

Asian Domain Name Dispute Resolution Center
Beijing Office
Administrative Panel Decision
Case No. CN1000399

Complainant: Weichai Power
Respondent: Da Weihai
Domain Name: 潍柴重机.com
Registrar: GODADDY.COM, INC.

1、 Procedural History

On 2 Novemebr 2010, the Complainant submitted its Complaint to the Beijing Office of the Asian Domain Name Dispute Resolution Centre (the “ADNDRC Beijing Office”), 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”), and ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the “ADNDRC Supplemental Rules”).

On 3 November 2010, the ADNDRC Beijing Office confirmed the receipt of the Complaint and transmitted by email to ICANN and the Registrar of the domain name in dispute, GODADDY.COM, INC., a request for registration verification of the disputed domain name.

On 3 December 2010, the ADNDRC Beijing Office received the Registrar’s confirmation of registration information of the domain name in dispute.

On 20 December 2010, the ADNDRC Beijing Office sent the Transmittal of Complaint to the Respondent.

On 23 December 2010, the ADNDRC Beijing Office notified the Complainant that the Complaint had been confirmed and forwarded, and the ADNDRC Beijing Office notified the Respondent, the

Registrar and ICANN of the commencement of the case proceeding.

The Respondent failed to submit a Response within the specified time period. On 15 January 2011, the ADNDRC Beijing Office sent the Notification of No Response Received and Hearing by Default to the parties.

Upon receiving the declaration of impartiality and independency and the statement of acceptance from the candidate Panelist, the ADNDRC Beijing Office appointed Zhao Yun as the sole panelist in this matter On 27 January 2011. Then the ADNDRC Beijing Office transferred all the case materials to the panel on the day, and asked the panel to submit a decision before 10 February 2011.

2、 Factual Background

For the Complainant

The Complainant in this case is Weichai Power. The registered address is No. 197 A, East Fushou Road, Hi-tech Development Zone, Weifang, Shangdong. The Complainant is the owner fo the trademark “潍柴”. The authorized representative in this case is Tang Xueli.

For the Respondent

The Respondent in this case is Eyu Lang. According to the record in the Whois database, the Respondent’s domain name “潍柴重机.com” was registered on 17 July 2009 through GODADDY.COM, INC..

3、 Parties’ Contentions

Complainant

(1) The Complainant has the prior right for the trademark “潍柴”. The No.3175015 trademark “潍柴及图” was approved to be

registered as early as 21 May 2004, in the procedure of approval, the Trademark Office approved the transfer of the trademark in November 2003; the No. 3175016 trademark “潍柴” was approved to be registered as early as 28 October 2003, also by the trademark Office’s approval, the Complainant transferred the trademark in June 2004. The Complainant is the lawful owner of the trademark “潍柴”. Other than these two trademarks, the Complainant owns a number of registered trademarks related to “潍柴”.

(2) The Complainant has the prior right for the business name “潍柴”. The Complainant was established in December 2002, which was promoted to be established by former Weifang Diesel Engine Factory (now Weichai Holding Group Co. Ltd), with the scope of business as “design, development, producing, sale, maintenance and importing & Exporting of diesel engine and auxiliary products”, the Complainant has the prior right for the business name “潍柴”. The Complainant has invested long-term human, material and financial resources in making the highly reputable business name “潍柴”, which is an important property rights of the Complainant, having prominent distinctiveness and identity.

(3) The part for identification of the disputed domain name “潍柴” is similar to the prior right of the Complainant, and may cause confusion. The disputed domain name, the part “重机” (meaning “power” or “heavy machinery”) is short for “heavy machinery industry”, which is without distinctiveness; while the other part “潍柴” (weichai) is the main part of the distinctiveness, which the Complainant enjoys prior right, and is identical with the business name “潍柴”. Moreover, the part “重机” belongs to the same or similar industry of the Complainant. Taking note of the use of the combination of “潍柴” and “重机” on the internet may certainly lead to confusion for clients and mislead the public, which also is detrimental to the Complainant’s right on “潍柴”, the business name and the trademark.

(4) The Respondent doesn't enjoy the lawful right for the domain name or the main part of the domain name. According to the statement and evidence above, the Complainant is the lawful owner of “潍柴”. “潍柴” has great reputation in diesel engine, generator, however, the name of the Respondent is “da weihai”, which doesn't have any direct relevance with the part for identification of the disputed domain name; also “潍柴” is neither the trademark nor business name of the Respondent; again the Complainant doesn't transfer the symbol “潍柴” to the Respondent either by licensing or authorization.

