



Asian Domain Name Dispute Resolution Centre

seoul

(Seoul Office)

## ADMINISTRATIVE PANEL DECISION

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**Case No.** KR-1900201

**Complainants:** Bodyfriend Co., Ltd. (Authorized Representative : Kim & Chang)

**Respondent:** Ankur Tyagi

**Disputed Domain Name(s):** bodyfriendkorea.com

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### 1. The Parties and Contested Domain Name

The Complainant is Bodyfriend Co., Ltd., Bodyfriend 163 Yangjaecheon-ro, Gangnam-gu, Seoul, Republic of Korea (Zip:06302).

The Authorized Representative of Complainant is Kim & Chang, Seyang Building, 39, Sajuk-ro 8-gil, Jongno-gu, Seoul 110-720, Republic of Korea.

The Respondent is Ankur Tyagi, #50, Hardev nagar, North Delhi, Delhi, India.  
Postal Code: 110084

The domain name at issue is <bodyfriendkorea.com>, registered by GoDaddy.com.

### 2. Procedural History

The Complaint was filed with the Seoul Office of the Asian Domain Name Dispute Resolution Center (ADNDRC) ["Center"] on August 12, 2019, seeking for a transfer of the domain name in dispute.

On August 19, 2019, the Center sent an email to the Registrar asking for the detailed data of the registrant. On August 20, 2019, GoDaddy.com transmitted by email to the Center its verification response, advising 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 for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the Centre's 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. The proceedings commenced on August 20, 2019 and the due date for the Response was September 9, 2019. No Response was filed by the due date.

On September 17 2019, the Center appointed Mr. Dae-Hee Lee as the Sole Panelist in the administrative proceeding and with the consent for the appointment, impartiality and independence declared and confirmed by the Panelist, the Center, in accordance with paragraph 7 of the Rules, organized the Panel of this case in a legitimate way.

We are writing to advise the parties of Panel order.

### **3. Factual background**

The Complainant has manufactured and sold massage chairs under the trademark of "BODYFRIEND" since 2007 in various countries such as the United States, China, Australia, New Zealand, and Vietnam in addition to Korea. The Complainant has also been actively operating many stores around the world. According to the global market search firm, the market share of the Complainant was 8.1% in the global massage chair market, and the Complainant has been awarded many prizes many times in several countries in addition to Korea.

The Complainant has secured ownership of the "BODYFRIEND" trademark through national and international trademark registrations worldwide. These include trademark registrations covering many countries including not only Korea, but the United States, several European countries, China, Japan, Canada, Vietnam, Singapore, Australia, New Zealand, Taiwan, and Malasia. Complainant's trademarks had been registered in those countries earlier before the Contested Domain Name <bodyfriendkorea.com> was registered.

The Respondent registered the Contested Domain Name <bodyfriendkorea.com> on November 28, 2017. The Contested Domain Name is currently resolved to a web site using a different domain name from the Contested Domain Name.

## **4. Parties' Contentions**

### **A. Complainant**

The Complainant contends that it is a lawful owner of the mark "BODYFRIEND." It submits that the mark "BODYFRIEND" is a well-known mark around the world which has been used by it for a long period of time, and that it has registered many domain names with respect to the mark "BODYFRIEND" to provide services related to its massage chair products all over the world. It contends that the Respondent has no relation to the mark "BODYFRIEND," that the Respondent has not been granted any right to the mark, and that the Respondent is not entitled to the Contested Domain Name.

The Complainant also contends that the Contested Domain Name <bodyfriendkorea.com> is identical or confusingly similar to its trademark "BODYFRIEND." It submits that the Contested Domain Name is just composed of its trademark and the country name or its nationality 'KOREA.'

The Complainant finally contends that the Respondent has registered and owns the Contested Domain Name for unjust purposes. It adds that the mark "BODYFRIEND" has been globally well known as its trademark and tradename even before the restration of the Contested Domain Name, and that it registered the mark "BODYFRIEND" in major countries before the restration of the Contested Domain Name.

The Complainant concludes that the Respondent is interfering with the registration and use of the Contested Domain Name in which it is lawfully entitled thereto, and seeks a transfer of the Consted Domain Name to it.

### **B. Respondent**

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

## **5. Findings**

If the Complainant is to succeed, it must prove each of the three elements referred to in paragraph 4(a) of the Policy, namely that:

- (i) the Disputed Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- (iii) the Disputed Domain Name has been registered or is being used in bad faith.

The Panel will proceed to establish whether the Complainant has discharged the burden of proof in respect of each of the three elements referred to in paragraph 4(a) of the Policy.

