



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.:	HK-2101442
Complainant:	Hysan Development Company Limited
Respondent:	K Y Chiu
Disputed Domain Name(s):	<leegardens.com>,<lee-gardens.com>,<lee-gardens.net>,<leegardens.info> & <leegardens.org>

1. The Parties and Contested Domain Name

The Complainant is Hysan Development Company Limited of 50F, Lee Garden One, 33 Hysan Avenue, Causeway Bay, Hong Kong.

The Respondent is K Y Chiu of P.O. Box 8286, General Post Office, Hong Kong, Tel No + 852.97848909, Email roberthusky@2ifc.com

The domain names at issue are <leegardens.com>,<lee-gardens.com>, <lee-gardens.net>, <leegardens.info> and <leegardens.org>, all registered by the Respondent with GoDaddy.com, LLC, of 14455 N. Hayden Rd., Ste. 226 Scottsdale, AZ 85260 USA. Tel No (480) 3050-7470; Fax No (480) 624-2546; Email: HQ@godaddy.com.

2. Procedural History

On 31 March, 2021, the Complainant's authorized representative, Hogan Lovells, of 11th Floor, One Pacific Place, 88 Queensway, Hong Kong, submitted the Complaint with Annexures, in English, against the Respondent's registrations of the disputed domain names: <leegardens.com>, <lee-gardens.com>, <lee-gardens.net>, <leegardens.info> and <leegardens.org> to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (ADNDRC) (the Hong Kong Office), in accordance with the Uniform Domain Name Dispute Resolution Policy (UDRP) adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) on October 24, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules) approved by the ICANN Board of Directors on September 28, 2013, and ADNDRC's Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (Supplemental Rules) effective from July 31, 2015. The Complainant requested a single person panel.

On 31 March, 2021, the Hong Kong Office transmitted via email to GoDaddy.com, LLC (the Registrar) requesting the Registrar to verify: (1) that the disputed domain names were

registered with the Registrar, (2) whether the Respondent is the current registrant or holder of the disputed domain names, (3) whether ICANN's UDRP applies to the Complaint of the disputed domain names, (4) what was the language of the Registration Agreement of the disputed domain names, (5) the respective dates of the registration and expiration of the disputed domain names, (6) that the disputed domain names would not be transferred to another holder during the pending administrative proceeding for a period of 15 business days after such proceeding is concluded pursuant to paragraph 8 of UDRP, and (7) the relevant information of the disputed domain names from the Registrar's Whois database.

On 31 March, 2021, the Registrar responded to the Hong Kong Office confirming that (1) that the disputed domain names were registered with the Registrar, (2) the Respondent is the current registrant or holder of the disputed domain names, (3) ICANN's UDRP applies to the Complaint of the disputed domain names, (4) the language of the Registration Agreement of the disputed domain names was English, (5) the respective dates of the registration and expiration of the disputed domain names are- re leegardens.com: 24.10.2003 and 24.10.2025 respectively; re lee-gardens.com: 16.8.2004 and 16.8.2021 respectively; re lee-gardens.net: 31.5. 2005 and 31.5. 2021 respectively; re leegardens.info: 10.3.2005 and 10.3.2022 respectively; and re leegardens.org: 10.3.2005 and 10.3.2022 respectively; (6) that the disputed domain names would not be transferred to another holder during the pending administrative proceeding for a period of 15 business days after such proceeding is concluded pursuant to paragraph 8 of UDRP, and (7) the relevant information of the disputed domain names from the Registrar's Whois database.

On 1 April, 2021, the Hong Kong Office informed the Complainant that the Complaint was administratively deficient. On the same day, the Complainant submitted a revised Complaint. And on the same day, the revised Complaint was accepted by the Hong Kong Office as compliant with UDRP and the Rules.

Also on 1 April, 2021, the Hong Kong Office served a written notice of Complaint to the Respondent and informed the Respondent, inter alia, that through incorporation by reference of UDRP into the Registration Agreement with the Registrar of the disputed domain names <leegardens.com>, <lee-gardens.com>, <lee-gardens.net>, <leegardens.info> and <leegardens.org>, the Respondent was required to submit to and participate in mandatory administrative proceedings. The Respondent had to submit a Response within 20 days i.e. on or before 21 April, 2021 in accordance with Article 5 of the Rules and the Supplemental Rules. And the language of the proceedings would be in English.

The Hong Kong Office did not receive a Response from the Respondent in respect of the Complaint by the due date. On 22 April, 2021, the Hong Kong Office notified the Parties of the Respondent's default.

