



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1300561
Complainant:	Swire Pacific Offshore Operations Pte Ltd
Respondent:	PDFoundation
Disputed Domain Name:	<swirepacificoffshore.com>

1. The Parties and Contested Domain Name

The Complainant is Swire Pacific Offshore Operations Pte Ltd, of 300 Beach Road, #12-01 The Concourse, Singapore 199555.

The Respondent is PDFoundation, of PO box 2932, Manila, Biliran, Philippines 1003.

The domain name at issue is <swirepacificoffshore.com>, (“the Domain Name”) registered by the Respondent with PDR Ltd d/b/a publicdomainregistry.com, of Directplex, Next to Andheri Subway, Old Nagardas Road, Andheri (East), Mumbai, Maharashtra 400069, India.

2. Procedural History

An initial Complaint in relation to the Domain Name (HK-1300556) was filed with the Hong Kong office of the Asian Domain Name Dispute Resolution Centre (“the Centre”) on October 22, 2013.

On October 31, 2013, the Centre transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On November 1, 2013, the Registrar transmitted by email to the Centre its verification response confirming that the Respondent is the registrant and providing the contact details.

Following the Complainant’s failure to remedy defects in the Complaint drawn to its attention by the Centre on November 5, 2013, the initial Complaint was deemed withdrawn on November 13, 2013. A second Complaint (HK-1300559) was filed next day. The Complainant failed to pay the case filing fee within time so the second Complaint was deemed withdrawn on December 3, 2013. The present Complaint was filed with the Centre, together with the case filing fee, on December 4, 2013.

The Centre verified that the present 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 Centre’s Supplementary Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplementary Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Centre formally notified the Respondent of the Complaint, and the proceedings commenced on December 13, 2013. In accordance with the Rules, paragraph 5(a), the due date for Response was January 2, 2014.

No Response was filed and the Centre notified the parties of the Respondent’s default on January 7, 2014.

The Centre appointed Alan L. Limbury as the sole panelist in this matter on January 13, 2014. The Panel finds that it was properly constituted. The Panel has informed the Centre of his impartiality and independence, to ensure compliance with the Rules, paragraph 7.

The language of the proceeding is English, being the language of the Registration Agreement.

On January 15, 2014, the Centre sent to the parties Administrative Panel Order No. 1 issued that day by the Panel in the following terms:

1. The Complainant is requested to provide the following, within 7 days of its receipt of this Order or within such further time as the Panelist may allow:
 - (i) A copy of at least one certificate of registration of a trademark on which the Complainant relies;
 - (ii) if the Complainant is not the registrant, an explanation and evidence of a relationship between the Complainant and the registered proprietor of that trademark, such as to demonstrate that the Complainant has rights in that mark.
2. The Respondent may respond to any material so provided by the Complainant within a further 7 days.
3. The time for the Panel’s decision is extended to February 12, 2014.

On January 22, 2014 the Complainant requested an extension of time within which to provide the documents listed in the Administrative Panel Order No. 1. With the Panel’s concurrence, the Centre informed the parties that day that the time for compliance by the Complainant with that Order was extended until January 29, 2014 and that the Respondent may respond to any material provided by the Complainant within a further 7 days. The time for the Panel’s decision was extended to February 17, 2014.

The Complainant failed to provide the documents listed in the Administrative Panel Order No. 1.

3. Factual background (undisputed facts)

The Complainant was incorporated in Singapore in 1998. Swire Pacific Offshore is a business name of the Complainant, registered with the Singapore Government. The Complainant is a member of a group of companies known as the Swire Pacific Offshore Group which owns and operates a worldwide fleet of 80 vessels in the offshore industry.

The Domain Name was registered by the Respondent on October 1, 2013. It resolves to a website stated to be “Under Construction”.

4. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

- i. The “Swire” mark is registered in a large number of jurisdictions worldwide including various countries across Africa, Asia, Europe, the Middle East and the North and South American continents. The Domain Name is identical or confusingly similar to the following distinctive and well-known trade names that are legitimately held by the Complainant or its parent entities: “Swire”, “Swire Pacific” and/or “Swire Pacific Offshore”.
- ii. The Respondent has no rights or interests in the Domain Name, and no business relationship with or authorization from the Complainant.
- iii. The Domain Name has been registered and is being used in bad faith. In October 2013 the Complainant was alerted to a scam involving fraudulent emails, purportedly sent from the Human Resources Department of various Swire Pacific Offshore entities, such as “Swire Pacific Offshore (North Sea) Ltd” and “Swire Pacific Offshore Ltd”. The scam alleges that the recipient has been shortlisted or accepted for various job opportunities in Swire Pacific Offshore and requests recipients to submit their resumes and CVs, to complete and submit various assessment forms and to send a fee for visa processing. These fraudulent emails have been sent from accounts including careers@swirepacificoffshore.com.

