

**ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE**  
**(Beijing Office)**  
**ADMINISTRATIVE PANEL DECISION**  
**Case No. CN-1000346**

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**Complainant: EMANUEL UNGARO**

**Respondent: lv kefeng**

**Domain Name: emanuel-ungaro.com**

**Registrar: WEB COMMERCE COMMUNICATIONS LIMITED DBA WEBNIC. CC**

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## **1. Procedural History**

A Complaint, made pursuant to the Uniform Domain Name Dispute Resolution Policy (“UDRP”) implemented by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on 24 October 1999, and under ICANN Rules for UDRP (“the Rules”) and Asia Domain Name Dispute Resolution Center (“ADNDRC”) Supplemental Rules for UDRP, was received by ADNDRC Beijing Office on 20 April 2010. On 22 April 2010, ADNDRC Beijing Office requested ICANN and the Registrar by email for the provision of information at their WHOIS database in respect of the domain name in dispute, and the registration information was confirmed by the Registrar on the same day.

On 20 May 2010, ADNDRC Beijing Office transmitted the Complaint to the Respondent by email.

On 9 June 2010, ADNDRC Beijing Office notified the Complainant by email that the Complaint was reviewed and forwarded to the Respondent and confirmed with the parties and Registrar by email that administrative proceeding of the captioned case was formally commenced. ADNDRC Beijing Office also requested the Respondent to submit a Response within the 20 days of the date of commencement of the proceeding.

On 13 July 2010, ADNDRC Beijing Office notified the Complaint and the Respondent by email stating that, as the Respondent did not submit a response within the required time, ADNDRC Beijing Office would appoint the panelist to make the Decision by default.

On 14 July 2010, ADNDRC Beijing Office gave notice to the candidate of Panelist Dr. Gao Lulin requesting him to confirm whether he would accept the appointment as the Panelist for this case, and if so, whether he could maintain impartiality and independence between the parties in this case.

On July 14, 2010, ADNDRC Beijing Office received a declaration of impartiality and independence and a statement of acceptance from Dr. Gao Lulin.

On July 21, 2010, ADNDRC Beijing Office informed by email the Parties that Dr. Gao Lulin would be the sole Panelist of this case and transferred the files of this case to the Panel formally on the same day. The Panel should render the Decision within 14 days, i.e. on or before August 4, 2010.

## **2. Factual Background**

### **For the Complainant**

The Complainant of this case is EMANUEL UNGARO. Its address is at 2, AVENUE MONTAIGNE, F-75008 PARIS, FRANCE. Its authorized representative is Haiying Fu.

### **For the Respondent**

The Respondent of this case is lv kefeng with address at zhe jiangshengcixishi kandunzhen ci xi, zhejiang cn 315300.

## **3. Parties' Contentions**

### **The Complainant**

(1) "EMANUEL UNGARO" is a registered trademark which has been used by the Complainant for many years and enjoys high reputation in fashion industry. The effective part of the disputed domain name is identical with the trademark for which the Complainant owns prior rights.

a) The Complainant enjoys legitimate rights and interests to "EMANUEL UNGARO", the effective part of the disputed domain name.

The Complainant's trademark "EMANUEL UNGARO" comes from its founder's name, the famous French designer Emanuel Ungaro. Born in an Italian immigrant family, Mr. Emanuel Ungaro went to Paris in 1955 and was engaged in designing clothes. He became famous overnight after issuing the first clothing series named with his own name in 1965. Through Complainant's long-term use and promotion, the reputation of the trademark "EMANUEL UNGARO" has been established in China.

There are 1,740,000 results of searching "EMANUEL UNGARO" via Google, the biggest search engine in the world, and 156,000 via Baidu, the biggest Chinese search engine. These results are all directly related to the Complainant. It can be concluded that "EMANUEL UNGARO" is only related to the Complainant in China or Chinese-spoken area.

In addition, the Complainant has searched for all news reports containing "EMANUEL UNGARO" via parts of the database in National Library of China. From these reports, it can be found that "EMANUEL UNGARO" or its Chinese translation "伊曼纽尔·温加罗/埃玛纽埃尔·尤卡罗/马努埃尔·温加罗" often appears as international famous clothing brand in Chinese media's reports along with other brands like "Chanel, Givenchy, Armani": Since July 2001, CCTV International Website has begun reporting the fashion show held by Complainant in Paris. "Da He Newspaper", "Modern Life Newspaper", "Xin Min Evening Newspaper", "Guangxi Daily Newspaper" have also reported the characteristics and latest trend of Complainant's clothes. The said search is also able to prove that Chinese media began paying attention to and reporting the Complainant's clothing products and brand long time ago. Above all, Mr. Emanuel Ungaro, the founder of the Complainant's company, is a world famous clothing designer, and EMANUEL UNGARO clothes designed by him has obtained high reputation in the fashion industry in the world, including China.