On 23 April, 2021, the Hong Kong Office appointed Mr Peter Cheung as the Sole Panelist in the present dispute, who confirmed that he was available to act impartially and independently between the Parties in this matter. The Panel finds that the Administrative Panel was properly constituted and appointed in accordance with the Rules and the Supplemental Rules.

3. Factual background

The Complaint is based on the rights of the Complainant in the trade mark “Lee Gardens” (in various forms) (“**Mark**”) which has been registered in various Classes in many jurisdictions including Hong Kong. Copies of the official trade mark records of some of the Complainant’s Hong Kong trade mark registrations for the Mark are provided as **Annex B**. The particulars of the Marks are as follows:

Mark	Registration No.	Registration Date (date/month/year)	Class(es) [For detailed specifications, please refer to Annex B]
Hong Kong			
	300044315	08-07-2003	36, 37
	300988264	07-11-2007	35, 39, 41, 42, 43, 45
LEE GARDENS	302307014	06-07-2012	35, 36, 37, 39, 41, 42, 43, 45
LEE GARDEN ONE - SIX	303607182	24-11-2015	35, 36, 37, 39, 41, 42, 43, 45
LEE GARDENS OFFICES	303607191	24-11-2015	35, 36, 37, 39, 41, 42, 43, 45
LEE GARDENS OFFICE PLUS	303607128	24-11-2015	16, 35, 36
LEE GARDENS	303739186	11-04-2016	19, 36, 39, 45
LEE GARDENS PLUS	303943972	27-10-2016	9, 16, 35, 36

Mark	Registration No.	Registration Date (date/month/year)	Class(es) [For detailed specifications, please refer to Annex B]
	305049504	06-09-2019	9, 16, 35, 36
	305242400	08-04-2020	9, 16

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

Background

The Complainant is Hysan Development Company Limited. The Complainant belongs to the Hysan group whose history can be traced back to the 1920s. The Complainant became listed on the Stock Exchange of Hong Kong in the year 1981. The Complainant is a leading property investment, management and development company in Hong Kong. With a diverse and high-quality office, retail and residential portfolio, the Complainant manages around 2.4 million gross square feet of premium office space and is one of the largest commercial landlords in Hong Kong's business district of Causeway Bay.

As further background, the Lee Gardens is an area developed by the Complainant. The Lee Gardens area comprises commercial buildings and shopping malls including Hysan Place, Lee Theatre, Leighton, and Lee Garden One, Lee Garden Two, Lee Garden Three, Lee Garden Five and Lee Garden Six.

A brief history of the Complainant and its group as well as their Lee Gardens development can be found at its group official website: <https://www.hysan.com.hk/about/history/> (printouts of the Complainant's Websites provided as **Annex C**).

The Complainant owns the domain name <leegardens.hk> since 30 January 2004 and its associate company Perfect Win Properties Limited holds the domain name <leegardens.com.hk> (registered since 30 May 2001) on its behalf. The Complainant has always used these domain names as its official websites ("**Complainant's Websites**") to promote its goods and services. A copy of the print-outs of the WHOIS database search on

the domain names <leegardens.hk> and <leegardens.com.hk> conducted on 24 March 2021
Annex D.

Rights of the Complainant

The Complainant enjoys trade mark rights under the Mark in Hong Kong. The Complainant has also built up a protectable goodwill in the Mark through active use and promotion of the Mark.

i/ Disputed Domain Names being confusingly similar to the Complainant's trade mark

The prominent elements of the Disputed Domain Names are "leegardens" and "lee-gardens", which are identical to the Mark in which the Complainant has rights. The addition of a hyphen between "lee" and "gardens" in two of the Disputed Domain Names (namely, lee-gardens.com and lee-gardens.net) does not distinguish these domain names and the Complainant's Mark. Furthermore, it is a well-established principle that domain name strings such as .com, .net, .org and .info are not distinguishing part of a domain name. Therefore, all the Disputed Domain Names are identical to or at least highly confusingly similar to the Complainant's Mark. The Disputed Domain Names will mislead or are at least very likely to mislead people into thinking that the Disputed Domain Names relate to the Complainant when this is in fact not the case.

ii/ The Respondent has no rights or legitimate interests in respect of the domain name.

The Complainant has not authorised or licensed anyone outside its group to use or register any domain names consisting of its Mark.

After the filing of this complaint, the registrar informed ADNDRC that the registrant of all the Disputed Domain Names is "K Y Chiu" with its address as "P.O. Box 8286 General Post Office Hong Kong". To support the Complainant's below arguments, copies of the domain name history reports of <leegardens.com> and <lee-gardens.com> obtained from DomainTools and the reverse WHOIS search results for the email address <roberthusky@2ifc.com> are provided as Annex E.

