



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

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| Case No. | HK-1500731 |
| Complainant: | Lenovo (Beijing) Ltd. |
| Respondent: | Tamerlan Bagraev |
| Disputed Domain Name: | <lenovo.biz> |

1. The Parties and Contested Domain Name

The Complainant is Lenovo (Beijing) Ltd., of 6 Chuangye Road, Shangdi Information Industry Base, Haidian District, People’s Republic of China.

The Respondent is Tamerlan Bagraev, of Pr. Kosta 283-46, North Ossetia-Alania, Vladikavkaz 362015, Russian Federation.

The domain name at issue is <lenovo.biz>, registered by Respondent with DYNADOT LLC, of PO Box 345, San Mateo, CA 94401, United States of America (the “Registrar”).

2. Procedural History

The Complaint was filed with the Asian Domain Name Dispute Resolution Center (the “Center”) on 26 March 2015. On 27 March 2015, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On 10 April 2015, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant of the disputed domain name and providing its 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 Supplemental Rules to the ICANN’s Uniform Domain Name Dispute Resolution Policy and the Rules for the Uniform Domain Name Dispute Resolution Policy (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 10 April 2015. In accordance with the Rules, paragraph 5(a), the due date for Response was 30 April 2015. The Respondent sent a brief statement to the Center on 10 April 2015, but did not file a

formal Response. Accordingly, on 4 May 2015, the Center informed the Parties that no formal Response was filed within the due date for doing so.

The Center appointed Assen Alexiev as the sole panelist in this matter on 5 May 2015. The Panel finds that it was properly constituted. The Panel has confirmed that it is in a position to act independently and impartially between the Parties, as required by the Center to ensure compliance with the Rules, paragraph 7.

3. Factual background

The Complainant is a company based in China, and was established in 1984 under the name LEGEND (BEIJING) LTD. In 2004, the Complainant changed its name to LENOVO (BEIJING) LTD. It has become a well-known global company specialized in the design, development, manufacturing and sale of personal computers, tablet computers, smartphones, workstations, servers, electronic storage devices, IT management software and smart television sets. Having its headquarters in Beijing, China, and Morrisville, North Carolina, the United States of America, the Complainant has 54,000 employees in more than 60 countries, and sells products in around 160 countries. In 2014, the Complainant was the world's largest personal computer vendor by unit sales and ranked 286 on the Global Fortune 500 List.

The Complainant has numerous trademark registrations for its brand LENOVO around the world, including the following registrations (the “LENOVO trademark”):

| Trademark | Registration No. | Territory | International Classes | Registration date |
|-----------|------------------|--------------------|-----------------------------------|-------------------|
| lenovo | 267,155 | Russian Federation | 9, 37, 42 | 15 April 2004 |
| lenovo | 286,752 | Russian Federation | 7, 11, 16, 28, 35, 38, 39, 40, 41 | 13 April 2005 |

The Complainant has registered the domain name <lenovo.com> on 6 September 2002, and uses it for its official international website.

The Respondent is a natural person with an address in the Russian Federation. It has registered the disputed domain name on 13 November 2013. The disputed domain name currently resolves to a blank webpage that contains only a contact form for communication with the Respondent.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

- i. The Complainant has spent substantial time, efforts and money for the advertising and promotion of the LENOVO trademark throughout China and the world. As a result, the LENOVO trademark has become world famous and has accumulated a vast amount of goodwill.
- ii. The Complainant has started using its trade name, the LENOVO trademark and the domain name <lenovo.com> long before the registration of the disputed domain name. Therefore, the Respondent must have known of the Complainant and of the LENOVO trademark when it registered the disputed domain name.
- iii. The disputed domain name is identical or confusingly similar to the LENOVO trademark. The main part of the disputed domain name is "lenovo", which coincides with the LENOVO trademark. This similarity may easily cause confusion in Internet users.
- iv. The Respondent has no rights and legitimate interests in the disputed domain name. There is no evidence that the Respondent has ever registered or used any trademark or trade name containing "lenovo" or similar signs, and the Respondent has never obtained authorization from the Complainant to register the disputed domain name. The Respondent is not affiliated in any way with the Complainant. The word "Lenovo" has no meaning; it is a fancy word created by the Complainant. The Respondent has no *bona fide* reason to use "lenovo" as the distinguishing part of the disputed domain name.
- v. The Respondent has registered and is using the disputed domain name in bad faith with knowledge of the Complainant and of the Complainant's famous LENOVO trademark and without having rights or legitimate interests in it. The Respondent is passively holding the disputed domain name with the intent to obtain improper profit. The registration of the disputed domain name prevents the Complainant from registering and using the disputed domain name.

