



Asian Domain Name Dispute Resolution Centre

hongkong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1600908
Complainant:	WONG TO YICK WOOD LOCK OINTMENT LIMITED
Respondent:	Chun Hoi CHEUNG
Disputed Domain Names:	wong-to-yick.com

1. The Parties and Contested Domain Name

The Complainant is WONG TO YICK WOOD LOCK OINTMENT LIMITED, of 4/F., Mai Shun Ind. Bldg., 18-24, Kwai Cheong Rd., Kwai Chung, N.T., Hong Kong.

The Respondent is Chun Hoi CHEUNG, of No. 141, Cheung Sha Wan Road, Sham Shui Po, Kowloon, Hong Kong.

The domain name at issue is wong-to-yick.com, registered by Respondent with GoDaddy.com, LLC.

2. Procedural History

The Complaint was filed with the Hong Kong office of the Asian Domain Name Dispute Resolution Centre (“the Center”) on 17 October 2016. The Complaint contains three annexes, namely:

1. WHOIS search result for “wong-to-yick.com”;
2. Registration certificate for “Wong To Yick” (Reg. No. 3365260) in class 5 in PRC; and
3. GoDaddy Registration Agreement.

On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On 18 October 2016, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

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 Domain Name Dispute Supplemental Rules (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on 20 October 2016. In accordance with the Rules, paragraph 5(a), the due date for Response was 9 November 2016. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on 10 November 2016.

The Center appointed Kun FAN as the sole panelist in this matter on 16 November 2016. The Panel finds that it was properly constituted. The Panel has informed the Centre of his impartiality and independence, to ensure compliance with the Rules, paragraph 7.

The language of the proceeding is English, being the language of the Registration Agreement.

3. Factual background

The Complainant described itself as *"the manufacturer and seller of the well-known Wong To Yick Wood Lock Medicated Balm"*. The Complainant owns a valid Trademark "Wong To Yick", which was registered by the Chinese Trademark Office of the People's Republic of China on 21 May 2010 under the number 3365260, the certificate of which has been attached to the Complaint (hereinafter, "the Trademark").

The Whois data as provided that the Registrar shows that the Disputed Domain Name was registered on 7 September 2012.

The complainant asserts that the Disputed Domain Name is used to advertise and sell medicated balms under the names "黄道益" and "Wong To Yick", and considers this use as *"directly in competition with the Complainant's own website and products"*.

4. Parties' Contentions

A. Complainant

- i) According to the Complainant, the Disputed Domain Names is identical to the Trademark.

The Complainants further asserts Disputed Domain is identical to the Trademark. To support this assertion, the Complainant provides a copy of the certificate of the Trademark delivered by the Chinese Trademark Office.

The Complainant further asserts that it *"promotes and sells ointments with the prominent use of the mark "黄道益" "*. However, the panel observes that the Complainant did not submit any evidence of its supposedly "prominent use" of the Trademark "Wong To Yick" or the Chinese expression "黄道益" .

- ii) According to the Complainant, the Respondent has no legitimate right or interest to the Disputes Domain name.

The Complainant declares that the Respondent is not affiliated with, sponsored by, endorsed by, or even known to the Complainant. The

Complainant further contends that the Respondent is not licensed or otherwise authorized to sell the Complainant's products. Finally, the Complainant asserts that it sells its own products via various authorized retail chain stores and drug stores only.

The Complainant further alleges that the Respondent's website makes the following statement:

“绿本堂大药店从 10 年代理香港黄道益以来，开设第一家网上黄道益专卖旗舰店，本着产品第一，服务至上的目标，深受大陆用户的喜爱。”

According to the Complainant, such a statement is:

“willfully misleading and implied a relationship with the Complainant, which may cause public confusion as to the source of the products, the authenticity of the Disputed Domain Name and also the Complainant”.

The Panel observes that the Complainant did not submit any evidence supporting the existence of such a statement. Moreover, although the Complainant agreed to conduct this proceeding in English, the Complainant did not provide a translation of the said statement. However, both parties are located in Hong Kong, and the Respondent bears a Chinese name. In these circumstances, the Panel provides the following translation:

“Since 10 years of being the distributing agent of Hong Kong Wong-to-yick, Lv Ben Tang Pharmacy has opened the first Wong-to-yick flagship store. With the aim of promoting the product and providing optimal services, the store is well received by the Mainland users.”

