



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1400602
Complainant:	NBA Properties, Inc.
Respondent:	Qianli Qiu
Disputed Domain Name:	<nbasneakers.com >

1. The Parties and Contested Domain Name

The Complainant is NBA Properties, Inc., incorporated under the laws of the USA, represented by Beijing Jieding IP Agency Co.

The Respondent is Qianli Qiu, an unrepresented individual, of Building 3 Apt.605, Taoranjū, GaoFa Technology Park, Nanshan District Park, Nanshan District Shenzhen, Guangdong, China.

The disputed domain name is <nbasneakers.com>, registered with Name.com, Inc. of Denver, Colorado, USA.

2. Procedural History

The Complaint was filed with the Hong Kong office of the Asian Domain Name Dispute Resolution Center (the "Center") on 21 April, 2014. On 22 April, 2014, the Center transmitted by email to Name.com, Inc. a request for registrar verification in connection with the domain name at issue. On 23 April, 2014, Name.com, Inc. 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"), the Rules of Procedure under the Policy (the "Rules"), and the Center's Supplemental Rules.

In accordance with the Rules, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on 25 April, 2014. In accordance with the Rules, the due date for Response was 15 May, 2014. A Response was not submitted and so on 19 May, 2014, the Respondent was notified that it was in default.

The Center appointed Debrett G. Lyons as panelist in this matter on 29 May 2014. The Panel finds that it was properly constituted and has acted impartially in reaching its conclusion.

3. Factual background

A. For Complainant

1. The Complainant is a subsidiary company of National Basketball Association, Inc. and acts as its marketing and licensing body.
2. The Complainant licenses third parties to manufacture and goods including sneakers, basketballs, warn-up jackets, sweaters and non-sport items, all bearing the NBA trademark.
3. The Complainant is the owner of PRC trademark registration number 1170761 filed 28 April, 1998, for the trademark, NBA.
4. The trademark has been widely promoted in China from a time before registration of the domain name in dispute.
5. The Complainant has not licensed or otherwise permitted the Respondent to use the trademark or to register or use any domain name incorporating the trademark, NBA.
6. The Complainant petitions the Panel to order transfer the disputed domain name from the Respondent to the Complainant.

B. For Respondent

7. The Respondent registered the disputed domain name on 20 August 2012.
8. The domain name is inactive and appears never to have been used.

4. Parties' Contentions

A. Complainant

The Complainant asserts rights in the trademark NBA and states that the disputed domain name is confusingly similar to the trademark.

The Complainant alleges that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant alleges that the Respondent registered and used the disputed domain name in bad faith.

B. Respondent

The Respondent did not submit a Response.

5. Findings

Paragraph 4(a) of the Policy states 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;
- 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 a two-fold enquiry – a threshold investigation into whether a complainant has rights in a trade mark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to the trade mark.

The Policy does not distinguish between registered and unregistered trade mark rights. It is accepted that a trade mark registered with a national authority is evidence of trade mark rights. The Panel finds that the Complainant has trade mark rights in NBA acquired through registration.

The remaining question is whether the disputed domain name is confusingly similar to the Complainant's trade mark. For the purposes of testing confusing similarity, the generic top-level domain “.com” can be ignored. The comparison then reduces to “nba sneakers” with NBA. Within the context of the Complainant's business and licensing interests, the word “sneakers” is purely descriptive. The Panel finds the disputed domain name to be confusingly similar to the Complainant's trade mark.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B) Rights and Legitimate Interests

The Complainant has the burden to establish that the Respondent has no rights or legitimate interests in the disputed domain name. Nevertheless, it is well-settled that the Complainant need only make out a *prima facie* case, after which the onus shifts to the Respondent to rebut such *prima facie* case by demonstrating rights or legitimate interests.

Paragraph 4(c) of the Policy states 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 rights or legitimate interests to a domain name for purposes of paragraph 4(a)(ii) of the Policy:

- “(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.”

The publicly available WhoIs database identifies the registrant as “Qianli Qiu” and so does not support any conclusion that the Respondent might be commonly known by the disputed domain name. There is no evidence that the Respondent has trademark rights in the disputed domain name, registered or not.

There is no evidence that the disputed domain name has ever been used in connection with a bona fide offering of goods or services. The Complainant provides evidence that the disputed domain name is inactive.

The Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. In the absence of a Response that *prima facie* case has not been rebutted.

The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name and so the Complainant has satisfied the second element of the Policy.

C) Bad Faith

Policy ¶ 4(b) sets out the circumstances which shall be evidence of the registration and use of a domain name in bad faith. They are:

(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 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.

Those four scenarios are illustrative of bad faith use and registration and are not exhaustive. In this case the Panel need not examine the Respondent’s conduct with reference to those scenarios since it is plain to the Panel that the Respondent both registered and used the domain name in bad faith.

In particular, the Panel finds on a balance of the evidence that the Respondent deliberately chose the disputed domain name so as to somehow benefit commercially from the notoriety of the Complainant's trademark and business. The trade mark was already well advertised and promoted in China prior to 2012 and the fact that the domain name combined the trademark with the related goods description of "sneakers" is almost certain proof that the Respondent targeted the Complainant's trade mark. Moreover, the Complainant provides indirect evidence that the Respondent has registered numerous domain names incorporating the well-known brand names of third parties. The Panel finds registration in bad faith.

Further, the Panel finds use in bad faith in spite of the apparent non-use of the domain name in keeping with the reasoning first laid down in the case of *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003. The evidence indicates that the Respondent has engaged in a pattern of bad faith conduct by registering domain names incorporating others' trademarks. The evidence is that none of those other domain names has been put into actual use. In most instances the third party trade marks are very well-known. Generally, it can be said that there is no reason to think that the Respondent has permission to use any of those trade marks. Confining argument to the case at hand, it could be argued that the three plain letters "NBA" might be used for some good faith purpose in the future but the fact that they have been combined with the word "sneakers" immediately calls to mind a unique association to the Complainant's trade mark. Since there is, on the evidence, no justifiable reason that the Respondent should need to use the domain name for its own legitimate purposes and since there is every reason to think that its use would create an improper connection in the minds of internet users with the Complainant's trade mark and business, it can be said that any future use of the domain name is likely to be in bad faith. The Panel finds that the passive holding is bad faith use in terms of the criteria set out in the *Telstra case*.

6. Decision

Having established all three of the elements required under the Policy, the Panel decides that relief shall be **GRANTED**.

The Panel orders transfer of the domain name from the Respondent to the Complainant.

Debrett G. Lyons

Panelist

Dated: 2 June 2014