



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1400606
Complainant:	Kuala Lumpur Regional Centre for Arbitration
Respondent:	Mayuna Urade
Disputed Domain Name:	<klrca.org>

1. The Parties and Contested Domain Name

The Complainant is Kuala Lumpur Regional Centre for Arbitration, 12 Jalan Conlay, 50450 Kuala Lumpur, Wilayah Persekutuan Kuala Lumpur, Malaysia. The Complainant's authorized representative is SKRINE, of Unit No. 50-8-1, 8th Floor, Wisma UOA Damansara, 50 Jalan Dungun, Damansara Heights, 50490 Kuala Lumpur, Malaysia.

The Respondent is Mayuna Urade, of Kitano Nishi 2-Jo, Takasucho, Kamikawagun, Hokkaido, 071-1232 Japan.

The domain name at issue is <klrca.org> (the "Disputed Domain Name"), registered by the Respondent with Go Canada Domains, LLC of 14455 North Hayden Rd., Suite 219, Scottsdale, AZ 85260, United States.

2. Procedural History

The Complaint was filed with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre ("the Centre") on 24th April 2014. On 30th April 2014, the Centre notified the Complainant the receipt of its Complaint and transmitted a request for registrar verification in connection with the Disputed Domain Name to Go Canada Domains, LLC. On 1st May 2014, Go Canada Domains, LLC responded the Centre stating that (i) a copy of the Complaint had been received, (ii) the Disputed Domain Name was registered with it, (iii) the Respondent was the registrant, (iv) Uniform Domain Name Dispute Resolution Policy applied and (v) the language of the registration agreement for the Dispute Domain Name was English.

The Centre verified that the Complaint satisfied the formal requirements of the ICANN Uniform Domain Name Dispute Resolution Policy (the "Policy"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules"). In accordance with the Rules, the Centre formally notified the Respondent of the Complaint, and the proceedings commenced on 8th May 2014. According to Article 5 of the Rules, the Respondent was required to submit a Response (the Response Form R and

its Annexures) on or before 28th May 2014. The Respondent has not filed a Response in accordance with the Supplemental Rules within the required period of time. On 29th May 2014 the Centre notified the parties the proceedings would be continued on default of the Respondent.

The Centre appointed Solomon Lam as the sole panelist in this matter on 3rd June 2014. The Panelist has confirmed his availability to act as a Panelist and his ability to act independently and impartially between the parties to this dispute.

The Panel finds that it was properly constituted and appointed in accordance with the Rules and the Supplemental Rules. Therefore, this Panel has jurisdiction over this domain name dispute. In accordance with Paragraph 11(a) of the Rules, since the language of the Domain Name Registration Agreement is English, therefore, this proceeding shall be conducted in English.

3. Factual background

The Complainant was established in 1978 under the auspices of the Asian-African Legal Consultative Organization (“AALCO”) through an agreement with the Government of Malaysia which recognises the Complainant as a non-governmental organization conferred with certain immunities and privileges for its independent functioning.

The Complainant is the longest established arbitration centre in South East Asia and was set up as part of AALCO’s initiative to establish regional centres for arbitration with the objectives of promoting international commercial arbitration in the Asian-African region and for the conduct of international arbitrations.

The Disputed Domain Name was registered by the Respondent on 11th June 2013 in the name of Mayuna Urade, of Kitano Nishi 2-jo, Takasucho, Kamikawagun, Hokkaido, 711232 Japan.

4. Parties’ Contentions

A. Complainant

The Complainant’s contentions can be summarized as follows:

(i) The Disputed Domain Name is Identical or Confusingly Similar

Rights in “KLRCA”

The Complainant contended that since its foundation in the year 1978, it has continuously and consistently carried out its activities under the name “Kuala Lumpur Regional Centre for Arbitration” as well as “KLRCA” as the Complainant was and is regularly referred to by its acronym “KLRCA”.

“KLRCA” as an acronym and as a mark is singular and uncommon. There is no other organization, business or company anywhere in Malaysia, and no known other individual, organization or business in the world that goes by the name and/or acronym and/or mark “KLRCA”. The Complainant produced screenshots of the top search engine results upon search of “KLRCA” as evidence to support this contention.