In the meantime, the Complainant is the legal owner of the trademark "EMANUEL

UNGARO". The trademark was filed for registration for Class 14 and 25 in China on November 28, 1992 and approved by the Chinese Trademark Office in 1994. The registration numbers are 677726 and 674873 respectively. The trademark has been renewed and is within the period of validity.

b) The effective part of the disputed domain name "emanuel-ungaro" is identical with the trademark, for which the Complainant owns prior rights.

As mentioned above, "EMANUEL UNGARO" is the Complainant's trademark which enjoys high reputation in world fashion industry. To Chinese consumers, "EMANUEL UNGARO" is only related to the Complainant. Whenever seeing "EMANUEL UNGARO", the consumers relate it to the Complainant naturally.

Because the effective part of the disputed domain name "emanuel-ungaro.com" is identical with the Complainant's trademark, the consumers easily mistake the disputed domain name as owned by or related to the Complainant's company and click it to browse. Therefore, the registration and use of the disputed domain name will inevitably cause the consumers' confusion and misidentification.

(2) The respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant has begun registering and using the trademark "EMANUEL UNGARO" in China since 1994. According to the Complainant's search on the official website of the Chinese Trademark Office and main search engines, the Respondent has no civil rights or legitimate interests in respect of "EMANUEL UNGARO". In addition, the Complainant has never authorized the Respondent to use any trademarks related to "EMANUEL UNGARO". Therefore, the Respondent has no civil rights or legitimate interests in respect of "EMANUEL UNGARO".

(3) The domain name was registered and is being used in bad faith.

"EMANUEL UNGARO" is French words, which is Mr. Emanuel Ungaro's name, founder of the Complainant and a world famous designer. "EMANUEL UNGARO" has no specific meaning, which is highly distinctive. Furthermore, the Complainant has used the top-level domain name "emanuelungaro.com" for more than ten years, which had obtained high reputation in China fashion industry. Therefore, it is obviously impossible that the Respondent's registration of the disputed domain name is because of accidental or coincident design.

In addition, the Respondent links the disputed domain name to an advertisement link page. All the links on this page are Friends-making websites, some of which may be pornographic. In light of the above, the Respondent does not actually use the disputed domain name, but conducts domain name parking, that is, obtains click profits when people clicking advertisement links on the page after logging in the website.

Therefore, it is obviously that the Respondent wants to take advantage of the high reputation of the Complainant's famous trademark and therefore registered the domain name "emanuel-ungaro.com" to obtain unjustifiable commercial interests by acquiring click profits.

The Respondent's registering the domain name has not only prevented the Complainant from legally using its registered trademark in the form of the domain name on the internet, but also parks the domain name to obtain unjustifiable business interests by taking advantage of the Complainant's famous trademark. Therefore, the

Respondent's registration and use of the disputed domain name is obviously in bad faith. In addition, the links to Friends-making websites and even the pornographic ones on its website under the disputed domain name will objectively bring bad influence to the Complainant's reputation.

In light of the above, the Respondent's registration of the disputed domain name is obviously in bad faith as prescribed in 4(b)(ii) and (iv) of Uniform Domain Name Dispute Resolution Policy, which reads "you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name" and "by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site 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 your web site or location or of a product or service on your web site or location".

According to the above stipulations, the Complainant earnestly requests the Panel to rule that the Respondent shall transfer the domain name to the Complainant to protect the legitimate rights and interests of the Complainant and to ensure the competition order in the market.

### **The Respondent**

There's no Response came from the Respondent.

### **4. Findings**

As stipulated in the Paragraph 4(a) of the Policy, when claiming dispute to a domain name registered by another, the Complainant must prove each of the following:

- (i) That the domain name of the Respondent's is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) That the Respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) That the domain name has been registered and used in bad faith.

Based on relevant stipulations under the Policy, the Rules and ADNDRC Supplemental Rules, to make the Claim to be supported by the Panel, the Complainant needs to satisfy each of the afore-said prerequisites.

