

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

(Beijing Office)

ADMINISTRATIVE PANEL DECISION

Case No. CN 1100489

Complainant : FACEBOOK. INC
Respondent : BINGBING FAN
Domain Name : china-facebook.com
Registrar : GoDaddy.com, Inc.

1. Procedural History

On August 23, 2011, the Complainant submitted the Complaint in English to the Beijing Office of the Asian Domain Name Dispute Resolution Centre (the "ADNDRC Beijing Office") pursuant to the Uniform Policy for Domain Name Dispute Resolution (the "Policy") approved 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 ICANN, and Asian Domain Name Dispute Resolution Centre Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "ADNDRC Supplemental Rules"). The ADNDRC Beijing Office confirmed the receipt of the Complaint on August 24, 2011 and asked ICANN and the Registrar, Go Dadyy.com.Inc., for the confirmation of the registration information with regard to the disputed domain name.

On August 27, 2011, the ADNDRC Beijing Office received from the Registrar the registration confirmation in connection to the disputed domain name.

On September 16, 2011, the ADNDRC Beijing Office made the transmittal of the claims to the Respondent.

On September 20, 2011, the ADNDRC Beijing Office sent to the parties the notification of the commencement of the proceeding, and of the matter the claims have been confirmed and forwarded; and notified ICANN and the Registrar of the commencement of the proceeding.

Having received no answer by the Respondent upon the expiry of the regulated period for the Respondent's submission of the Defense, the ADNDRC Beijing Office sent, on October 17, 2011, the notification to the disputing parties of the Hearing by Default.

Having received a Declaration of Independency and Impartiality and a Statement of Acceptance from Mr. Chi Shaojie, the ADNDRC Beijing Office informed the disputing parties of the Confirmation of the Appointment of the sole panelist on October 26, 2011.

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

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 conformity with the language used by the Complainant in the submitted Complaint.

2. Factual Background

For the Complainant

The Complainant is FACEBOOK. INC, with its registered business address at 1601 South California Avenue, Palo Alto, California

94304 USA, claiming to be the owner of the world-wide registered trademarks with the Latin letters of "FACEBOOK" as its distinctive subject matters. The Complainant thinks itself of being entitled to the disputed domain name and initiates the current proceeding requesting the Panel to make an award on the transfer of the entitlement to the disputed domain name to the Complainant.

The Complainant authorizes WANG ZHENG & XIANG FEI of Beijing East IP Law Firm to be its representatives in the proceeding; and the address of the authorized agents is Suite 1604, Tower E2, The Towers, Oriental Plaza, No.1 East Chang An Avenue, Dongcheng District, Beijing 100738, P. R. China.

For the Respondent

The Respondent is known, by the registration information, as "BINGBING FAN", domiciled in 32 HAO SHITAN STREET, HANWU DISTRICT WH, HB 430000 CHINA, as revealed in the registration. The disputed domain name "china-facebook.com" was registered on October 6, 2010 through the registrar GoDaddy.com, Inc..

3. Parties' Contentions

The Complainant

The Complainant alleges in its Complaint that:

"FACEBOOK" is the trademark used and registered by the Complainant since its establishment in 2004. "FACEBOOK" and other marks of this series, such as "THEFACEBOOK", have been approved for registration in many countries/regions in the world (collectively referred to as "FACEBOOK Mark"). In U.S.A.,

FACEBOOK Mark was approved for registration in respect of online social networking services in Classes 35 & 38 on January 10, 2006, much earlier than the registration date (October 6, 2010) of the Disputed Domain Name. In China, FACEBOOK Mark was approved for registration in Classes 35 & 38 as early as July 2009.

In addition to part of the registrations in the U.S.A. and China, the FACEBOOK Mark is also registered in various other countries and regions throughout the world. Registrations have been issued for the FACEBOOK Mark in the European Union, the African Intellectual Property Organization, Argentina, Australia, Benelux, Brazil, Burundi, Canada, Colombia, Costa Rica, Czech Republic, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, France, Greece, Guatemala, Haiti, Honduras, Hong Kong, Hungary, Iceland, Israel, Japan, Jordan, Kuwait, Lebanon, Macau, Madagascar, Malaysia, Mauritius, Mexico, Monaco, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, Poland, Romania, Russia, Rwanda, Saudi Arabia, Serbia, Seychelles, Singapore, South Africa, South Korea, Switzerland, Taiwan, Thailand, Turkey, Vanuatu, Venezuela, and Vietnam.