### **A) Identical / Confusingly Similar**

Based upon Complainant's uncontested evidence of its use of the mark "BODYFRIEND" and its registration in many countries, the Panel finds that Complainant has rights in the mark "BODYFRIEND."

The Contested Domain Name <bodyfriendkorea.com> incorporates in its entirety the Complainant's mark "BODYFRIEND." Where a domain name incorporates a complainant's mark in its entirety, it is sufficient to establish that the domain name is identical or confusingly similar to the mark for purposes of the Policy. *See* Kabushiki Kaisha Hitachi Seisakusho (d/b/a Hitachi Ltd) v. Arthur Wrangle, WIPO Case No. D2005 1105. Adding the geographic term "KOREA" to the Complainant's mark "BODYFRIEND" does not alleviate the similarity or confusion.

While the generic top level domain ".com" is added to the Contested Domain Name, the suffix is not taken into consideration in the comparison of similarity between the complainant's mark and the contested domain name. The ".com" generic top level domain does not serve to distinguish the Contested Domain Name from the Complainant's mark.

For the foregoing reasons, the Panel finds that the Contested Domain Name is identical, or confusingly similar, to the Complainant's mark in which the Complainant has rights, and concludes that paragraph 4(a)(i) of the Policy has been satisfied.

#### **B) Rights and Legitimate Interests**

A Complainant is required to make out an initial *prima facie* case that the Respondent lacks rights or legitimate interests in respect of the Contested Domain Name. Once such a *prima facie* case is made, the Respondent carries the burden of producing evidence establishing that it has rights or legitimate interests. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

If a complainant shows that the contested domain name is identical or confusingly similar to the complainant's trademark, that the respondent is not commonly known by the contested domain name, and that the complainant has not authorized the respondent to use its mark, whether in the contested domain name or otherwise, it is generally regarded as *prima facie* evidence. *Roust Trading Limited v. AMG LLC*, WIPO Case No. D2007 1857.

The Panel notes that the Contested Domain Name is identical to the Complainant's mark "BODYFRIEND." The Panel accepts the Complainant's contentions that the Respondent has no relation to the mark, that the Respondent has not been granted any right to the mark, and that the Respondent is not entitled to the Contested Domain Name. The Panel is therefore satisfied that the Complainant has provided sufficient *prima facie* proof that the Respondent has no rights or legitimate interests in the Contested Domain Name.

Because such *prima facie* case is made, the burden of production shifts to the Respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in respect of the Contested Domain Name. However, the Respondent did not reply to the Complaint.

In these circumstances, it is clear to the Panel that the Respondent has not rebutted the *prima facie* case. Consequently the Panel finds that Respondent has no rights or legitimate interests in respect of the Contested Domain Name, and accordingly concludes that paragraph 4(a)(ii) of the Policy has been satisfied.

### C) Bad Faith

With regard to whether the Respondent has registered the Contested Domain Name in bad faith, the evidence shows that Complainant's trademark had been registered in many countries earlier than the date the Respondent registered the Contested Domain Name. And the Panel notes that the Complainant had launched many stores around the world before the registration of the Contested Domain Name, and that Complainant's trademark "BODYFRIEND" had been well known around the world before the registration of the Contested Domain Name. The panel is willing to infer that the Respondent had actual knowledge of the Complainant's mark in the registration of the Contested Domain Name, and that it has registered the Contested Domain Name in bad faith.

Paragraph 4(b) of the Policy illustrates evidence of the registration and use of a domain name in bad faith. According to paragraph 4(b)(iv), if a respondent has intentionally attempted to attract, for commercial gain, internet users to the 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 the Respondent's website or location or of a product or service on the respondent's website or location, it may be proved that the respondent has registered and uses the disputed domain name in bad faith. To the knowledge of the panel, the Respondent is currently selling the same products as Complainant's using the website under the different domain name to which the Contested Domain Name is resolved. The panel finds that the Respondent may create a likelihood of confusion with the Complainant's mark.

Registration of a domain name which is identical to a complainant's famous mark and trade name, without showing by the Respondent of any right or legitimate interest (such as legitimate noncommercial use without intent for commercial gain to misleadingly divert consumers or tarnish the trade mark at issue) is, in and of itself, evidence of bad faith. *PepsiCo, Inc. v. Paul J. Swider*, WIPO Case No. D2002-0561.

Based on these findings, the Panel concludes that the Contested Domain Name has been registered and used by Respondent in bad faith, and accordingly concludes that paragraph 4(a)(iii) of the Policy has been satisfied.

### 6. Decision

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Contested Domain Name <bodyfriendkorea.com> be transferred to the Complainant.



Dae-Hee Lee

Sole Panelist

Dated: October 8, 2019