The Complainant further contended that “KLRCA” has been extensively used in connection to the Complainant’s various activities and services which include inter alia arbitration services, promoting international commercial arbitration in the Asia-Pacific region, rendering assistance in the conduct of ad hoc arbitrations, and providing alternative options for the settlement of disputes such as mediation (“the Complainant’s Services”). The Complainant plays an important role in the legal landscape in Malaysia and as a result “KLRCA” is well known by statutory and regulatory bodies, the legal industry and the general public in Malaysia. As an example of the significance of the role of the Complainant in this regard, under the Malaysian Arbitration Act 2005, the Complainant’s director is specifically named as the statutory appointing authority for the appointment of arbitrators. Similarly, under the constitution of the Olympic Council of Malaysia, one of the main routes of settling disputes between its members is the referral of the dispute to the Complainant either for mediation or subsequently, arbitration.

The use of “KLRCA” in connection with the Complainant’s Services also covers the release of the KLRCA Arbitration Rules in 2003, and subsequently updated rules in 2010, 2012 and 2013. The Complainant has also undertaken several initiatives to facilitate alternative dispute resolution through the release of the KLRCA Fast Track Rules 2010, KLRCA Mediation / Conciliation Rules 2011, KLRCA Rules for Islamic Banking and Financial Services Arbitration 2007, and the KLRCA i-Arbitration Rules. The KLRCA Rules have been made known all over the world and are adopted in both domestic and international arbitral proceedings.

The Complainant also produced evidence showing that “KLRCA” appears consistently on the Complainant’s documents, letterheads, and business cards both in its ordinary form and

since 2010, in its stylized form . The logo consists of the lowercase letters 'klrca' in a bold, black, sans-serif font, followed by a blue triangle pointing upwards.

The Complainant also contended that it has achieved a strong international presence as a reputable institution for dispute resolution. Its numerous service users includes individuals, law firms, professional bodies, traders, companies, non-profit organisations, statutory bodies and multinational companies, both Malaysian and foreign. The Complainant has strong ties with various other international organizations. The Permanent Court for Arbitration has selected Malaysia/the Complainant to be an alternate venue for their proceedings, as has the International Council of Arbitration for Sport in Lausanne (“ICAS”), Switzerland. The Complainant has also signed numerous memoranda of understanding with other leading international associations and organizations, such as the Memorandum of Understanding with the Associated Chinese Chambers of Commerce on 27 January 2011. Additionally, the Complainant hosts numerous conferences such as the Asia Pacific Regional Arbitration Group Conference (“APRAG”). The Complainant has assumed the presidency of the APRAG for the past 2 years. The Complainant has used “KLRCA” in its official website <www.klrca.org.my> in or since around 2010 to provide information and to facilitate the Complainant’s Services.

As a consequence of its long and extensive use, the Complainant has acquired substantial reputation and goodwill in “KLRCA” in Malaysia, in the region and in the world, such that “KLRCA” is distinctive of and associated exclusively with the Complainant and none other.

Disputed Domain Name is Identical or Confusingly Similar

The Disputed Domain Name <klrca.org> consists of and fully incorporates “KLRCA” in its entirety. It is therefore identical and/or confusingly similar to the Complainant’s distinctive trade name acronym and mark “KLRCA”. To compound the high likelihood of confusion, between 1998 and 2002, the Disputed Domain Name was the domain name owned and/or used by the prior administration of the Complainant for its official website.

By virtue of the foregoing, the Complainant submitted that the first element of Complaint pursuant to Clause 4a(i) of the Policy is satisfied.

(ii) The Respondent has no rights or legitimate interests in the Disputed Domain Name

The Complainant submitted that the Respondent has registered or caused the registration of the Disputed Domain Name <klrca.org> on or around 11th June 2013 without the licence, consent or authority of the Complainant for the use of “KLRCA” which has been entirely distinctive of the Complainant and none other since 1978.