According to the Complainant, the Respondent:

“has also published information connecting to the Complainant, details regarding the authenticity of the Complainant's products, as well as links for making purchase. The website contains references and images of the exact same “Wong To Yick” products being offered for sale by the Complainant. The website does not describe itself truthfully, as having no relationship with the Complainant or the Complainant's registered mark “Wong To Yick”.

Again, the Panel observes the Complainant did not submit any evidence supporting such a statement.

- iii) According to the Complainant, the Respondent registered and uses the disputed domain name in bad faith.

The Complainant contends that the Respondent is using the Disputed Domain Name to attract Internet users to its website, and “*is attempting to pose as the real website of the Complainant*”.

According to the Complainant, the Respondent’s “*use of the Disputed Domain Name, the vague identification of its true identity and its attempt to disguise itself as an authorized retailer of the Complainant create a likelihood of confusion with the Complainant’s mark as to the source, affiliation, or endorsement of the Registrant’s website and of the products it attempts to sell on the website. Thus, they have obviously registered/used the Domain Name in bad faith*”.

- iv) In light of the above, the Complainant requests the disputed domain name to be transferred to the Complainant.

The Complainant requests that the disputed domain name(s) be transferred to the Complainant.

B. Respondent

Respondent has failed to file a response in this matter.

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 must be 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

The Complainant has established the fact that it has valid trademark rights for “Wong To Yick”.

The Disputed Domain Name is identical to the registered trademarks “Wong To Yick”.

The Panel therefore considers the Disputed Domain Names to be confusingly similar to the trademarks “Wong To Yick” in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

The Panel finds that the Complainant has established the first element of the Policy.

B) Rights and Legitimate Interests

Paragraph 4(c) of the Policy provides that:

“Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii):

- (i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

It is generally accepted that the Complainant:

“is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP” (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition (“WIPO Overview 2.0”), see para. 2.1.).

In the present case, the Complainant made out a *prima facie* case that the Respondent lacked rights or legitimate interests.

Moreover, given the absence of response from the Respondent, there is no evidence before the Panel that the Respondent has any right or legitimate interest on the Disputed Domain Name.

Under these circumstances, the Panel takes the view that the Respondents have no rights or legitimate interests in the disputed domain names and that the requirement of paragraph 4(a)(ii) of the Policy is also satisfied.

C) Bad Faith

Paragraph 4(b) of the Policy provides that:

“the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be 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”.

The Panel supports the general view that:

“[a] respondent's default does not automatically result in a decision in favor of the complainant. Subject to the principles described in paragraph 2.1 above with regard to the second UDRP element, the complainant must establish each of the three elements required by paragraph 4(a) of the UDRP. Although a panel may draw appropriate inferences from a respondent's default (e.g., to regard factual allegations which are not inherently implausible as being true), paragraph 4 of the UDRP requires the complainant to support its assertions with actual evidence in order to succeed in a UDRP proceeding. There are many examples of cases (typically involving complaints based on wholly unsupported assertions or mere conclusory statements) to which there has been no response where (notwithstanding such respondent default) the decision has nonetheless gone in favor of the respondent on grounds that the complainant has failed to prove its case” (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition ("WIPO Overview 2.0"), see para. 4.6.).

The expeditious nature of the proceedings shall not compromise its purpose: to seek the truth and to lead to a decision that bears legal effects. To this regard, it is expected that the parties submit evidences that are able to support each of their assertions. Since the decision on the second element is based on the absence of “*evidence before the Panel that the Respondent has any right or legitimate interest on the Disputed Domain Name*” (see section 5B above), the right to a fair trial imposes upon the Panel to apply the same standard of evidence to the Complainant.