B. Respondent

The Respondent's contentions may be summarized as follows:

- i. Prior to its registration by the Respondent, the disputed domain name was available for registration and could be registered by anyone.
- ii. The disputed domain name is a common word in several languages.
- iii. When it registered the disputed domain name, the Respondent did not know that LENOVO was a registered trademark.
- iv. The Respondent has registered the disputed domain name for non-commercial purposes.
- v. The disputed domain name has not been used in violation of the Complainant's rights.
- vi. The Respondent has made expenses for the development of a non-commercial website to be linked to the disputed domain name. This website does not exist yet.
- vii. The registration of a domain name is not a violation *per se*. No violation of third party rights is possible if the disputed domain name is not used. The Complainant has not informed the Respondent of its trademark rights prior to this proceeding.
- viii. The Respondent is ready to transfer the disputed domain name to the Complainant.

5. Findings

By Rules, paragraph 5(b)(i), it is expected of a respondent to: "[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name..." In the event of a default, under Rules, paragraph (14)(b): "...the Panel shall draw such inferences therefrom as it considers appropriate."

At the same time, it is well established that “[a] respondent's default does not automatically result in a decision in favor of the complainant... [T]he complainant must establish each of the three elements required by paragraph 4(a) of the UDRP.”¹

In the present proceeding, the Respondent has not submitted a formal Response, but has nevertheless put forward certain allegations and arguments in defense of its actions. To ensure the equality of the Parties and the opportunity of each of them to present its case, the Panel has reviewed and taken into account the position expressed by the Respondent.

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

To satisfy the first UDRP element, the disputed domain name must be identical or confusingly similar to a trademark, in which the Complainant has rights. The Complainant has contended that the disputed domain name is identical or confusingly similar to the LENOVO trademark, and has demonstrated its rights in the same trademark by providing evidence of its registration in the Russian Federation. The Respondent has not taken a position on the issue of whether the first UDRP element is satisfied in the present case. It has alleged that “lenovo” is a dictionary word found in several languages, but has not specified which these languages are, and has provided no evidence in support of its allegation.

As discussed in the WIPO Overview 2.0, the threshold test for confusing similarity under the UDRP involves a comparison between the trademark and the domain name itself to determine likelihood of Internet user confusion. A domain name which incorporates a distinctive trademark without the addition of any other elements will generally be found to be identical to such trademark, given that the generic Top-Level Domain (gTLD) suffix in the domain name, being a technical requirement for the registration, would usually be disregarded for the purposes of the comparison.

In view of the above, the relevant part of the disputed domain name is its “lenovo” section. This section is identical to the LENOVO trademark. The Panel is not persuaded by the allegation of the Respondent that “Lenovo” is a dictionary word. Rather, the Panel finds that “Lenovo” is a fancy word with a high level of inherent distinctiveness, which consumers associate exclusively with the Complainant. For these reasons, the Panel finds that the disputed domain name is identical to the LENOVO trademark in which the Complainant has rights.

¹ See Paragraph 4.3 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition (“WIPO Overview 2.0”).