The Complainant Facebook, Inc. is the world's leading provider of online social networking services. The Complainant's website at facebook.com is among the top 2 most-trafficked website of any kind in the world, according to web information company Alexa. The Complainant's site, which operates under and features the FACEBOOK trade name and trademark as well as the facebook.com domain name, allows computer users to communicate with existing friends, make new friends, organize groups and events, and share their personal profiles, status, activities, photos, links, and videos, among many other activities.

Complainant began offering its services in 2004. Since that time,

the Complainant's FACEBOOK Mark has become one of the most widely recognized brands around the world, including China. As of July 2011, the Complainant provided online networking services in over 70 languages to over 750 million active users worldwide, more than half of whom typically logged on to the Complainant's website on any given day.

The Complainant's website provides tools for each of its users to create a personal web page (a "Profile") on which the user can choose to display personal information such as education, professional background, and contact information. In addition, the Complainant's website provides on each Profile a means through which users can communicate with each other, including via private electronic messages that are sent directly to users' inboxes, as well as through online real-time chat. The Complainant's users are also able to send and receive items such as textual messages, links, photographs, or video via his or her own or another user's Profile. The Complainant's website has also provided various online games for entertainment by its users.

The Complainant has been the subject of thousands of unsolicited stories in television, radio, and print media, highlighting the Complainant's innovative and successful efforts in online networking and communities. A fictional retelling of the Complainant's founding was also depicted in the Academy Award winning film "The Social Network", which has grossed hundreds of millions at the box office since its release in 2010.

As early as 2006, the Complainant's website is open for registration to Chinese users, and has been the model of many Chinese websites. The Complainant and its trademarks are enjoying high reputation and fame and have been reported by a large amount of news media in China.

Search results with “FACEBOOK” as the keyword obtained from the website www.cnki.net, a famous journal database in China, show over 9,797 pieces of news reports and articles matching the search condition from newspapers, university journals and periodicals. These news reports and articles relate to introductions, citations or promotions of “FACEBOOK”.

Meanwhile, nearly 16 billion web pages and over 70 million web pages can be separately obtained by conducting a search via the famous search engines Google and Baidu taking “FACEBOOK” as the keyword, and the contents shown all have relations with the Complainant and its services. The search results and relevant Internet reports not only prove that the Complainant’s trademark enjoys high reputation, but also demonstrate that the FACEBOOK Mark has established a close and even the sole association with the Complainant. Due to the high reputation of the FACEBOOK Mark, the relevant public may readily associate the FACEBOOK Mark with the Complainant.

The Complainant has also received numerous awards and recognitions, including a listing in Nielsen’s Top 10 Web Brands (ranking the Complainant 2nd overall and 1st by hours spent on the site per day) in January 2011; Business Insider’s “Most Likely to Change the World” award in 2009; The Webby Award’s “People’s Voice Winner” for Social Networking in 2007 and 2008; Harvard Business School’s “Entrepreneurial Company of the Year” in June 2008; BusinessWeek’s “The World’s 50 Most Innovative Companies” in 2008; and The Crunchie Award for Best Overall Startup in 2007, 2008 and 2009. And in 2010, Time Magazine named the Complainant’s founder Mark Zuckerberg its Person of the Year. In 2011, the Complainant ranks 35 in the “2011 BrandZ Top 100 Ranking Most Valuable Global Brands” by BrandZ with a

value of 19,102 million US dollars.

The fame of the FACEBOOK Mark is, ironically, also evidenced by the number of cyber squatters that have tried to unfairly exploit the consumer recognition and goodwill attached to the mark and social networking site. Domain dispute panels in earlier cases have recognized the strength and renown of the FACEBOOK Mark, and have ordered infringing respondents to transfer infringing domain names to the Complainant domains. Relevant decisions include, among others: Facebook, Inc. v. Privacy Ltd. Disclosed Agent for YOLAPT, WIPO Case No. D2007-1193 (September 23, 2007) (holding that the FACEBOOK Mark is “inherently distinctive” and that Facebook’s services “by their very nature, became known to the public through the Internet and thus worldwide”); Facebook, Inc. v. Talkbeans Media Limited, WIPO Case No. DIE2007-0009 (February 19, 2008) (noting that the FACEBOOK mark is “distinctive” and that Facebook “achieved rapid and remarkable success and expansion since [] launch[ing] its business using that name in connection with its social networking services in 2004”); Facebook, Inc. v. Callverse Pty Ltd, WIPO Case No. DAU2008-0007 (June 4, 2008) (finding that the FACEBOOK Mark is a “coined term” that is “inherently distinctive” and “well-known internationally” and that the online social networking services offered at the FACEBOOK site are “internationally renowned”); Facebook, Inc. v. Amjad Abbas, WIPO Case No. DME2010-0005 (July 13, 2010) (“With a domain name consisting of a trademark as famous as the FACEBOOK mark, its very use by someone having no connection with the goods or services marketed under that famous mark is suggestive of ‘opportunistic bad faith.’”); Facebook, Inc. v. Franz Bauer, WIPO Case No. D2010-1247 (September 3, 2010) (“FACEBOOK is a famous trademark and it is difficult, if not impossible, to conceive of any legitimate explanation for the choice of the domain name.”); Facebook, Inc. v. Domain

Asset Holdings, WIPO Case No. D2011-0516 (ordering transfer of over 20 infringing domain names).

