



## ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (BEIJING OFFICE)

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### Decision Submission

English Print

Decision ID	DE-0800213
Case ID	CN-0800236
Disputed Domain Name	www.sportsauthority.aisa
Case Administrator	lvyang
Submitted By	Shaojie Chi
Participated Panelist	
Date of Decision	27-12-2008

### The Parties Information

<b>Claimant</b>	sportsauthority .asia
<b>Respondent</b>	Tesler Alex

### Procedural History

On September 28, 2008, the Complainant submitted its Complaint in Chinese to the Beijing Office of the Asian Domain Name Dispute Resolution Centre (the "Centre"), in accordance with the Uniform Domain Name Dispute Resolution Policy (the "Policy") adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN") on August 26, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "Rules") approved by ICANN on October 24, 1999, and Asian Domain Name Dispute Resolution Centre Supplemental Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "ADNDRC Supplemental Rules") being effected on February 28, 2002. The Centre confirmed the receipt of the Complaint on October 6, 2008.

On October 7, 2008, the Centre notified the Registrar of the domain name dispute, and the latter confirmed the receipt of the information on October 7, 2008.

On October 24, the Centre received the English version of the Complaint by the Complainant.

On November 10 2008, the ADNDRC transmitted the Complaint to the Respondent.

On November 17, 2008, the Centre conveyed the English copy of the Complaint by the Complainant to the Respondent; and sent the parties the notification of the commencement of the proceedings and the claims had been confirmed and forwarded; and notified ICANN and registrar of the start of the proceedings.

The Centre received no response from the Respondent until December 8, 2008; and notified the parties that lacking of any response by the Respondent, hearing by default would be conducted.

As requested by the Claimant, a panel of sole expert is to be constituted; and the Centre contacted the candidate sole panelist on December 9, 2008.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Mr. Chi Shaojie on December 9, 2008, the Centre informed the Complainant and the Respondent of the appointment of the sole panelist on December 10, 2008.

On December 11, 2008, the Centre transferred the documents in hard copy lodged by the Complainant to the sole panelist, and the latter confirmed the receipt of the delivery.

The sole panelist finds that the panel was properly constituted and appointed in accordance with the Rules and the ADNDRC Supplemental Rules.

Having requested the Respondent to submit the formal Response, the Centre has received no reaction from the requested party in the whole course of the proceedings.

The procedural language 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 English might be the language commonly understood by the disputing parties.

## **Factual Background**

### **For Claimant**

The Complainant contends that both itself and TSA Corporate Services, Inc. are the subsidiaries of The Sports Authority, Inc. (TSA) which was established in USA in 1987 and have been engaged in specialized sports goods marketing in the States, and later expanded its business to overseas countries, e.g. Japan, etc. After its historical evolution, both TSA and its subsidiaries become well known globally in selling high quality sports goods to customers in the USA and other countries. Well prior to the registration of the disputed domain name, TSA registered a series of trademarks containing the words The Sports Authority and its equivalent languages in other countries, e.g. Chinese in China, out of which some were assigned to the Complainant, e.g. the marks registered in China. Obviously, the disputed domain name takes the two essential words of the registered trademarks owned by TSA and the Complainant, which neither TSA nor the Complainant has ever granted a license to the Respondent to use to registered the disputed domain name. Besides, the Respondent has never had any right on, or legitimate interest in, the disputed domain name. Evidences submitted by the Complainant reveal that the purpose of the registration of the domain name at issue is to make illegal profit by selling the disputed domain name to others who does not know the evolutional history of the trademark claimed by TSA and the Complainant. Based upon the above facts, the Complainant thinks the complaint lodged by it meets the fundamental requirements set forth under the Policy and other administrative regulations governing the registration of the disputed domain name, and thus requests the Panel to make a decision on an ordered transfer of the domain name at issue.

### **For Respondent**

The Respondent was duly notified by the Centre of the Claims lodged by the Complainant and asked to submit the Response in accordance with the relevant regulations under the Policy, the Rules and the ADNDRC Supplementary Rules, but failed to make any defense against whatever the Complainant alleges.

## **Parties' Contentions**

### **Claimant**

The Complainant's essential contentions includes:

l The words "The Sports Authority", claimed by the Complainant as registered trademark in present case, was created by the Complainant's mother company, The Sports Authority that was set up in late eighties of the last century and is one of the largest world class company specialized in the business of quality sports goods marketing; and "The Sports Authority" has always been the trade name of TSA and its subsidiaries, incl. the Complainant.

l Under several assigns, the Complainant is entitled to a number of prior-registered trademarks containing the words "The Sports Authority", and the entitlement is earlier than the Respondent made the registration of the domain name at issue.

l The identifying part of the disputed domain name is identical to the trademarks entitled by the Complainant.

l The Respondent has never had any license by either TSA or any of its subsidiaries, and has no legal right on or lawful interest in the disputed domain name.

l The Respondent registered and used the disputed domain name in bad faith by advertising to sell the disputed domain name on the web.

### **Respondent**

The Respondent did not make any contentions against whatever the Complainant said.

## **Findings**

One of the Pre-requisites for the Respondent to register the disputed domain name through the Registrar is to accept the Policy as the binding regulations. As mentioned, the Policy applies to this dispute. As stipulated in the Paragraph 4(a) of

the Policy, when claiming back a domain name registered by the Respondent, the Complainant must prove each of the following:

That the domain name of the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

That the Respondent has no rights or legitimate interests in respect of the domain name; and

That the domain name has been registered and is being used in bad faith.

