



Asian Domain Name Dispute Resolution Centre

hong kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1400569
Complainant:	KHL Printing Co Pte. Ltd. & Asian Geographic Magazines Pte Ltd
Respondent:	Chong Seat Au
Disputed Domain Name(s):	<asiadiveexpo.com>

1. The Parties and Contested Domain Name

The Complainant 1 is KHL Printing Co Pte. Ltd. of 57, Loyang Drive, Singapore 508968 and Complainant 2 is Asian Geographic Magazines Pte Ltd of 20, Bedok South Road, Singapore 469277. The Complainant 1 is the holding company of the Complainant 2.

The Respondent is Chong Seat Au of 24, Jalan Tengah, Layang Layang, Johor, Malaysia 81850.

The domain name at issue is <asiadiveexpo.com>, registered by Respondent with IP Mirror Pte Ltd of 9, Hong Kong Street, #01-01, Singapore 059652.

2. Procedural History

On 20 January 2014, the Complainant submitted a Complaint in English to the Hong Kong Office of Asian Domain Name Dispute Resolution Center (the ADNDRC) and selected this case to be dealt by a one-person panel, in accordance with the Uniform Domain Name Dispute Resolution Policy (the Policy) approved by the Internet Corporation for Assigned Names and Numbers (ICANN), the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the ADNDRC Supplemental Rules). On the same date, the ADNDRC sent to the Complainant by email an acknowledgement of the receipt of the Complaint and reviewed the format of the Complaint in compliance with the Policy, the Rules and the ADNDRC Supplemental Rules.

On 28 January 2014, the ADNDRC transmitted by email to ICANN and the Registrar, IP Mirror Pte Ltd, a request for registration verification of the disputed domain name and sought "Whether the Respondent 'LX Development Group Ltd' is the Registrant or holder of the disputed domain name".

On 29 January 2014, the Registrar transmitted by email to the ADNDRC its verification response, replied that the Respondent 'LX Development Group Ltd' is not listed as the registrant of the disputed domain name.

On 11 February 2014, the ADNDRC transmitted by email to ICANN and the Registrar, IP Mirror Pte Ltd, a request to provide the true identity of the registrant/holder of the disputed domain name as the identity of the registrant/holder of the disputed domain name <asiadiveexpo.com> is hidden.

On 18 February 2014, the Registrar transmitted by email to the ADNDRC and provided the true identity of the Registrant as "Chong Seat Au of 24, Jalan Tengah, Layang Layang, Johor, Malaysia 81850".

On 19 February 2014, the ADNDRC notified the Complainant that there are some deficiencies in the Complaint and to resubmit the revised Complaint according to Paragraph 4 (b) of the Rules alongwith the required documents and the relevant supporting documents (if applicable) on or before 24 February 2014, failing which the Complaint will be deemed withdrawn without prejudice to submission of a different Complaint by the Complainant.

On 21 February 2014, the Complainant submitted a Revised Complaint in English to the ADNDRC and on the same day, the ADNDRC sent to the Complainant by email an acknowledgement of the receipt of the Complaint and reviewed the format of the Complaint in compliance with the Policy, the Rules and the ADNDRC Supplemental Rules.

On 26 February 2014, the ADNDRC transmitted the Written Notice of the Complaint to the Respondent, which informed that the Complainant had filed a Complaint against the Respondent over the disputed domain name and the ADNDRC had sent the Complaint and its attachments to the Respondent through email according to the Rules and the ADNDRC Supplemental Rules. The ADNDRC notified the Complainant that the Complaint has been confirmed and transmitted to the Respondent, ICANN and Registrar that the case is officially commenced on 26 February 2014.

On 19 March 2014, the Centre notified the parties that no Response was received and the hearing shall be conducted by default.

On 19 March 2014, the ADNDRC notified the Proposed Panelist Mr. Neeraj Aarora to see whether he is available to act as the Panelist in this case and if so, whether he is in a position to act independently and impartially between the parties.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Mr. Neeraj Aarora, on 24 March 2014, the ADNDRC informed the Complainant and the Respondent of the appointment of the Panelist, and transferred the case file to the Panelist on the same day and asked the Panel to submit a decision on or before 7 April 2014.

The Panel finds that it was properly constituted and appointed in accordance with the Rules and the ADNDRC Supplemental Rules.

The language of the proceeding is English, as being the language of the Domain Name Registration and Service Agreement, pursuant to Paragraph 11(a) of the Rules, and also in consideration of the fact that there is no express agreement to the contrary by the Parties.