The Complainant's valuable reputation is based on the goodwill created from more than half billion users who visit, post, and otherwise interact on the FACEBOOK site. The user's experience on the FACEBOOK site, and his/her faith and trust in the integrity of the FACEBOOK networking services, are not only crucial to maintain the value and distinctiveness of the FACEBOOK Mark, but also vital to the success of the Complainant's business. Moreover, given the online nature of the Complainant's networking services, the Complainant's "facebook" domain names are not only the heart of its business but also a primary way for its users to avail themselves of its services. Accordingly, the Complainant devotes significant resources to protecting its famous FACEBOOK Mark and users in forums such as this Administrative Proceeding.

Based on the above, the Complainant and its FACEBOOK Mark has had high reputation and influence around the world including China and its FACEBOOK Mark has been protected in various proceedings. Through long term use and wide promotion, close or even sole connection has been established between the Complainant and its trademark and trade name "FACEBOOK".

The Complainant owns the prior trademark right over the term "FACEBOOK", which is the identifying and distinctive part of the Disputed Domain Name. As has been introduced, the Complainant has owned various trademark registrations for FACEBOOK Mark in the U.S.A., China, and other countries and regions prior to the registration date of the Disputed Domain Name. Therefore, the Complainant has had prior right to its FACEBOOK Mark. The Disputed Domain Name incorporates the Complainant's famous FACEBOOK Mark in their entirety. Among the Disputed Domain

Name “china-facebook.com”, “.com” is only a gTLD postfix, “china” is a country name and thus china-facebook may convey the meaning of Chinese language version of FACEBOOK website or has connection with the Facebook website. Thus, “facebook” is undoubtedly the identifying and distinctive part of the Disputed Domain Name. Therefore, the Disputed Domain Name is confusingly similar to FACEBOOK Mark in which the Complainant has rights, which has thus met the first requirement set forth in Article 4(a) of the Policy.

The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. According to the name of the Respondent and to the best of the Complainant’s knowledge, the Respondent enjoys no right or legitimate interests in the term “facebook” and the Disputed Domain Name. Furthermore, the Respondent is not an authorized dealer, distributor, or licensee of the Complainant, despite its use of the Complainant’s famous marks in its Disputed Domain Name. In addition, the Complainant’s FACEBOOK Mark is independently created by the Complainant and has strong inherent distinctive. Therefore, there is little possibility for the Respondent to think out such a word by himself or herself.

The registration of the Disputed Domain Name is in bad faith. The Disputed Domain Name is registered on October 6 2010, well after the Complainant had become well-known around the world, including in China, and registered its famous FACEBOOK trademark throughout the world, including in China. By the time the Respondent registered the Disputed Domain Name, the Complainant claimed more than 500 million active users on its website. Therefore, the Respondent knew or should have known of the prior right of the Complainant. Under such circumstance, the

Respondent still registered the Disputed Domain Name. Undoubtedly, the Respondent has registered the Disputed Domain Name in bad faith.

The use of the Disputed Domain Name is in bad faith. After the registration of the Disputed Domain name, the Respondent has used the Disputed Domain Name to establish a social networking website, engaging in completely the same service to the Complainant's. The china-facebook.com website provides registration by its users, like the Complainant's. On the home page of the china-facebook.com website, it mentions such wordings like "Chinese FACEBOOK", "What is FACEBOOK", "How to visit FACEBOOK", "What is the Chinese for FACEBOOK", and etc. On the header and footer of this home page, it definitely claims to be "FACEBOOK China Website". This home page is even labeled with the Complainant's registered FACEBOOK Mark and F Design Mark. Only through this home page, undoubtedly, the Respondent has deliberately connected himself/herself with the Complainant.