Based itself upon the stipulations under the Policy, what the Panel needs to do is to find out whether each of the above-mentioned facts can be proved. If the answer is yes, the Panel makes final award in accordance with the fact-finding and the relevant stipulations under the Policy, the Rules and the ADNDRC Supplemental Rules. If not, the claims by the Complainant shall be rejected.

The Respondent failed to submit the Response or defense of any sort to argue against whatever the Complainant alleges and to show his intention to retain the disputed domain name as required by the Policy, the Rules and the ADNDRC Supplementary Rules. As stipulated in Paragraph 5(e) in the Rules, “If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint”. In view of the situation, the Panel cannot but make the decision based primarily upon the contentions and the accompanying exhibits by the Complainant, except otherwise there is an exhibit proving to the contrary; or the Panel thinks what the Complainant advocates false based upon natural and logical deduction.

### **Identical / Confusingly Similar**

Pursuant to Paragraph 4(a) (i) of the Policy, the Complainant must prove that the domain name is identical or confusingly similar to a trademark or service mark in which it has rights. To meet the requirement, the Complainant submits a series of trademark certificates to prove the registration of the trademarks “The Sports Authority” in China and other Asian countries or regions. The Panel has attended to the fundamental fact that the Complainant is either the registrant or the assignee of the trademark certificates covering the mark The Sports Authority. Based upon those exhibits, the Panel holds that the Complainant is the right holder of a series of registered trademarks containing the words The Sports Authority, and the dates of those registration or assignment are earlier than that of the registration of the disputed domain name.

The disputed domain name is composed of its identifying part “sportsauthority” and the suffix “asia”. As is known to the web users, the suffix of a domain name represents a country, a region or the legal nature of the registrant, etc., and is used mainly for the purpose of the administration of the registration of domain names. In the current case, the suffix of the disputed domain name “asia” indicates the region of Asia in the eye of ordinary web-users, thus having no extra meaning for the users to identify the registrant of the name. The identifying part of the disputed domain name is “sportsauthority”. Obviously, to the English-speaking web-users, it is composed of two words, i.e. “sports” and “authority”. As clearly indicated in the paragraphs, the registered trademark to which the Complainant is entitled is “The Sports Authority”. Needless to say, neglecting the preposition “The”, the identifying part of the disputed domain name “sportsauthority” is the combination of the words “Sports Authority”, thus being identical to each other. If one insists that the registered trademark contains three English words and the identifying part of the disputed domain name is the combination of two words, thus the two being different, the Panel may hold that the identifying part of the disputed domain name is confusingly similar to the Complainant’s registered trademarks. Since the Policy asks for either “identity” OR “confusingly similarity”, the Panel holds that the Complainant meets the first requirement set forth under Paragraph 4(a)(i) of the Policy.

### **Rights and Legitimate Interests**

Paragraph 4(c) of the Policy stipulates how a Respondent can effectively demonstrate rights or legitimate interests in the disputed domain name. Unfortunately, the Panel cannot see that the Respondent has any legal rights or interests in respect of the disputed domain name, due to the fact that the Respondent does not claim such a right or interest, and nothing so far could lead the Panel to hold such a fact in the Respondent’s favor. Besides, the Panel has attended to a very basic fact that the disputed domain name was created and registered much later than the trademark The Sports Authority was created and registered.

On the other hand, the Complainant expounds the development history of TSA and the Complainant, and submits plenty of exhibits to support its allegations. Facing the pile of the evidences, the Panel can hardly say that what the Complainant states is not true. On one side the Panel cannot see any rights or legitimate interest of the Respondent in the disputed domain name; and on the other side the Complainant’s claiming that it does have rights and legitimate interests in the domain name is much persuasive. For this reason, the Panel holds that the Complainant meets the second requirement set forth under Paragraph 4(a)(ii).

### **Bad Faith**

The Complainant also has to establish the fact of bad faith on the part of the Respondent as set forth in the Paragraph 4(a) (iii) of the Policy. Under the Paragraph 4(b) of the Policy, the following circumstances, in particular, shall be considered

as the bad faith in the registration or use of a domain name, “(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; ……” The Complainant submits that the Respondent has not used the disputed domain name but advertised on the web to sell it for monetary consideration. Lacking of the adverse contention and the accompanying evidences, the Panel cannot but holds it a fact of what the Complainant says and proves; and further holds that the Respondent uses the disputed domain name in bad faith. Since the Panel already holds that the disputed domain name is identical, or at least confusingly similar, to the registered trademarks by the Complainant; the Respondent has no right on or legitimate interest in the disputed domain name; and the Respondent uses the disputed domain name in bad faith, how could the Panel holds that the Respondent registered the disputed domain name in good faith? What is more, in accordance with the relevant stipulations under the Policy, what the Complainant needs to prove is either the registration in bad faith or the use in bad faith, meaning that either fact may meet the third requirement of Bad Faith. Since the Panel comes to see the bad faith of the Respondent in the registration and use of the domain name at issue, the Panel comes to the conclusion that the Complainant meets the requirement set forth under Paragraph 4(a)(iii) of the Policy.

Based upon all the above findings, the Panel rules that the Complaint fulfills the conditions provided in Paragraph 4(a)(i) (ii) (iii) of the Policy, thus its claims shall be held.

### Status

www.sportsauthority.aisa                      Domain Name Transfer

### Decision

In light of all the foregoing findings and in accordance with Paragraphs 4(a), 8(a) of the Policy and 5(e) of the Rules, the Panel holds:

- a) That the disputed domain name “sportsauthority.asia” is identical, or at least confusingly similar, to the trademark “The Sports Authority” to which the Complainant is entitled, and
- b) That the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- c) That the domain name was registered and subsequently used by the Respondent in bad faith.

As such the Panel rules that the registration of the domain name “sportsauthority.asia” be transferred to the Complainant.

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