ADNDRC described herein was in the English language. On the same day, the HK Office transmitted by email to the Registrar a request for confirmation of the WHOIS records of the Disputed Domain Names and other related information. On 27 February 2019, the Registrar confirmed by email that it is the registrar of the Disputed Domain Names, both of which are registered by the Respondent and the WHOIS information of the Disputed Domain Names; and that the Policy is applicable to the dispute relating to the Disputed

Domain Names; and that language of the registration agreement for the Disputed Domain Names is English.

On 8 March 2019, in accordance with paragraphs 2(a) and 4(a) of the Rules, the HK Office issued the notice of commencement of proceeding and formally notified the Respondent of the Complaint on 14 March 2019. In accordance with paragraph 5(a) of the Rules, the due date for the Respondent to submit the Response was 3 April 2019. The Respondent did not submit any response to the Complainant. On 8 April 2019, the HK Office issued a Notice of the Respondent in Default, informing the absence of a Response from the Respondent within the required period of time. On 28 May 2019, the HK Office sent a Notice of Appointment (Presiding Panelist) to Dr. Gao Lulin and a Notice of Appointment of Co-Panelist to Mr. Matthew Murphy and Mr. Douglas Clark respectively as panelist candidates for the current case. The Presiding Panelist and Co-panelists submitted their Statement of Acceptance and Declaration of Impartiality and Independence to the HK Office in compliance with paragraph 7 of the Rules.

On 3 June 2019, the HK Office notified both parties and the Presiding Panelist and Co-panelists the "Panel") by email that Dr. Lulin GAO be the Presiding Panelist and Mr. Matthew Murphy and Mr. Douglas Clark be the Co-panelists in this matter, and then formally transmitted the file in this matter to the Panel. The Panel finds that it was properly constituted and should render the Decision within 14 days, i.e., on or before 17 June 2019.

During the review of the Complaint and all evidence, the Panel considered that the Complainant should be allowed an opportunity to submit additional evidence relating to its standing to bring the complaint and accordingly issued an administrative panel order on 12 June 2019, requesting the Complainant to provide additional evidence. Pursuant to this order, the date for rendering the Decision was postponed to 27 June 2019.

The Panel noted that the Respondent did not respond to the Complaint that was written in English that was transmitted by email to the Respondent under cover of a notice in English language issued by the HK Office. If the Respondent objected to the use of English by the Complainant in this proceeding, the Respondent should have raised his/her objections. Pursuant to Paragraph 11 (a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding. The language of the current Disputed Domain Name Registration Agreement is English, thus the Panel determines English as the language of the proceedings.

3. Factual background

The Complainant in this case is Marquee Holdings Ltd. The registered address is Akara Bldg, 24 De Castro Street, Wickhams Cay 1, Road Town, Tortola, British Virgin Islands. The authorized representative in this case is Pinsent Masons MPillay LLP.

The Respondent in this case is Dewi domino. The registered address is 11P/F Burgundy Corporate Tower, 252 Sen, gil puyat ave, makati, METRO MANILA 1200, PHTel No. The Respondent is the current registrant of the Disputed Domain Names <w88hero.com> <w88hero.net>, which were registered on 16 May 2018 according to the WHOIS information. The registrar of the Disputed Domain Name is NameSilo, LLC.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

The Complainant is licensed exclusively by Powermight Technology Limited, which owns Singapore Trademark No. T1319876C and Singapore Trademark No. T40201512153Y, to use such trademarks for business.

The Complainant submits that all three elements under Paragraph 4(a) of the Policy are fulfilled:

i. The disputed domain name(s) is/are identical or confusingly similar to a trademark or service mark in which the Complainant has rights

The Complainant is the exclusive licensee of, and therefore has rights in, Singapore Trademark No. T1319876C, and Singapore Trademark No. T40201512153Y, both of which are trademarks that have been registered in Singapore in respect of gaming services (including sports betting). The Respondent's Disputed Domain Names contain "w88", which is identical to the "w88" that forms a dominant part of the aforementioned trade marks. The use of a stylized "w" design to accompany the words "w88" is also similar to the Claimant's trade marks, which both feature a stylised "w" next to the words "w88".