B) Rights and Legitimate Interests

The Policy requires the Complainant to make at least a *prima facie* showing that the Respondent has no rights or legitimate interests in the disputed domain name. Once the Complainant makes such a showing, the Respondent may provide evidence to demonstrate that it has rights or legitimate interests in the disputed domain name. The burden of proof, however, always remains on the Complainant to establish that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Complainant has contended that the Respondent has no rights or legitimate interests in the disputed domain name, stating that the Respondent is not known by it and has not been authorized by the Complainant to use the LENOVO trademark, and that the Respondent is not affiliated in any way with the Complainant and has no *bona fide* reason to use "lenovo" as the distinguishing part of the disputed domain name. The Complainant also asserts that "Lenovo" is a fancy word with no meaning, and that it was created by the Complainant. Thus, the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent, although given a fair opportunity to do so, chose not to present to the Panel a formal Response in accordance with paragraph 5(b)(i) and 5(b)(ix) of the Rules, despite the consequences that the Panel may extract from the fact of a default (paragraph 14 of the Rules). In its defense, the Respondent has made several allegations. The Panel has reviewed them and its conclusions are the following.

The first allegation made by the Respondent is that "lenovo" is a dictionary word used in several languages. The Respondent has not specified the languages in which "lenovo" is allegedly a dictionary word, and has provided no evidence in support of its allegation. As discussed above in relation to the first UDRP element, the Panel is not convinced by this argument of the Respondent. In the Panel's view, "lenovo" is a coined word with no generic meaning – it is a well-known brand of the Complainant.

The second argument advanced by the Respondent is that prior to its registration, the disputed domain name was available for registration and could be registered by anyone. The Panel is of the opinion that this argument has little weight and does not accept it. Under Paragraph 2 of the Policy, by applying to register the disputed domain name, the Respondent has represented and warranted that to its knowledge, the registration of the disputed domain name will not infringe upon or otherwise violate the rights of any third party; that the Respondent is not registering the domain name for an unlawful purpose; and that the Respondent will not knowingly use the disputed domain name in violation of any applicable laws or regulations. Paragraph 2 of the Policy also provides that it is the Respondent's responsibility to determine whether the registration of the disputed domain name infringes or violates someone else's rights. As evident from this provision of the UDRP, the mere availability of a domain name for registration does not *per se* mean that it can be registered by anyone in disregard of or in violation of the rights of third parties. In the present case, the disputed domain name is identical to the well-known LENOVO trademark of the Complainant, which has been registered as trademark and extensively used in numerous territories, including the Russian Federation where the Respondent is located, long before the registration of the disputed domain name. The registration of the LENOVO trademark has been officially published in the Russian Federation, and any person can check its status by accessing the official public database of the Russian Federal

Institute of Industrial Property.² In addition, a trademark holder is by means obliged to register its trademark as a domain name in all possible gTLDs in order to secure its trademark rights, and the fact that it has not done so in respect of a given gTLD cannot be regarded as a waiver of its trademark rights.

The third argument of the Respondent is that it has registered the disputed domain name for non-commercial purposes, and has made expenses for the development of a non-commercial website to be linked to the disputed domain name, which website does not exist yet. Here, the Respondent again provides no details of its future plans, no justification for its choice of a domain name, and no evidence of actual use and of its alleged expenses. The scarce content of the website at the disputed domain name provides no information in this respect. In the lack of any evidence for the purported non-commercial website in development, and of any explanation by the Respondent of its plans for the content and the use of such website, the Panel does not see why the Respondent could have chosen in good faith a domain name that is identical to the LENOVO trademark, and for what legitimate purposes it could have used such a domain name. Therefore, the Panel is not convinced by this argument of the Respondent.

Lastly, the Respondent has stated its readiness to transfer the disputed domain name to the Complainant. In the Panel's view, a party that is ready to abandon a domain name implicitly accepts that it has no rights or legitimate interests in it.

Apart from the factual contentions of the Parties discussed above, the only other source of information about the Respondent is the WhoIs information, provided by the Registrar. This information contains no evidence that the Respondent is commonly known by the disputed domain name.