Further, the Disputed Domain Names were and are not used in connection with a bona fide offering of goods and services by the Respondent since the Disputed Domain Names all led to (as revealed in the domain name history searches) and currently also lead to inactive websites. The Complainant's Internet searches also did not reveal any online presence or businesses of the individual "KY Chiu / Kwong Yee Chiu". Screenshots of the Respondent's Websites and the Complainant's Internet search results are provided as Annex F.

Moreover, the Complainant has conducted online trade mark searches for Hong Kong. These searches reveal that the owners of the trade mark registrations for the mark "lee gardens" are the Complainant and the Complainant's group company. These search results dated 26 March 2021 are provided as Annex G.

Therefore, the Complainant has no reason to believe that the Respondent has any rights or legitimate interests in the Disputed Domain Names.

iii/ The disputed domain name has been registered and is being used in bad faith.

It is obvious that the Disputed Domain Names have been registered and are used in bad faith, for the reasons below.

1) The Respondent was and is clearly aware of the Complainant, the Mark and the associated goodwill, which is evidenced by the following:

a. The registration dates of the Disputed Domain Names are as follows:

- i. leegardens.com: 24 October 2003
- ii. lee-gardens.com: 16 August 2004
- iii. leegardens.org: 10 March 2005
- iv. leegardens.info: 10 March 2005
- v. lee-gardens.net: 31 May 2005

b. As mentioned above, the Complainant and its group and their Lee Gardens development have a long history in Hong Kong. The Complainant became listed on the Stock Exchange of Hong Kong in the year 1981. The Complainant's domain names <leegardens.com.hk> and <leegardens.hk> were created since 30 May 2001 and 30 January 2004 respectively. The Complainant first registered its "Lee Gardens" trade mark (no. 300044315) in Hong Kong in July 2003.

c. Whereas, the registration dates of the Disputed Domain Names are later than the Complainant's first use and first trade mark registration of the Mark. Further, according to the contact details provided by the registrar, the Respondent is located in Hong Kong. Given the long history of the Mark and the extensive use and fame of the Complainant's Mark in Hong Kong and that the Respondent is also located in Hong Kong, the Complainant submits that the Respondent knew or must have been aware of the Complainant's Mark at the time of registering the Disputed Domain Names. The Respondent cannot credibly claim to have been unaware of the Complainant's Mark.

2) By registering these multiple Disputed Domain Names and other domain names that comprise trade marks and/or names of famous buildings and shopping malls in Hong Kong, the Respondent is clearly engaged in a pattern of hijacking trade marks of third parties. The Complainant relies on the following:

a. The Respondent has registered not just one but five domain names that copies the Mark.

b. According to the Complainant's reverse WHOIS search (please see Annex E2), the email address roberthusky@2ifc.com is associated with multiple domain names which imitate or copy the trade marks and names of well-known buildings and shopping malls in Hong Kong. These domain names are obviously registered in bad faith. We set out below a summary of these domain names:

Domain names associated with the email address roberthusky@2ifc.com	Trade marks and names of well-known buildings/shopping malls copied or imitated
1ifc.com 2ifc.com	The IFC shopping mall in Central (including IFC 1 and IFC 2) jointly owned by Sun Hung Kei Properties and Henderson Land Development Company Limited (https://ifc.com.hk/en/mall/)
international-commerce-centre.com intl-commerce-centre.com intlcommercecentre.com	The ICC building at Kowloon Station owned by Sun Hung Kei Properties (https://www.shkp-icc.com/website/Main.do)
chater-house.com chater-house.net chater-hse.com chaterhouse.org chaterhse.com chaterhse.net chaterproperties.com chaterproperty.com the chaterhouse.com thechaterhse.com	The Chater House building in Central owned by the Hongkong Land group (https://www.hkland.com/en/properties/hong-kong/chater-house)
edinburghtower.com	The Edinburgh Tower building in Central owned by the Hongkong Land group (https://www.hkland.com/en/properties/hong-kong/edinburgh-tower)
gloucestertower.com	The Gloucester Tower building in Central owned by the Hongkong Land group (https://www.hkland.com/en/properties/hong-kong/gloucester-tower)
henleybuilding.com	The Henley Building in Central owned by Tung Hing Yip Investment Company Limited (http://businesscentre.hksei.com/building/henley-building)
admiraltycentre.com	Admiralty Centre building in Admiralty owned by CK Asset Holdings Limited (https://www.ckah.com/tchi/page19_co3_d146.html)

- 3) Clearly, the Respondent has engaged in a pattern of conduct of bad-faith cybersquatting and preventing trade mark holders from reflecting their marks in a domain name. The Complainant relies on Paragraph 3.1.2 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition. As such, this is clear evidence of “bad faith”

under Paragraph 4(b)(iii) and (iv) of the Uniform Domain Name Dispute Resolution Policy.