The Complainant also contended that the Respondent has no trademark or intellectual property rights in “KLRCA”, and is not commonly known by “KLRCA”.

On the basis that the Respondent has not made any bona fide offering of services in connection with the Disputed Domain Name and that commercial use of the Disputed Domain Name continues in bad faith, as addressed below, it is submitted that the Respondent cannot establish rights and/or legitimate interests in the Disputed Domain Name pursuant to Clause 4a(ii) of the Policy.

(iii) No Bona Fide Offering of Services / Use of the Disputed Domain Name in Bad Faith

The Complainant contended that as of 6th March 2014, the services promoted on the website served by the Disputed Domain Name (“the Objectionable Website”) are commercial ‘live-chat’ services for users to chat with women for a fee and the wording denoting chat services of a sexual nature (“the Objectionable Services”). The contents of the Objectionable Website show that “KLRCA” is not used as a trade mark, trade name, service mark or in any connection with the purported promotion of the Objectionable Services and/or the Respondent. Conversely “KLRCA” is well known and exclusively distinctive of the Complainant, even in Japan where the Respondent is based, such that the Respondent must reasonably be expected to know of the Complainant’s rights in “KLRCA” and the inevitable conclusion is that the choice to register the Disputed Domain Name is to misappropriate and to ride on the Complainant’s goodwill and reputation in “KLRCA”.

The Rabbit Trail to Adult Sex Chat Websites

The Complainant contended that as of 6 March 2014, further examination of the Objectionable Website and Objectionable Services reveals that the Disputed Domain Name is not used by the Respondent in a bona fide offering of the Objectionable Services, but as part of a network to maximise traffic into a rabbit-trail of links to adult sex chat websites. The Complainant provided evidence in support of this contention in Annexure of the Complaint.

Network of Links to Maximise Traffic and Ride on Goodwill

The Complainant contended that as of 6 March 2014, several other websites are inbound linked into the Linked Website and employ an identical template, layout and design to the Objectionable Website (“the Similar Websites”). Much like the Objectionable Website, the Similar Websites promote sex chat services for a fee. All of the Similar Websites direct interested users to a link which connects to the Linked Website.

Much like the Disputed Domain Name, the domain names serving the Similar Websites (“the Similar Domains”), comprise of direct reference to other long established groups and entities. The connection between the Disputed Domain Name and the Similar Domains is further emphasised by the fact that these domain name were all registered in June 2013. The Similar Domains also share common Domain Name Servers with the Disputed Domain Name.

The Complainant submitted that the natural conclusion from this pattern of conduct and the inescapable parallels between the Disputed Domain Name and the Similar Domains is that their use is to form a network for nuisance and mischief, and in this particular situation, to maximise traffic into the Linked Website, which functions to market consumers to the Adult Sex Chat Websites presumably for monetary gain.

The Complainant submitted that the Disputed Domain Name has been chosen in an opportunistic manner to ride on the Complainant’s goodwill and serves merely to maximise traffic in tandem with the Similar Domains riding on the goodwill of others, and not in any bona fide offering of services.

Use of the Disputed Domain Name tarnishes “KLRCA”

The Complainant cited the case of *Britannia Building Society v. Britannia Fraud Prevention* (Case No. D2001-0505), in which the damage of ‘tarnishing’ has stated as:

“Tarnishment in this context refers to such unseemly conduct as linking unrelated pornographic, violent or drug-related images or information to an otherwise wholesome mark.”

The Complainant submitted the Disputed Domain Name does not have to be linked to explicit pornographic material to be “tarnished”, as supported by the views of the Panel in *Christian Dior Couture v. Paul Farley* (Case No. D2008-0008) when it found:

“A question might be thought to arise as to whether the website in this case can be regarded as ‘pornographic’. In the Panel’s view, it does not matter whether or not that precise word is an appropriate descriptor of the website – if the nature of the website is such that linkage with a complainant’s mark could reasonably be supposed to tarnish that mark (in the same way that numerous panels have held that pornographic websites do), the result should be the same. The Panel has no doubt that the website in this case is of a kind that would tarnish the Complainant’s marks if it were confusingly linked to those marks. The website is an “adult” website, restricted to persons over the age of 21. Through the website, Mistress Anna proposes BDSM sessions, and offers for sale her new, and used, underwear. On any

view of it, the ‘tarnishment’ capacity of such a website must be no less than that of a website which might be described as an “orthodox” pornographic website.”