(5) The Respondent shows mala fide in the registration and use of the disputed domain name. The Respondent copied the reputable trademark and business name “潍柴”, along with its behavior of combining “潍柴” and a common name for industry “重机” to be the disputed domain name “潍柴重机”, increasing the possibility of misleading connection between the disputed domain name and the Complainant. The purpose is to cause confusion between the Respondent and the Complainant, misleading the public. By taking advantage of the reputation of the Complainant, the Respondent may seek illegal profits.

In accordance with Paragraph 4(b)(i) of the Policy, the Complainant requests the Panel to issue a decision to transfer the disputed domain name to the Complainant.

Respondent

The Respondent failed to submit a Response within the specified time period.

4、 Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: “A Panel shall decide a complaint on the basis of the statements and

documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.”

Paragraph 4 (a) of the Policy requires that the Complainant should prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

(i) the domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(ii) the Respondent has no rights or legitimate interests in respect of the domain name; and

(iii) the domain name has been registered and is being used in bad faith.

Identical/Confusingly Similar

The mark “潍柴” was registered as a trademark in China as early as of 2003. The trademark was later transferred to the Complainant. Afterwards, the Complainant has successfully registered several other trademarks under the mark “潍柴”. The registration date is much earlier than that of the disputed domain name (i.e., 17 July 2009). Furthermore, “潍柴” is major and distinctive part of the Complainant’s business name. The evidence submitted by the Complainant shows that the Complainant enjoys the indisputable prior trademark right over “潍柴” and right to the business name “潍柴”.

The disputed domain name is “潍柴重机.com”. The major part of the disputed domain name consists of “潍柴” and “重机”. The first part “潍柴” is identical to the Complainant’s trademark. The second part “重机” represents the abbreviation for “heavy machinery industry”. As the name for an industry, this part is not distinctive. Moreover, the Complainant’s major area is in this industry. The addition of the second part does not help differentiate the major

part of the disputed domain name from the Complainant's trademark, but further strengthens the connection between the two. As the suffix ".com" only indicates that the domain name is registered under this gTLD and is not distinctive, the Panel has no problem in finding that the disputed domain name "潍柴重机.com" is confusingly similar to the Complainant's trademark "潍柴".

The Panel therefore holds that the Complaint fulfills the condition provided in Paragraph 4 (a)(i) of the Policy.

Rights and Legitimate Interests

The Complainant contends that the Respondent does not have rights to or legitimate interests in the disputed domain name. The Complainant's assertion is sufficient to establish a prima facie case under Policy 4 (a)(ii), thereby shifting the burden to the Respondent to present evidence of its rights or legitimate interests.

The Respondent has failed to show that the Respondent has any rights or legitimate interests in respect of the disputed domain name. The act of registering the disputed domain name does not automatically endow any legal rights or interests with the Respondent.

The Panel therefore finds that the Complaint fulfills the condition provided in Paragraph 4(a)(ii) of the Policy.

Bad Faith

Under Paragraph 4 (b) of the Policy, the following are relevant examples a Panel may take as evidence of registration and use 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 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 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 your website or location or of a product or service on your website or location.

Evidence shows that the Complainant, winning lots of awards nationally, has been very successful after the establishment. The Complainant's trademark and business name“潍柴” has achieved a strong reputation through use and promotion. As such, the public has come to recognize and associate the Complainant's trademarks as originating from the Complainant and no other. This entitles the Panel to infer that the Respondent should be aware of the existence of the Complainant and its trademark. The fact that the Respondent combined “潍柴” with “重机”, a line of business which the Complainant is heavily involved in, further testifies that the Respondent is well aware of the Complainant and its trademark. The above circumstance has rightly led to the assumption that the Respondent registered the disputed domain name to hinder the Complainant from reflecting its trademark and business name “潍柴” in a domain name corresponding to its activities in China. As such, the action of registering the disputed domain name per se has constituted bad faith.

In conclusion, the Panel finds that the Respondent has registered and used the domain name in bad faith. Accordingly, the Panel

finds that the Complaint satisfies the condition provided in Paragraph 4 (a) (iii) of the Policy.

5、 Decision

Having established all three elements required under the Policy, the Panel concludes that relief should be granted. Accordingly, it is ordered that the domain name “潍柴重机.com” should be TRANSFERRED to the Complainant Weichai Power.

Sole Panelist:



DATED: 10 February 2011