- 4) Further, the Complainant argues that the prolonged non-use and passive holding of the Disputed Domain Names supports a finding of bad faith. The Disputed Domain Names did not and do not resolve to active websites or other bona fide online presence. There is no evidence that any bona fide website or other bona fide online presence is in the process of being established with reference to the Disputed Domain Names. There is also no evidence of advertising, promotion or display to the public of the Disputed Domain Names. In short, there is no positive and bona fide action being undertaken by the Respondent in relation to the Disputed Domain Names. In consideration of the Complainant's strong reputation of its Mark and the lack of evidence of any actual or contemplated good faith use of the Disputed Domain Names by the Respondent, the Complainant submits that it is simply not possible to conceive of any plausible bona fide use (whether actual or contemplated) of the Disputed Domain Names by the Respondent. The Complainant relies on Paragraph 3.3 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition and the WIPO Domain Name Decision *Telstra Corporation Limited v. Nuclear Marshmallows Case No. D2000-0003*.

For the above reasons, the registration and use of the Disputed Domain Names is in bad faith.

REMEDIES SOUGHT:

The Complainants request the Panel appointed in this administrative proceeding to issue a decision that the Disputed Domain Names shall be transferred to the Complainant.

B. Respondent

The Respondent did not file any Response in reply to the Complainant's contentions.

5. Findings

ICANN UDRP 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 is 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

The Panel takes notice that the Complainant and its group and their Lee Gardens development have a long history in Hong Kong. The Complainant became listed on the Stock Exchange of

Hong Kong in the year 1981. The Complainant's domain names <leegardens.com.hk> and <leegardens.hk> were created since 30 May 2001 and 30 January 2004 respectively. As the Complainant first registered its "Lee Gardens" trade mark (no. 300044315) in Hong Kong in July 2003, the Panel takes the registration as prima facie satisfaction of the threshold requirement of having trade mark rights. See WIPO Jurisprudential Overview 3.0, para 1.2.1.

The disputed domain names <leegardens.com>, <lee-gardens.com>, <lee-gardens.net>, <leegardens.info> and <leegardens.org> basically contains two elements: "leegardens" or "lee-gardens" and the generic top-level domain ".com" or ".net" or ".info" or ".org". It is trite rule that the generic top-level domain names are technical in nature, do not have any proprietary significance, cannot confer any distinctiveness and are incapable of differentiating the disputed domain names from others' proprietary rights." See WIPO Jurisprudential Overview 3.0, para 1.11.

The potential distinctive elements of the disputed domain names are therefore "leegardens" or "lee-gardens". For the dominant part in the form of letters "leegardens", it is identical with the Complainant's trade names. For the dominant part in the form of "lee-gardens", it is trite rule the additional hyphen does not make it distinctive. Domain names are case-insensitive too. Therefore, the disputed domain names are either identical or confusingly similar with the Complainant's trade mark and trade names. The Panel takes the view that considering the disputed domain names as a whole, the addition of the non-distinctive hyphen between "lee" and "gardens", does not confer to the whole a new meaning and does not dispel confusing similarity between the disputed domain names as a whole and the Complainant's trade mark or trade names. See WIPO Jurisprudential Overview 3.0, para 1.7.

Furthermore, the Complainant demonstrated that it owns the leegardens trade names in the form of domain names <leegardens.com.hk> and <leegardens.hk> as early as 30 May, 2001 and 30 January, 2004 respectively and its "Lee Gardens" trade mark in Hong Kong as early as July 2003, well before the Respondent applied to register the disputed domain names from 24 October 2003 to 31 May 2005. The Panel takes the view that the Respondent is shown to have been targeting the Complainant's trade mark and trade names, evidencing their significance as source identifiers. See WIPO Jurisprudential Overview 3.0, para 1.3.

The Panel finds that the disputed domain names are either identical or confusingly similar to a trade mark or trade name in which the Complainant has rights, satisfying paragraph 4(a) (i) of UDRP.

B) Rights and Legitimate Interests

The registration dates of the disputed domain names are as follows: <leegardens.com> on 24 October 2003, <lee-gardens.com> on 16 August 2004, <leegardens.org> on 10 March 2005, <leegardens.info> on 10 March 2005 and <lee-gardens.net> on 31 May 2005. The Panel notes that the Complainant's Internet searches also did not reveal any online presence or businesses of the individual "KY Chiu / Kwong Yee Chiu"; and the disputed domain names were and are not used in connection with a bona fide offering of goods and services by the Respondent since the disputed domain names all led to (as revealed in the domain name history searches) and currently also lead to inactive websites.