After registration with the china-facebook.com website, further information may be learned on the china-facebook.com website. The users can choose to display personal information such as education, professional background, and contact information. In addition, this website provides on each profile a means through which users can communicate with each other, including online real-time chat. The Complainant users are also able to send and receive items such as textual messages, links, photographs, or video via his or her own or another user's profile. Like the Complainant's website, this website also provides various online games, like Texas Hold'em poker, Dan Dan Hall and etc. In addition, this website also provides the advertisement for various other entities, like

Taobao and Vancl. Undoubtedly, the china-facebook.com website is of high similarity to the Complainant's. All such kind of information shows the Respondent has used and is using the domain name in bad faith and intends to mislead the public, in order to obtain unfair benefit from the operation of such website, which has also damaged the Complainant's legitimate right and interest.

Based upon the above fundamental reasons, the Complainant thinks that all the three conditions set forth under the relevant paragraph of the Policy for request for the transfer of the disputed domain name have all been met.

The Respondent

After being served of the claim and all the accompanying documents submitted by the Complainant, and of all the procedural documents by the ADNDRC Beijing Office, the Respondent makes no response by any means in the whole course of the proceeding.

4. Findings

It is significant for the parties to understand the legal nature of the current proceeding which is totally different from that of arbitration or litigation. Though the proceeding is known as administrative proceeding, it is really NOT the proceeding by a government agency. The jurisdiction by the Panel over the current dispute on the domain name registered by the Respondent comes from the authorization by the organization for the administration of domain name registration and maintenance. Anyone intends to register a domain name needs to sign a registration agreement with the administrative authority which makes no substantive examination on the registration application, but stipulates in the registration

agreement that whenever a claim against the registration is submitted, the registrant is obliged to be a procedural party which has rights to make arguments against the claim, but subject to an award made by a Panel constituted in conformity with the stipulated procedural rules. As it is, the current proceeding is a part of the whole proceeding for the registration and maintenance of domain names. As such, the fundamental feature of the Panel's making a judgment on the entitlement to the disputed domain name is to decide which party should be the rightful holder of the disputed domain name, so as to be in conformity with the basic requirements set forth under the Policy and to help keep the good operative order for the running of the internet, and to be beneficiary to the protection of common interests of the web-users.

The indispensable pre-condition for the Panel to find out the disputing facts is to base itself upon the allegations and defenses by the parties, which does not exist in the judgment of the present dispute due to the lack of any defense by the Respondent. In view of this, what the Panel is going to do for the fact-finding is to base itself upon the submissions and exhibits by the Complainant alone. Unless the Panel has a reason to reject any submission or evidence by the Complainant in view of the panelist's professional sense to make judgment and personal experiences in making decisions on domain name disputes, the facts are to be held by the adoption of the Complainant's submitted evidences.

One of the prerequisites for the Respondent to register the disputed domain name through the Registrar is to accept the Policy as the binding regulations for the registration. As mentioned, the Policy applies to this dispute as the substantive criteria for making the judgment of whether the Complainant's request is to be sustained or rejected. 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 and all of the following:

- (i) That the domain name of the Respondent 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 itself upon the stipulations under the Policy, what the Panel needs to do is to find out whether each and all of the three basic facts can be attested by the Complainant. If the answer is yes, the Panel makes an award in the Complainant's favor in accordance with the relevant stipulations under the Policy, the Rules and the ADNDRC Supplemental Rules. If not, the claim by the Complainant shall be rejected.

Identity or Confusing Similarity

Pursuant to Paragraph 4(a) (i) of the Policy, the Complainant must prove that the domain name at issue is identical OR confusingly similar to a trademark or service mark to which it has rights. As stipulated in the Policy, the Complainant needs to prove either the IDENTITY or the CONFUSING SIMILARITY, i.e. either one of the two. To meet the requirement, the Complainant submits trademark certificates to establish the fact that prior to the registration of the domain name at issue, it had had extensive geographic coverage of the registration for the mark "FACEBOOK", including China; and based upon the fact, the Complainant alleges that the disputed domain name is similar to its registered mark and the similarity could cause confusion to the consumers.

The identifying part of the disputed domain name is “china-facebook”, being composed of “china”, “-” and “facebook”. Out of which “facebook” is identical to the Complainant’s registered mark “FACEBOOK”. The meaning of “china” is clear for those understanding English. Though under certain circumstances, “china” could mean “porcelain”, nowadays when people see the word “china”, their very first impression is the People’s Republic of China. It is extremely true when they see “china” is NOT followed by a suffix “ware”, but a mark hyphen “-” together with the Complainant’s mark “facebook”. Based upon a common sense to make ordinary judgment, English-speaking people may interpret “china-facebook” into “FACEBOOK in China”. Due to the proven fact that FACEBOOK has very high world-wide profile in internet business, people may easily take the Respondent for the one who has something to do in China with the Complainant, which is to the contrary of what the Complainant submits in view of any relationship between the two. As it is, the Panel holds that the disputed domain name “china-facebook.com” is confusingly similar to the mark “FACEBOOK” to which the Complainant has rights, thus the Complainant meets the first requirement set forth under Paragraph 4(a)(i) of the Policy.

