



**(Hong Kong Office)**

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	<b>HK-1400576</b>
<b>Complainant:</b>	<b>The Hongkong Land Company, Limited</b>
<b>Respondent:</b>	<b>THE HONGKONG LANDMark COMPANY, LIMITED</b>
<b>Disputed Domain Name:</b>	<b>&lt;hk-landmark.com&gt;</b>

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**1. The Parties, Contested Domain Name and Registrar**

The Complainant is The Hongkong Land Company, Limited, having a registered business address in Hong Kong, represented by Mayer Brown JSM, solicitors.

The Respondent is THE HONGKONG LANDMark COMPANY, assuming a Hong Kong address, unrepresented.

The disputed domain name is <**hk-landmark.com**>, registered with 1API GmbH.

**2. Procedural History**

The Complaint was filed with the Hong Kong office of the Asian Domain Name Dispute Resolution Center (the “Center”) on 20 February, 2014. That same day the Center transmitted by email to 1API GmbH a request for registrar verification in connection with the domain name at issue. On 3 March, 2014, and after several reminder emails from the Center, 1API GmbH 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 5 March, 2014. In accordance with the Rules, the due date for Response was 25 March, 2014. A Response was not submitted within the allowed time, or at any later time. The Respondent is in default.

The Center appointed Debrett G. Lyons as panelist in this matter on 3 April, 2014. The Panel finds that it was properly constituted and has acted impartially in reaching its conclusion.

### **3. Factual background**

#### **A. Complainant**

- i. The Complainant is a member of a group of companies in the business of real property management and investment which has done business in Hong Kong under the trade mark LANDMARK since 1980.
- ii. The LANDMARK trade mark is also used for the name of a well-known luxury shopping complex in Hong Kong.
- iii. The Complainant is the owner of PRC trade mark regn. no. 200309470 for the word mark, LANDMARK, registered 19 March 1999.
- iv. The disputed domain name was registered on 12 December 2013 and resolves to a website which offers luxury consumer goods for sale.
- v. The Complainant has not licensed or otherwise permitted the Respondent to use the trade mark or to register or use any domain name incorporating the trade mark.
- vi. The Respondent failed to respond to a letter of demand sent to it by the Complainant on 4 February 2014.

#### **B. Respondent**

The Respondent did not file a response to the complaint.

### **4. Parties' Contentions**

#### **A. Complainant**

The Complainant asserts rights in the trade mark, LANDMARK, and states that the disputed domain name is confusingly similar to the trade mark.

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.

The Complainant petitions the Panel to order transfer the disputed domain name from the Respondent to the Complainant.

#### **B. Respondent**

No contentions.

## 5. Findings

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at paragraph 4(a), that each of three findings must be proven in order for the 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

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.

Paragraph 4(a)(i) of 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 for the purposes of the Policy. The Panel finds that the Complainant has trade mark rights in LANDMARK acquired through registration by reason of its registration referred to already.

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, it is well established that the generic top-level domain “.com” can be ignored. The comparison then reduces to “hk-landmark” with the trade mark LANDMARK. The letters “HK” are simply a geographical reference to Hong Kong and 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 THE HONGKONG LANDMark COMPANY, LIMITED. Whilst that name would normally invite a closer consideration of whether paragraph 4(c)(ii) of the Policy might apply, in this case the Panel accepts, based on the totality of the evidence, the Complainant’s claim that the Respondent has assumed this name in bad faith to pass itself off as the Complainant.

Evidence of that claim is clear from the facts that (a) there is no official Hong Kong company record of incorporation of a company by the name of the Respondent, and (b) the Respondent has provided the Registrar with an address - 8th Floor, One Exchange Square, Central, Hong Kong – identical to the Complainant’s Hong Kong address.

Additionally, many panels considering this aspect of the Policy in the past have insisted on exact correspondence between the disputed domain name and the respondent name and it is enough to note here that in this case the terms differ. In the result, there is no reasonable foundation to find that the Respondent might be commonly known by the disputed domain name.

There is no evidence that the Respondent has trade mark 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. On the contrary, the evidence is that the Respondent has used the domain name to direct Internet users to a website presumably maintained and controlled by the Respondent where a variety of luxury consumer goods are offered for sale. The total impression of that website is one where reasonable people might assume it to be associated with the Complainant and the evidence is that since establishment of that website, consumers have been caused to wonder whether the website is the official website of the Complainant.

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. Accordingly, the onus shifts to the Respondent to prove otherwise and in the absence of a Response that *prima facie* case has not been met.

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**

Paragraph 4(b) of the Policy 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.

The Panel finds on a balance of the evidence that the Respondent deliberately chose the disputed domain name so as to benefit commercially from the notoriety of the Complainant's trade mark and business. Having registered the domain name in bad faith, the Respondent then used the name in bad faith.

The Panel finds that the Respondent's actions fall squarely under paragraph 4(b)(iv) above. The Panel has already found the disputed domain name to be confusingly similar to the Complainant's trade mark. The Complainant submits evidence of screenshots of the website to which the disputed domain name redirects users. That website exists for commercial gain. In terms of paragraph 4(b)(iv) of the Policy, the Panel finds that the Respondent is using the domain name to attract, for commercial gain, internet users to its website by creating a likelihood of confusion with the Complainant's trade mark.

The Panel finds that the Respondent registered and used the disputed domain name in bad faith and so finds that the Complainant has satisfied paragraph 4(a)(iii) of the Policy.

## 6. Decision

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



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Debrett G. Lyons  
Panelist

Dated: 10 April 2014