3. Factual background

For the Complainant

The Complainant 1, KHL Printing Co Pte. Ltd owns the Trade Mark “Asia Dive Expo” which was registered on November 30, 2006 in Singapore, No. T0626264H in Class 35. The Complainant 1 through its subsidiary company Asian Geographic Magazines Pte Ltd., Complainant 2 is organizing and holding exhibitions in the name of “Asia Dive Expo” and has gained a well established goodwill and reputation in Singapore and overseas. The authorized representative of the complainants in this case is Mr. Thomas Au Siu Yung (Ascentsia Law Corporation) of 10, Anson Road, #03-01, International Plaza, Singapore 079903.

For the Respondent

The Respondent is Chong Seat Au. The Domain Name <asiadiveexpo.com> is created on 31 July 2002 and last updated by the Respondent on 20 December 2013. The domain name is registered by Respondent with IP Mirror Pte Ltd of 9, Hong Kong Street, #01-01, Singapore 059652.

4. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

- i. The Complainant 1, KHL Printing Co Pte. Ltd owns the Trade Mark “Asia Dive Expo” which was registered on November 30, 2006 in Singapore, No. T0626264H in Class 35. The Complainant 1 through its subsidiary company Asian Geographic Magazines Pte Ltd., Complainant 2 is organizing and holding exhibitions in the name of “Asia Dive Expo” and has gained a well established goodwill and reputation in Singapore and overseas. The Complainant 2 was registered as a Publishing company in 2001.
- ii. It has recently come to the notice of the Complainant 2 that a website by the domain name of www.asiadiveexpo.com has been advertising exhibition events for diving related activities in Singapore & China and disputed domain name is confusingly similar to “Asia Dive Expo” trademarks and trade name in which the Complainants has the rights and interests and the Complainant 2 is organizing and holding regular exhibitions in Singapore in a wide range of recreational interests and sporting themes including diving related activities in the name of “Aisa Dive Expo” and thus, the Respondent has infringed the Complainant’s trade mark by using the trade mark as its domain name.

- iii. The “Asia Dive Expo” is simultaneously known as “ADEX” in its simplified form for all the diving exhibitions. The diving exhibition event attracts nearly 40,000 local and foreign visitors for a 4 days event.
- iv. The word “ADEX” appeared in the home page of the disputed domain name that induced the general public into believing that the exhibition events are being organised by the Complainant 2 and the information contained are provided by the Complainant 2.
- v. The website contained and published irresponsible and erroneous statement and information so as to belittle the Complainant and other competitors to gain undue advantage. It publishes unfavourable and incorrect statistics on certain diving exhibition events throughout Asia as a result of which, Complainant 2 has faced with numerous Complaints from general public and competitors.
- vi. The intention of the owner of the disputed domain name is to ride on the reputation of Complainant 2 to pursue its own gain.

For the reasons outlined above, the Complainant requests that the disputed domain be transferred to the Complainant 2.

B. Respondent

The Respondent did not reply to the Complainant’s contentions.

5. Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: “A Panel shall decide a Complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.”

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

To prove this element the Complainant must have trade or service mark rights and the Domain Name must be identical or confusingly similar to the Complainant’s trade or service mark. The Panel acknowledge that the Complainant has rights in respect of the

“Asia Dive Expo” trade mark on the basis of its trade mark registration in Singapore registered on November 30, 2006 in Singapore, No. T0626264H in Class 35.

For the Panel while making an inquiry as to whether or not a trade mark is identical or confusingly similar to a disputed domain name, the generic top level extension of the disputed domain name, in this case “.com”, may be disregarded (see *Rohde & Schwarz GmbH & Co. KG V. Pertshire Marketing Ltd*, WIPO Case No. D2006-0762).

As the disputed domain name is identical to the Complainant’s “Asia Dive Expo” trade mark in which the Complainant has rights and accordingly, the Panel holds that the Complaint fulfills the condition provided in Paragraph 4(a)(i) of the Policy

B) Rights and Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a Respondent may establish rights or legitimate interests in a domain name by demonstrating any of the following:

- (i) before any notice to it of the dispute, the Respondent's use of, or demonstrable preparations to use the disputed domain name or a name corresponding to the disputed domain name was in connection with a *bona fide* offering of goods or services; or
- (ii) the Respondent has been commonly known by the disputed domain name, even if it has acquired no trade mark or service mark rights; or
- (iii) the Respondent is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

The Complainant is required to establish a prima facie case in respect of the lack of rights or legitimate interests of the Respondent in the disputed domain name and upon thereafter, the burden shifts to Respondent for proving otherwise, failing which, paragraph 4(a)(ii) of the Policy shall be deemed to have been satisfied (see *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. D2003-0455 and *Accor v. Eren Atesmen*, WIPO Case No. D2009-0701).