Taking all the above into account, the Panel finds that the Complainant's *prima facie* case has not been rebutted, and that the Respondent has no rights or legitimate interests in the disputed domain name.

C) Bad Faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

“(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

² <http://www1.fips.ru/wps/portal/Registers/>

(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 website or location or of a product or service on your website or location.”

The Complainant asserts that the Respondent has registered and is using the disputed domain name in bad faith with knowledge of the Complainant and of the Complainant's famous LENOVO trademark. According to the Complainant, the Respondent is passively holding the disputed domain name with the intent to obtain improper profit, and the registration of the disputed domain name prevents the Complainant from registering and using it.

In its defense, the Respondent has alleged that it did not know that LENOVO was a registered trademark at the time of registration of the disputed domain name, and that the Complainant has not informed the Respondent of its trademark rights prior to this proceeding. According to the Respondent, the disputed domain name has not been used in violation of the Complainant's rights, because it has not been used at all, and no violation of third party rights is possible if the disputed domain name is not used.

The Panel has reviewed the arguments and evidence submitted by the Parties and has reached the following conclusions.

The first issue here is whether the Respondent had information of the Complainant and of its LENOVO trademark at the time of registration of the disputed domain name. As discussed above, the disputed domain name is identical to the well-known LENOVO trademark, which was registered in the Russian Federation and its registration published nine years before the registration of the disputed domain name. The official publication for the registration of the LENOVO trademark is sufficient to put everyone on notice, and the Complainant is not required to inform all third parties of its trademark registration. The Complainant is one of the largest global producers of personal computers and other electronic goods and its LENOVO trademark has been extensively promoted and used in the last ten years. The Respondent has provided no explanation at all of its choice of domain name and no details for its plans to use it. In these circumstances, the Panel accepts that it is more likely than not that the Respondent has chosen and registered the disputed domain name with knowledge of the Complainant and in an opportunistic attempt to extract benefit of the substantial goodwill of the LENOVO trademark and of its attractiveness to consumers. Therefore, the Panel finds that the disputed domain name was registered in bad faith.

The second issue is whether there can be use in bad faith if the disputed domain name is not actively used. In this respect, UDRP panels have found that the apparent lack of so-called active use of a domain name without any active attempt to sell or to contact the trademark holder does not as such prevent a finding of bad faith. The panel must examine all the circumstances of the case to determine whether the respondent is acting in bad faith. Examples of what may be cumulative circumstances found to be indicative of bad faith

include the complainant having a well-known trademark, no response to the complaint having been filed, and the registrant's concealment of its identity.³

In the present case, the disputed domain name resolves to a website which contains only a contact request form for contacting the Respondent. There is no evidence in the case file that the website has had any other content since the registration of the disputed domain name. The Respondent alleges that it is not using the disputed domain name, but at the same time (without providing any details or evidence in this respect) submits that it has started preparations for its use for a non-commercial website. These two allegations are not compatible with each other, and do not convince the Panel. Rather, the Panel finds that the Respondent has not provided evidence of any actual or contemplated good faith use of the disputed domain name. At the same time, the LENOVO trademark has wide global popularity, and the Complainant has made extensive efforts to secure its registration in numerous territories around the world, notably including the Russian Federation, where the Respondent is located. Taking this into account, the Panel cannot conceive of any use of the disputed domain name that would not be illegitimate and infringing the rights of the Complainant, the consumer protection legislation or other relevant law. For these reasons, the Panel has reached the conclusion that in the present case the Respondent's passive holding of the disputed domain name satisfies the requirement of paragraph 4(a)(iii) of the Policy that the disputed domain name "is being used in bad faith" by Respondent. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003.

6. Decision

For all the foregoing reasons, in accordance with paragraph 4(i) of the Policy and paragraph 15 of the Rules, the Panel orders that the domain name <lenovo.biz> be transferred to the Complainant.

Assen Alexiev,
Sole Panelist

Dated: 18 May 2015

³ See Paragraph 3.2 of WIPO Overview 2.0.