With respect to the case, a fundamental fact is that the Respondent failed to submit a defense or a response of any sort. As stipulated in Paragraph 5(e) of 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 light of this stipulation, the Panel makes the decision based primarily on the Complainant's contentions and accompanying exhibits unless proven otherwise or that the Panel, based upon its professional experiences, thinks that the Complainant's allegations are not logical or obviously contradictory to a prior judgment or any other enforceable decisions.

### **Identical or Confusing Similarity**

According to the evidence provided by the Complainant, the Panel finds that the Complainant obtained the registration of "EMANUEL UNGARO" as the trademark

(Registration Nos. 677726 & 674873) in China in 1994, which by a renewal remain valid at present, and the registration date (October 9, 2009) of the domain name in dispute is much later than that of the Complainant's trademark. Thus, the Panel is of the view that the Complainant enjoys the prior trademark right to "EMANUEL UNGARO".

As such, what the Panel needs to do is to make a conclusion on the identity or confusing similarity between the Complainant's registered trademark "EMANUEL UNGARO" and the domain name in dispute "emanuel-ungaro.com". It is easily observable that the identifying part of the domain name in dispute "emanuel-ungaro" is identical to the Complainant's registered trademark "EMANUEL UNGARO" except for the lowercase/capital letters, blank and a small bar "-" between "emanuel" and "ungaro" that nearly have no influence on distinguishing different domain names.

Therefore, the Panel finds that the domain name in dispute is identical or confusingly similar to the Complainant's trademark, and the Complainant has satisfied the first condition under Paragraph 4(a) of the Policy.

### **Rights or Legitimate Interests of the Respondent**

Paragraph 4(c) of the Policy stipulates how a Respondent can effectively demonstrate its rights or legitimate interests with regard to the domain name in dispute, as an argument against the Complainant's claim. The Respondent has not submitted any response and failed to demonstrate he has any rights or legitimate interests in respect of the domain name in dispute. Based on the default and the evidence in the Complaint, it is presumed that the Respondent has no rights or legitimate interests in the domain name in dispute.

Accordingly, the Panel finds that the Complainant has satisfied the second condition under Paragraph 4(a) of the Policy.

### **Bad Faith**

The Complainant also needs to establish the Respondent's bad faith as set forth in the Paragraph 4(a)(iii) of the Policy. Under Paragraph 4(b) of the Policy, the following circumstances in particular shall be considered as evidence of the registration and use of a domain name in bad faith:

"(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; or

(ii) You have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) You have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) By using the domain name, you have intentionally attempted to attract, for commercial gain, internet users to your web site 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 your web site or location or of a product or service on your web site or location."

The evidence provided by the Complainant shows that the Complainant's trademark "EMANUEL UNGARO" has achieved certain reputation through the Complainant's commercial activities in China where the Respondent is based, and the public has come to recognize and associate "EMANUEL UNGARO" as originating from the Complainant and no other. This leads the Panel to infer that the Respondent knew, or should have known, the existence of the Complainant and its trademark, while the Respondent has registered the domain name in dispute which thereby inevitably preventing the Complainant from reflecting its trademark in such corresponding domain name. Meanwhile, the Panel holds that by using the domain name in dispute for a website, the Respondent intentionally creates the confusion with the Complainant's trademark and website in order to attract relevant public to visit the Respondent's website via the domain name in dispute. Even where Internet users realize when they view the Respondent's website that it is not connected with the Complainant, the Respondent may still profit from their initial confusion.

Further, the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the domain name in dispute. These facts, together with the finding above that the Respondent has no rights or interests in the domain name in dispute lead the Panel to conclude that the domain name in dispute has been registered by the Respondent in bad faith.

In light of the above, the Panel concludes that the Complainant has satisfied the third condition under Paragraph 4(a) of the Policy.

## 5. 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 identifying part of the domain name in dispute "emanuel-ungaro.com" is confusingly similar to the Complainant's registered trademark "EMANUEL UNGARO"; and
- b) That the Respondent has no right or legitimate interest with regard to the identifying part of the domain name in dispute; and
- c) That the domain name was registered and used in bad faith.

As the final decision, the Panel orders the domain name "emanuel-ungaro.com" be transferred to the Complainant EMANUEL UNGARO.

Sole Panelist: 

Date: August 4, 2010