As mentioned in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the "WIPO Panel Views"), the addition of other terms in the disputed domain name does not prevent a finding of confusing similarity under the first element. In this case, the Respondent has added the word "hero" to the Complainant's trademark "w88" to register the domain name of "w88hero". Since the addition of "hero" does not have any significance, the word "w88hero" is still sufficiently similar to the Complainant's trademark "w88" as to be confusingly similar.

The WIPO Panel Views further state that the content of the website associated with a domain name can also be used to confirm confusing similarity where it appears prima facie that the respondent seeks to target a trademark through the disputed domain name. In the current matter, the header of the Respondent's web sites at the disputed domain names comprises a stylized "w", together with the words "w88hero" in white, situated against a black background. This is confusingly similar to the Complainant's registered trade marks (Singapore Trademark No. T1319876C and Singapore Trademark No. T40201512153Y), which both contain a stylized "w", together with the words "w88" in white, situated against a black background. The websites at the disputed domain names also bear a similar look and feel to the Complainant's website, which is located at "http://w88.com" and "http://w88club.com". The website at the disputed domain names have been set up with a blue and black colour theme that is strikingly similar to the Complainant's website, and the counters situated in the middle of the sites are identical. Screenshots of the comparison between the Complainant's website

and the websites at the disputed domain names have been submitted as evidence.

Given the similarity of the domain names with the Complainant's trademarks, the similar look and feel of the Respondent's websites to the Complainant's website, the use of images in the website design that are confusingly similar to the Complainant's registered trademarks, and the multiplicity of websites at similar domain names that bear confusingly similarity to the Complainant's registered trademarks, it is clear that the Respondent has sought to target the Complainant's registered trademarks through the disputed domain names.

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

Although the Respondents are offering services on its web site, such offering of services is not bona fide for the following reasons:

- (a) The Respondents' web sites at the disputed domain names are confusingly similar to the Complainant's web site, as indicated by the screenshots provided as evidence.
- (b) The Respondents are providing on their web sites at the disputed domain names, online gambling and sports betting services, which are services that compete with those provided by the Complainant, under trade marks which are confusingly similar to the Complainant's trade marks.
- (d) The Respondents have used the ® symbol on their websites in connection with the images that are confusingly similar to the Complainant's registered trademarks, going so far as to claim at the bottom of each page on the website that "©2015 w88hero. is an international registered trademark", despite not having registered "w88hero" and/or the stylised "w" as trademarks.
- (e) The Respondents do not have any trademark registration for "w88hero" and are also not commonly known by the name "w88hero". This is evident in the significantly lower page views that the Respondents' websites has, as compared to the page views for the Complainant's web site. According to StatShow (<http://statshow.com>), a publicly available web site statistic tool, the Respondents' web sites at "http://w88hero.net" and "http://w88hero.com" have approximately 4,000 and 10,000 page views a month each, while the Complainant's web site at "http://w88club.com" has approximately 350,000 page views a month. The search results from StatShow are provided as evidence.

iii. The disputed domain name(s) has/have been registered and is/are being used in bad faith

The following grounds support the Complainant's allegation of bad faith registration and use, and expose a premeditated attempt by the Respondents which falls within the circumstance outlined in paragraph 4(b)(iv) of the UDRP Policy:

- (a) The services provided on the web sites of the Complainant and the Respondents are identical.
- (b) The Respondents have given the impression that the services that they offered are provided by the Complainant when they are not. This is damaging to the Complainant.
- (c) As can be seen in the ICANN WHOis searches provided as evidence, the disputed domain names were both created on 16 May 2018, and updated on 9 September 2018. The fact that these disputed domain names were created at the same time and bear confusing similarity to the Complainant's trademarks and website is evidence of the Respondent's bad faith in targeting the Complainant's trademarks. Furthermore, the web sites at the disputed domain names also offer the same services as the Complainant's web site and have similar content, look and feel, which is designed to mislead audiences that the Respondent's websites are related to the Complainant's website.
- (d) The Respondent has registered multiple domain names that are similar to the Complainant's trademark and domain name, by adding the word "hero" to the Complainant's registered "w88". As far as the Complainant is aware, the word "hero" has no relevance to "w88", and is a meaningless word that has been added by the Respondent. As can be seen from the screenshots provided as evidence, the two domain names have identical content, and bear a similar look and feel to the Complainant's website.
- (e) The Respondents have diverted individuals looking for the Complainant's web site to their web sites, thereby improperly benefiting from the goodwill that the Complainant has developed in its marks and web sites. In fact, the Complainant first found out about the Respondents' web site when they were informed by their affiliates of the confusing similarity between the Respondents' web site and their own, resulting in the Complainant performing searches on the Internet Archive and coming to a conclusion that the Respondent's websites at the disputed domain names resemble the Complainant's websites.
- (f) The content of the Respondents' web site is confusingly similar to the Complainant's web site.
- (g) The Complainant had attempted to communicate directly with the Respondents prior to commencing this application by sending cease and desist letters. These letters were sent to the Whatsapp and LINE contact information that had both been provided on the websites as "Customer Service" details. However, the Complainant did not receive any acknowledgement or response from any person or entity.

Given the above, the Complainant argued that the Respondents had registered the disputed domain names in bad faith, as part of a concerted effort to improperly benefit from the goodwill that the Complainant has developed in its marks and websites.

B. Respondent

The Respondent was duly notified by the HK Office of the Complaint filed by the Complainant and asked to submit a Response in accordance with the relevant

stipulations under the Policy, the Rules and the ADNDRC Supplementary Rules, but failed to give any sort of defense in any form against the Complaint.

5. Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: “A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.”

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

Regarding the first condition, namely, whether the Disputed Domain Names are identical or confusingly similar to a trademark or service mark in which Complainant has rights, the Complainant claimed to be the exclusive licensee of, and therefore to have rights in, Singapore Trademark No. T1319876C and Singapore Trademark No. T40201512153Y, both of which are trademarks that have been registered in Singapore in respect of gaming services. Printouts of the foregoing two registrations derived from the website of the Intellectual Property Office of Singapore and a copy of the License Agreement between and the Complainant have been submitted as evidence.

Given the trademark information shown in the evidence, the foregoing Singapore Trademark No. T1319876C consists of the letter “W”, the numerals “88” and the Chinese characters of which the Chinese pinyin is “You De”; the foregoing Singapore Trademark No. T40201512153Y consists of the letter “W” and the numerals “88”. Both trademarks are within the validity term and are registered in the name of POWERMIGHT TECHNOLOGY LIMITED.

The License Agreement provided as evidence shows that, POWERMIGHT TECHNOLOGY LIMITED, i.e. the owner of the foregoing two trademarks, and the Complainant entered into the agreement as of 10 December 2013, which was defined as the Effective Date, and the Term of said Agreement is defined as “the extendable period of five (5) years from the Effective Date, unless terminated earlier pursuant to the terms of this Agreement”. The Complaint further submitted an Addendum to Licensing Agreement Dated 10 December 2013, which states that “The Agreement shall remain in full force and effect for a further 5 years till 9 December 2023”. Based on the Addendum, the Panel finds that the Complainant, as the exclusive licensee granted via a valid agreement, has rights in the foregoing trademarks “W88” and “W88 & You De in Chinese characters”.

The Disputed Domain Names are <w88hero.com> and <w88hero.net>. The suffixes “.com” and “.net” only indicate that the Disputed Domain Names are registered under

these gTLDs and are not distinctive. The main part of the Disputed Domain Names (“w88hero”) consists of two sub-parts (“w88” and “hero”). The first sub-part (“w88”) is the same as the trademark of which the Complainant is an exclusive licensee. The second sub-part (“hero”) is a generic and descriptive English word and thus is not distinctive; it is also related to the gaming services provided by the Complainant and/or its licensor. Therefore, the addition of “hero” to the Complainant’s trademark “w88” cannot effectively differentiate the distinguishable part of the Disputed Domain Names from the Complainant’s trademark. It is further noted that “w88” is not a common English word or a name commonly used in business. As such, the Disputed Domain Names will be easily mistaken to be owned by the Complainant and/or its licensor or at least have some connections with the Complainant and/or its licensor. Therefore, the Disputed Domain Names are confusingly similar to the trademark in which Complainant has rights.