Rights or Legitimate Interests of the Respondent

Pursuant to Paragraph 4(a)(ii), the second requirement for the Complainant to meet in terms of the request for the transfer of the disputed domain name is to prove that the Respondent does not have any right to or legitimate interest in the domain name at issue. Reading the expression of the stipulation, it seems to be the Complainant who shall take the burden of proof to establish the fact that the Respondent does NOT have rights or legitimate interests in the disputed domain name. Nevertheless, since the Complainant claims that it is entitled to the disputed domain names and the

Respondent has nothing to do with the name except registered and used it in bad faith, it can hardly submit any evidence to prove something it does not think existing. For this reason, the Panel is going to pay more attention to whatever the Respondent claims with regard to the rights or legitimate interests in respect to the disputed domain name. The Policy gives the chance to the Respondent to make argument on this issue by stipulating several could-be circumstances in the relevant article of the Policy. Unfortunately, the Respondent makes no argument to say it does have certain rights or legitimate interests in the domain name at issue. Under the circumstances, how could the Panel hold that it is the Respondent who is entitled to the disputed domain name? On the other hand, judging by the name of the Respondent's, he or she seems to be a Chinese natural person. Since he or she fails to submit any defense, the Panel does even not know the fundamental fact whether he or she understands English or not; and how could he or she create the disputed domain name with such a quite unique feature as "facebook", if he or she does NOT understand English. The ONLY answer could be he or she copied the Complainant's mark of widely recognized reputation.

On the other side, the Complainant submitted abundant exhibits to certify that it innovated and created the distinctive mark "FACEBOOK", the exact meaning of which can hardly be identified by common folks without being access to what the Complainant is doing, and has been extensively using the words in its business activities both as its trade name and the service mark (or trademark); as well as to certify the fact of the good-will and fame of the mark and the related high reputation and market share of the Complainant. Based upon comprehensive analyses of all the relevant evidences by the Complainant, the Panel has sufficient reason to ascertain that it is none other than the Complainant who has rights and legitimate interests in the disputed domain name;

and further holds that the Complainant meets the second requirement set forth under Paragraph 4(a)(ii).

Bad Faith

The Complainant has yet 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 evidence of the registration and use of a domain name in bad faith: “..... (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 Complainant submits that at the time the Respondent registered the domain name in dispute, the Complainant had had as many as 500 m. registered users around the world; the Respondent had known or should have known this fact. Under the circumstances, the registration of the disputed domain name by the Respondent revealed the ill-intention of the Respondent. The Panel agrees with the Complainant’s allegation; because it is not only proved but at least logically understandable. The act itself of the Respondent’s registration of a domain name which is similar to the Complainant’s prior registered mark and the Respondent has no legitimate rights or interests whatsoever with regard to the domain name, reveals the bad-faith of the Respondent in making the registration. Furthermore, the Complainant submits with evidences that the Respondent further uses the disputed domain name in a web site intending to mislead inter-net users to think the web might be operated by the Complainant or by someone with its

authorization. This fact-holding gives further support to the fact-finding of registration in bad-faith.

The prime logical thinking of the Panel is when a party registers a domain name which is NOT created by the party with its distinctive feature known in the real world, but identical or confusingly similar to a mark or logo or sign to which the other party is entitled with high market value, the intention of the registration is clear, namely taking illegal gains by causing confusion to the consumers or web-users. On the other hand, if the registrant is NOT intentionally to take advantage of other's, it should create a distinctive domain name to make web-users easily tell the name from others. What is more, if someone registers a domain name in bad faith, it is hard for him to make use of the registered subject matter in good-faith, otherwise the ill-intention of the registrant would not be realized. This fundamental logic further supports the holding of bad-faith fact in the foregoing paragraph. In view of this, the Panel cannot but holds that the Respondent registered and uses the disputed domain names in bad faith; and 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 each and all of the conditions provided in Paragraph 4(a)(i)(ii) (iii) 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 disputed domain name “china-facebook.com” is

confusingly similar to the mark “FACEBOOK” to which the Complainant has rights; and

(b) That the Respondent has no rights to or legitimate interests in 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 disputed domain name “china-facebook.com” should be transferred to the Complainant FACEBOOK. INC.

Sole Panelist-



Dated: November 8, 2011