As no response has been tendered by the Respondent, the Panel will examine whether the Respondent has any rights in the disputed domain name based on the contentions put forth and evidences produced by the Complainant and the website to which the disputed domain name resolves.

The disputed domain name <asiadiveexpo.com> is created on 31 July 2002 and last updated by the Respondent on 20 December 2013. The complainant on the other hand stated that it owns the Trade Mark “Asia Dive Expo” which was registered on November 30, 2006 in Singapore, No. T0626264H in Class 35. The complainants claimed that the Complainant 2 is organising and holding regular exhibition in the name of “Asia Dive Expo” but the evidence produced by them pertains to year 2010 onwards only. The complainant further fails to show any evidence that they were known by any

name similar to the disputed domain name prior to the year 2006 which the Respondent must have known when it registered the disputed domain name. In absence of the any such material, it is difficult to infer that the respondent have known that registration of the disputed domain name would likely to attract to its website a number of Internet users who were looking for Complainant's interest similar to the disputed domain name. The contention of the complainant regarding use of the word "ADEX" by the Respondent on his website is also of no consequence as complainant fails to have any trade mark or right in the usage of the word "ADEX" or its relation to the disputed domain name.

The Panel while considering the question of "rights or legitimate interests" under paragraph 4(a)(ii), finds that the mere fact that a trademark has been obtained by a Complainant is not an absolute right accruing to a complainant succeeding under the UDRP. In this case, the Disputed Domain Name has been obtained prior to the registration of the trade mark or evidencing the established interest in the Disputed Domain Name of the Complainant, it can not be inferred that the respondent was not having "rights or legitimate interests" at the time of registration of the Disputed Domain Name i.e. in the year 2002.

Based on the extremely limited evidence produced by the complainant before the Panel, the Panel finds that, Complainant has not demonstrated that the Respondent lacks rights or legitimate interests in respect of the Disputed Domain Names. The Complainant's mere statement that it is the legitimate and exclusive owner of the Trademark, cannot by itself be considered as a prima facie case for purposes of the Rules that the Respondent lacks rights to or legitimate interests in the Disputed Domain Names.

The panel is of the view that the contention of the complainant that the website containing disputed domain name indicates the unfavourable criticism and the erroneous statement about the complainant is also devoid of the merit as from the limited material put forth by the Complainant, it is not possible for the Panel to draw such inference and also not adequate to establish that the respondent is making illegitimate use of the Disputed Domain Name to the detriment of complainant.

In view of the above, the Panel finds that the Complainant has failed to discharge its burden of proving the requirements of paragraph 4(a)(ii) of the Policy.

C) Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must demonstrate the conjunctive requirement that the Respondent registered and used the disputed domain name in bad faith.

The disputed domain name was registered by the Respondent in 2002, almost 4 years prior to the Complainant's trademark application and nearly 8 years prior to the trademark's first use by the Complainant. Hence, at the time of the registration of the disputed domain name, the Respondent could not have contemplated the Complainant's non-existing rights. The Panel adheres to the consensus view of panelists in WIPO Overview 2.0, paragraph 3.1.

There are situations, which may justify a different assessment, in particular “when the Respondent is clearly aware of the Complainant, and it is clear that the purpose of the registration was to take advantage of the confusion between the domain name and any potential complainant rights”, WIPO Overview 2.0, paragraph 3.1. In the present case, however, the Complainant neither had a trademark nor had started any activity to use the mark “Asia Dive Expo” at the time of the disputed domain name registration. There is no indication in the case file that the Complainant had at that time even conceived of the idea to use the mark “Asia Dive Expo”. The material put forth by the Complainant is not sufficient to conclude the use of disputed domain name in bad faith as discussed hereinabove.

The Panel’s view is that the Complainant has not sufficiently proved bad faith registration by the Respondent.

6. Decision

For the forgoing reasons, the Complainants has failed to meet its burden to establish all of the elements in Complaint. The Complaint is Denied.

Neeraj Aarora
Panelists

Dated: April 5, 2014