The Panel notes that the Complainant does not have rights to use a registered trademark for W88 in the Philippines where the Respondent is located. The ownership of a trademark is generally considered to be a threshold standing issue. The location of the trademark, its date of registration (or first use) and the goods and/or services for which it is registered, are all irrelevant for the purpose of finding rights in a trademark under the first element of the UDRP. These factors may however bear on a panel’s further substantive determination under the second and third elements. (See Paragraph 1.1.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”).)

Accordingly, the Panel holds that the Complaint fulfills the condition provided in Paragraph 4(a) (i) of the Policy.

B) Rights and Legitimate Interests

The Complainant contends that the Respondent does not have rights to or legitimate interests in the Disputed Domain Names. The Complainant has never authorized the Respondent to use the trademark or the Disputed Domain Names. The Complainant’s assertion is sufficient to establish a prima facie case under Policy 4(a) (ii), thereby shifting the burden to the Respondent to present evidence of its rights or legitimate interests. (See: Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO case no. D2003 0455.)

The Respondent has failed to show that the Respondent has any rights or legitimate interests in respect of the Disputed Domain Names. No evidence has shown that the Respondent is using or plans to use the domain names for a bona fide offering of goods or services. The Respondent is not commonly known by the domain names. The evidence submitted by the Complainant further shows that the Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Names. The act of registering the Disputed Domain Names does not automatically endow any legal rights or interests with the Respondent.

The Panel therefore finds that the Complaint fulfills the condition provided in Paragraph 4(a) (ii) of the Policy.

C) Bad Faith

Under Paragraph 4(b) of the Policy, the following are relevant examples a Panel may take as evidence of registration and use 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 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 website 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 website or location or of a product or service on your website or location.

The Complainant and/or its licensor is a provider of online gambling and betting services at its web sites "http://w88club.com" and "http://w88.com". The web site "http://w88club.com" currently has unique users in excess of 160,000 a month and an estimated 350,000 page views a month. The Complainant has invested time and efforts in broadening its international presence and goodwill in the trademarks where it has rights by means of advertising at various other web sites, forums, magazines, and events, entering into a two-year sponsorship agreement with the Wolverhampton Wanderers Football Club, etc.


The Disputed Domain Names resolve to an online gaming website that prominently uses "W" and "W88hero". The stylized W design is visually similar to "W", the device part of the trademark "W W88" in which the Complaint has rights; and the capitalized letter W makes "W88hero" more similar to the Complaint's foregoing trademark. It is also noted that the layout of the website directed by the Disputed Domain Names and the content and services offered there are similar to that of the website www.w88.com where the Complainant has rights. Such facts make it obvious that the Respondent is not only well aware of the existence of the trademark "W88", but also familiar with the key business operated by the Complainant and/or its licensee. The action of registering the Disputed Domain Names *per se* has constituted bad faith. The action of resolving the Disputed Domain Names to an online gaming website will mislead the users to believe that the website of the Disputed Domain Names is endorsed by or operated by the Complainant and/or its licensee or has some other connections with the Complainant and/or its licensee. This is exactly the type of bad faith use of the Disputed Domain Names as envisaged in Paragraph 4(b) of the Policy, i.e. the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the website or other on-line location, by creating a likelihood of confusion with the trademark in which the Complainant has rights as to source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

The Panel concludes that the Respondent has registered and used the domain names in bad faith.

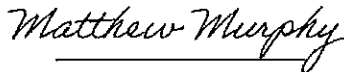
Accordingly, the Panel finds that the Complaint satisfies the condition provided in Paragraph 4(a) (iii) of the Policy.

6. Decision

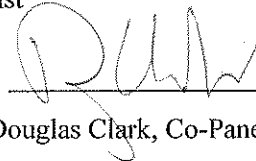
Having established all three elements required under the ICANN Policy, the Panel concludes that relief should be granted. Accordingly, it is ordered that the Disputed Domain Names <w88hero.com> and <w88hero.net> should be transferred from the Respondent to the Complainant.



Dr. Lulin GAO, Presiding Panelist



Mr. Matthew Murphy, Co-Panelists



Mr. Douglas Clark, Co-Panelists

Dated: June 25, 2019