In *The Deck Guys, Inc. v. Phil Palmer, d/b/a Deck Care of Iowa, Inc.* (WIPO case No. D2002-0739, September 30, 2002, complainant denied), the Panelist stated:

“Although Complainant alleges that Respondent offered to sell the domain name <thedeckguy.com> to Complainant, to date, Complainant has not submitted any evidence to support this allegation. Paragraph 12 of the Complaint states: “Furthermore, Respondent has offered to sell the domain name <thedeckguy.com> to Complainant. See Annex #.” However, there is no corresponding Annex in the Complaint and no documentary evidence showing the alleged offer to sell the domain name. No further details are

provided in the Complaint. In fact, the allegations in the Complaint are extremely conclusory and for the most part simply recite the Policy without much, if any, factual support.” (see para. 6.19)

In Televisa v. Retevisión Interactiva S.A. (WIPO case No. D2000-0264, June 28, 2000, complainant denied), the Panelist took the following view:

“Complainant provides no evidence suggesting that promotion has been done, and does not mention or prove the first date of such alleged promotion and advertisement. Complainant has provided insufficient documentary evidence that Complainant should have known the existence of the Complainant’s trademarks and use of its domain names on the Internet.”

There are numerous UDRP decisions rejecting complaints in which allegations are not supported by any documentary evidence (see also: The Restored Church of God v. Alexa Properties, LLC, WIPO case No. D2013-0320, March 21, 2013, Complainant denied; Jon M. Queen v. Domains by Proxy, Inc./ Kristen Bowers, WIPO case No. D2011-1449, November 1, 2011, Complaint denied; Mariposa Ltd. v. Stonecutter, Don Sawtelle, WIPO case No. D2010-0200, March 28, 2010, Complainant denied; Gothaer Versicherungsbank VVaG v. CKV, WIPO case No. D2006-0105, April 27, 2006, Complainant denied)

In the present case, the Complaint contains three annexes, namely:

1. WHOIS search result for “wong-to-yick.com”;
2. Registration certificate for “Wong To Yick” (Reg. No. 3365260) in class 5 in PRC; and
3. GoDaddy Registration Agreement.

In its Complaint, the Complainant made several assertions, which are not supported by any evidence. Indeed, according to the Complainant:

1. The Trademark is a well-known trademark;
2. The Respondent’s website makes the following statement:

“绿本堂大药店从 10 年代理香港黄道益以来，开设第一家网上黄道益专卖旗舰店，本着产品第一，服务至上的目标，深受大陆用户的喜爱。”

As provided above, the English translation reads:

“Since 10 years of being the distributing agent of Hong Kong Wong-to-yick, Lv Ben Tang Pharmacy has opened the first Wong-to-yick flagship store. With the aim of promoting the product and providing optimal services, the store is well received by the Mainland users.”

3. the Respondent:

“has also published information connecting to the Complainant, details regarding the authenticity of the

Complainant's products, as well as links for making purchase. The website contains references and images of the exact same "Wong To Yick" products being offered for sale by the Complainant. The website does not describe itself truthfully, as having no relationship with the Complainant or the Complainant's registered mark "Wong To Yick".

The Complainant concludes that the Respondent is using the Disputed Domain Name to attract Internet users to its website, and

"is attempting to pose as the real website of the Complainant". According to the Complainant, the Respondent's "use of the Disputed Domain Name, the vague identification of its true identity and its attempt to disguise itself as an authorized retailer of the Complainant create a likelihood of confusion with the Complainant's mark as to the source, affiliation, or endorsement of the Registrant's website and of the products it attempts to sell on the website. Thus, they have obviously registered/used the Domain Name in bad faith".

However, although the Complainant has had more than ample opportunity to provide straightforward documentation establishing these allegations, the Complainant contented itself providing i) a Whois search result, ii) the copy of a trademark certificate and iii) the registration agreement. None of these document is able to establish that the Disputed Domain Name was registered and is being used in bad faith.

Accordingly, the Panel is unable, on the evidence before her, to find that the Domain Names were registered and is being in bad faith.

The Panel finds that the Complainant has not met its burden to establish the third element of the Policy.

6. Decision

For all the foregoing reasons, the Complaint is denied.

Fan Kun

Professor Kun FAN
Sole Panelist

Dated: 30 November 2016