The Complainant submitted that due to “KLRCA” being exclusively distinctive of the Complainant, the Disputed Domain Name <klrca.org> will be perceived by the public and the Complainant’s service users to be attributable to the Complainant. The general public at large may confuse it to be an international extension of the Complainant’s own official website. Given that nowadays web browsers have inbuilt translation tools automatically providing an Internet user the option to translate a foreign language website, use and registration of the Disputed Domain Name by the Respondent to offer chat-services of a sexual nature and the direct rabbit-trail of links that lead to the Adult Sex Chat Websites tarnishes the valuable goodwill entrenched in “KLRCA” and damages the Complainant’s reputation as a distinguished non-governmental organization in the eyes of the general public around the world, and not just in Japan.

Further evidence of Bad Faith in Registration

The Complainant further submitted that registration of the Disputed Domain Name by then Respondent in concert with the Similar Domains, as detailed above, without any rights or legitimate interest in “KLRCA” is in bad faith.

Additionally, in a letter dated 4th December 2013, the Complainant attempted to serve a notice on the Respondent to acknowledge the Complainant’s rights in the Disputed Domain Name and for transfer to be made to the Complainant. The notice was sent via email and post based the registration details of the Respondent, however both were returned undelivered as it was found that the Respondent’s details of address and email were inoperable.

A search on Google Maps reveals that the Respondent’s details as to address refer to a block area with several streets, without providing a means of physically locating a place of residence or business where the Respondent may be contacted or served. These incomplete particulars not only relate to the details of the Respondent as the registrant but also extend to the Respondent’s details as the administrative, technical and billing contact of the Disputed Domain Name.

The inoperable contact information provided by the Respondent in registration of the Disputed Domain Name is evidence of bad faith and in clear contravention of the representations made that the details given in registration are complete and accurate.

The Complainant submitted that the Respondent has registered and used the Disputed Domain Name in bad faith within the meaning of Clause 4.a(iii) of the Policy.

No delay by the Complainant

The Respondent’s registration of the Disputed Domain Name came to the attention of the Complainant on or about 25th November 2013. Since then, the Complainant has been taking active steps to enforce its rights, first in the letter addressed to the Respondent dated 4th December 2013 and subsequent to the Complainant’s notice returning to sender, in the filing of this complaint. As certain key aspects of this complaint necessitated certified translations thereby prolonging the time before the filing of this complaint, it is submitted

that no unreasonable delay can be attributed to the Complainant in the filing of this complaint.

B. Respondent

The Respondent has not filed a Response (the Response Form R and its Annexures) in accordance with the Supplemental Rules.

5. Findings

The 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

On the evidence before the Panel, the Complainant has established rights in the "KLRCA" mark through its distinctive and long use as its acronym since 1978. The Panel also accepts that the rights are well-known in Malaysia, Asia Pacific region and worldwide, including Japan. Further, the Panel accepts that the Complainant has been using the domain name <www.klrca.org.my> as its official website since 2010.

The Panel considers that the generic top-level domain <.org> shall be disregarded (see e.g. *Pomellato S.p.A. v. Richard Tonetti*, WIPO Case No. D 2000-0493). Therefore, the identifiable part of the Disputed Domain Name <klrca> is identical to the Complainant's mark "KLRCA".

In addition, disregarding the domain extension <.org.my> of <www.klrca.org.my>, the identifiable part of the Disputed Domain Name <klrca> is also identical to the domain name of the Complainant's official website <www.klrca.org.my>.

Therefore, the Panel finds that Article 4(a)(i) of the Policy is satisfied.