The Panel notes that online trade mark searches for Hong Kong reveal that the owners of the trade mark registrations for the mark “lee gardens” are the Complainant and the Complainant’s group company. The Panel takes the view that the leegardens trade names or the Lee Gardens trade mark are not terms commonly used in the English language. Further, the Respondent has submitted no evidence to demonstrate it has been commonly known by the disputed domain names. Considering further that the Complainant has neither authorised nor licensed anyone outside its group to use or register any domain names incorporating the dominant part of its trade marks or trade names, the Panel rules that the Complainant has established a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain names. The Respondent therefore has to discharge the evidential burden in demonstrating it has rights or legitimate interests in respect of the disputed domain names. See WIPO Jurisprudential Overview 3.0, para 2.1.

It is trite rule that the mere registration of the disputed domain names by the Respondent itself is not sufficient to prove that it owns rights and legitimate interests, and nobody has any right to represent his or her goods or services as the goods or services of somebody else. In this matter, the Panel finds no evidence that would tend to establish that the Respondent has rights to or legitimate interests in respect of the disputed domain names. The Panel draws the irresistible inference that the Respondent is not using the disputed domain names on a non-commercial or fair use basis without intent to misleadingly divert the relevant sector of the public to its operation. See WIPO Jurisprudential Overview 3.0, paras 2.4-2.5. On the contrary, the Respondent is using the disputed domain names to tarnish the goodwill and reputation of the Complainant’s trade marks or trade names. See WIPO Jurisprudential Overview 3.0, para 2.14.

The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names, satisfying paragraph 4 (a) (ii) of UDRP.

C) Bad Faith

The Panel notes that, according to the contact details provided by the Registrar, the Respondent is located in Hong Kong. The Panel accepts the Complainant’s submission that the prolonged non-use and passive holding of the disputed domain names supports a finding of bad faith. The disputed domain names did not and do not resolve to active websites or other bona fide online presence. There is no evidence that any bona fide website or other bona fide online presence is in the process of being established with reference to the disputed domain names. There is also no evidence of advertising, promotion or display to the public of the disputed domain names. The Panel takes the view that there is no positive and bona fide action being undertaken by the Respondent in relation to the disputed domain names. Considering the Complainant’s strong reputation of its trade mark and the lack of evidence of any actual or contemplated good faith use of the disputed domain names by the Respondent, the Panel takes the view that it is simply not possible to conceive of any plausible bona fide use (whether actual or contemplated) of the disputed domain names by the Respondent. See WIPO Jurisprudential Overview 3.0, para 3.3.

From the evidence available, the Complainant has demonstrated a bad faith attempt of the Respondent to confuse and deceive the relevant sector of the public for the Respondent’s own commercial gain. Further, the Respondent has provided no evidence to demonstrate use of the disputed domain names in good faith. Given the long history of the extensive use and fame of the Complainant’s trade mark in Hong Kong and that the Respondent is also located in Hong Kong, the Panel draws the irresistible inference that the Respondent knew or should have known that the registrations of the disputed domain names would be identical to or confusingly similar with

the Complainant's trade marks or trade names." See WIPO Jurisprudential Overview 3.0, para 3.2.2.

By registering more than one disputed domain names and other domain names that comprise trade marks and/or names of famous buildings and shopping malls in Hong Kong, the Panel takes notice that the Respondent is clearly engaged in a pattern of hijacking trade marks and trade names of third parties. The Panel takes the view that the Respondent has engaged in a pattern of conduct of bad-faith cybersquatting, preventing trade mark holders from reflecting their marks in a domain name. See WIPO Jurisprudential Overview 3.0, para 3.1.2.

The Panel observes that the Respondent, by registering the disputed domain names, is a dishonest misappropriation of the Complainant's trade mark and trade names, making the Respondent's cybersquatting an instrument of fraud.

The Panel therefore finds that the Respondent's domain names have been registered and are being used in bad faith, satisfying paragraph 4 (a) (iii) of UDRP.

6. Decision

For all the foregoing reasons, the Panel concludes that the Complainant has provided sufficient proof of its contentions, has proved each of the three elements of paragraph 4 of UDRP with respect to the disputed domain names and has established a case upon which the relief sought must be granted. The Panel therefore orders that the registration of the disputed domain names <leegardens.com>, <lee-gardens.com>, <lee-gardens.net>, <leegardens.info> and <leegardens.org> be transferred to the Complainant.

Sole Panelist: Peter Cheung SBS *K.F. Cheung*

Date: 7 May 2021