These emails and the email domain they are using (which is notably similar to the Domain Name) are fake and are not associated with the Swire Pacific Offshore Group in any way. The Complainant believes that the Respondent’s sole purpose in registering the Domain Name is to masquerade as the Complainant and its affiliates, so as to mislead others into believing they are dealing with the Complainant or its affiliates, and thereby perpetrate a fraud for financial gain.

The Complainant has received a number of emails from various persons stating that they have been targeted by this scam. On 13 November 2013 the Complainant received an email from a person advising that he had been cheated of GBP 1775.

The Respondent’s acts, in masquerading as the Complainant and/or its affiliates without the approval or authorisation of the Complainant and perpetrating a fraud on the public, are extremely damaging to the Complainant’s reputation and to the interests of the public.

B. Respondent

No Response was filed by the Respondent.

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 Respondent is not obliged to participate in a proceeding under the Policy but if it fails to do so, asserted facts may be taken as true and reasonable inferences may be drawn from the information provided by the Complainant. See *Reuters Limited v. Global Net 2000, Inc.*, WIPO Case No. D2000-0441.

A) Rights in a trademark or service mark

Proof by a Complainant that it has rights in a trademark or service mark, whether as owner or licensee, is an essential prerequisite to relief under the Policy.

To succeed in a Complaint under the Policy in relation to an unregistered mark, the Complainant must produce evidence proving that it has provided goods or services under the unregistered mark and thereby acquired a reputation such that members of the public would associate those goods or services with the Complainant and not with others not authorized by the Complainant to use the mark: see *British Heart Foundation .v. Harold A Meyer III (eResolution Case No. AF0957)*. See also WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition ("WIPO Overview 2.0"), paragraph 1.7:

“The complainant must show that the name has become a distinctive identifier associated with the complainant or its goods or services. Relevant evidence of such "secondary meaning" includes length and amount of sales under the trademark, the nature and extent of advertising, consumer surveys and media recognition.”

The Complainant refers to its corporate name and its business name but makes no claim to unregistered trademark or service mark rights in them and has provided no evidence that it has acquired a reputation in either of those names such as to give rise to any such rights.

The Complainant has provided and relies upon a list of numerous SWIRE registered trademarks, dating from 1990, all shown as owned by “JSS”.

A mere list of claimed trademarks does not amount to evidence of their registration.

Having regard to the Complainant's assertions of fraudulent conduct of the Respondent which the Respondent has not denied, Administrative Procedural Order No. 1 sought evidence from the Complainant of registration of at least one SWIRE mark through the production of a copy of a certificate of registration and evidence that the Complainant is authorized to use the SWIRE mark.

In correspondence following the making of Administrative Procedural Order No. 1, the Complainant explained that JSS is the Complainant's parent company, John Swire & Sons.

Although ownership of a mark by a parent company does not, without more, entitle a subsidiary to use that mark, the consensus view amongst domain name panelists is set out in the WIPO Overview 2.0, paragraph 1.8 as follows:

“In most circumstances, a licensee of a trademark or a related company such as a subsidiary or parent to the registered holder of a trademark is considered to have rights in a trademark under the UDRP. For the purpose of filing under the UDRP, evidence of such license and/or authorization of the principal trademark holder to the bringing of the UDRP complaint would tend to support such a finding. Panels have in certain cases been prepared to infer the existence of a license and/or authorization from the particular facts, but in general, relevant evidence is desirable.”

The Complainant having failed to comply with the Procedural Order, the Panel is not prepared to infer that the SWIRE mark is registered as set out in the list provided by the Complainant. It follows that the Panel is unable to find that the Complainant is licensed to use that mark by its parent company.

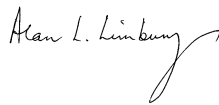
The Panel therefore finds that the Complainant has failed to establish that it has rights in a mark for the purposes of the Policy, paragraph 4(a)(i).

It is therefore unnecessary to consider the other elements required to be established by the Complainant.

The rejection of this Complaint is made without prejudice to any refiled Complaint which the Complainant may bring, both in its own interests and in the interests of innocent members of the public. The history of the Complainant’s failed attempts to comply with the procedural requirements of the Policy and the Rules indicates that the Complainant would benefit from engaging counsel experienced in this field.

6. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Complaint is denied.



Alan L. Limbury
Panelist

Dated: February 1, 2014.