B) Rights and Legitimate Interests

Even the Respondent did not produce any evidence to support its rights and legitimate interests in using the Disputed Domain Name, the Complainant is still required to prove that the Respondent has no rights and legitimate interests (*Neusiedler Aktiengesellschaft v. Kulkarni*, WIPO Case No. D2000-1769).

As mentioned above, the Panel accepts that the Complainant has rights in the "KLRCA" mark in Malaysia, Asia Pacific region and worldwide, including Japan. This pre-dated the registration of the Disputed Domain Name.

The Complainant confirmed that it did not grant any licence, consent or authority to the Respondent for the use of "KLRCA". From the evidence before the Panel, it appears that

there is no connection between the Complainant and the Respondent and there is no connection between the “KLRCA” mark and the Respondent’s name, address or services. The Panel accepts that the Complainant is able to prove that the Respondent has no trademark or intellectual property rights in “KLRCA”, and the Respondent is not commonly known by “KLRCA”.

Therefore, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Panel finds that Article 4(a)(ii) of the Policy is satisfied.

C) Bad Faith

The Panel finds that the Respondent has registered and used the Disputed Domain Name in bad faith for the following reasons:-

(i) Tarnishment

Bad faith is not limited to the situation as listed in 4(b) of the Policy (see e.g. *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003)

In fact, numerous Panels decided cases under the Policy have held that pornographic content on a respondent’s website may constitute a significant indicator of bad faith. (see e.g. *Christian Dior Couture v. Paul Farley*, WIPO Case No. D2008-0008). This is based on the concept of “tarnishment”. In the case of *Christian Dior Couture v. Paul Farley*, the Panel cited several previous decisions in relation to tarnishment in this line:-

“Previous cases to that effect were cited in the Caesars World Inc case – ABB Asea Brown Boveri Ltd. v. Quicknet, WIPO Case No. D2003-0215 (‘the use of ABB as part of a Domain Name offering pornographic material certainly tarnishes the Complainant’s existing marks, which is also evidence of bad faith’); America Online v. Viper, WIPO Case No. D2000-1198 (‘the fact that the site operated by Respondent is pornographic in nature has been found in prior decisions to be evidence of bad faith’); MatchNet plc v. MAC Trading, WIPO Case No. D2000-0205 (‘the Respondent has used its website to furnish sexually explicit and pornographic material under the domain name and in the circumstances, given the likelihood of confusion, there is a prima facie case that this could tarnish the Complainant’s goodwill in its common law service mark’); America Online, Inc. v. East Coast Exotics, WIPO Case D2001-0661, citing Coral Trademark Limited v. Eastern Net Inc, WIPO Case No. D2000-1295 (‘the posting of pornographic contents on a website under a domain name that corresponds to a third party’s mark is a bad faith use of the Domain Name’).”

The Panel accepts the Respondent offered pornographic services or materials in the website of the Disputed Domain Name and this tarnishes the valuable goodwill entrenched in Complainant’s “KLRCA” mark and damages the Complainant’s reputation as a distinguished non-governmental organization in the eyes of the general public around the world.

This tarnishment itself is the proof of bad faith.

(ii) *The Respondent has no connection with the Complainant*

The Panel finds that the Respondent should have aware of the rights of the Complainant on the “KLRCA” mark for the Panel accepts that the Respondent made use of the Disputed Domain Name and other similar well-known domain names in order to increase the traffic of its website, while the Respondent had no connection with the Complainant.

It was held in previous decisions that when a disputed domain name is so obviously connected with the Complainant, the use by someone with no connection with the Complainant suggests bad faith (see e.g. *Victoria’s Secret er al v. Atchinson Investments Ltd*, NAF Case No. FA0101000096496) . This is the case here.

For all the reasons outlined above, the Panel finds that the Respondent has registered and used the Disputed Domain Name in bad faith for the purposes of Article 4(a)(iii) of the Policy.

6. Decision

The Panel is satisfied that the Complainant has sufficiently proved the existence of all three elements of Paragraph 4(a) of the Policy. The Panel orders the Disputed Domain Name <klrca.org> be transferred to the Complainant.



Solomon Lam
Sole Panelist

Dated: 7th June 2014