

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE
(Beijing Office)
ADMINISTRATIVE PANEL DECISION
Case No. CN-1200529

Complainant: TRENDY INTERNATIONAL INVESTMENT LIMITED

(赫基国际投资有限公司)

Respondent: Jecy

Domain Name: oushili.com

Registrar: DROPEXTRA. COM INC.

1. Procedural History

On 18 January 2012, 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 29 January 2012, ADNDRC Beijing Office confirmed the receipt of the Complaint and sent an email to DROPEXTRA. COM INC, the Registrar of the domain name in dispute, for confirmation of registration information of the disputed domain name.

On 13 February 2012, ADNDRC Beijing Office received the Registrar’s confirmation of registration information of the domain name in dispute.

On 22 February 2012, ADNDRC Beijing Office sent the Transmittal of Complaint to the Respondent.

On 2 March 2012, ADNDRC Beijing Office notified the Complainant that the Complaint had been confirmed and forwarded, and notified the Respondent, the Registrar and the ICANN of the commencement of the

case proceeding.

On 29 March 2012, ADNDRC Beijing Office sent the Notification of No Response Received and Hearing by Default.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Ms. Xue Hong, on 29 March 2012, ADNDRC Beijing Office informed the Complainant and the Respondent of the appointment of the Panelist, and transferred the case file to the Panelist on 30 March 2012.

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

The language of the proceeding 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 there is no express agreement to the contrary by the Parties.

During the proceeding, a person named “ou” informed ADNDRC Beijing Office that he was the current holder of the disputed domain name. ADNDRC Beijing Office then requested the Registrar to reconfirm the Whois information of the disputed domain name on April 13, 2012. By the writing of this decision, ADNDRC Beijing Office is yet to receive any response from the Registrar.

The Policy, paragraph 8, provides that the domain name holder may not transfer the domain name registration to another holder during a pending administrative proceeding brought pursuant to paragraph 4 unless the party to whom the domain name registration is being transferred agrees, in writing, to be bound by the decision of the panel. Any transfer of a domain name registration to another holder made in violation of this provision shall be cancelled by the registrar.

In accordance with the Policy, paragraph 8, the Panel decides that “jegy”, which was the holder of the disputed domain name confirmed by the Registrar, remain the Respondent of the case. Should the disputed domain name had been transfer to another holder, the decision shall still be bound to the transferee.

For the situation abovementioned, the Panel can't make the decision within the time period requested by the Rules. Upon request of the Panel, the ADNDRC Beijing Office decides to extend the time for the Panel making the decision to May 2, 2012.

2. Factual Background

For the Complainant

The Complainant is TRENDY INTERNATIONAL INVESTMENT LIMITED (赫基国际投资有限公司). It's address is UNIT C 17/F SILVERCORP INT'L TOWER 713 NATHAN ROAD KL HK.

The Complainant that is primarily in the business of fashion design, production and sales is the owner of the trademark "ou shi li" that was firstly registered on 14 December 1998. The registration number is 1230787 and the registration class is 25 on the goods of clothes, shoes, etc.

For the Respondent

According to the record in the Whois database, the Respondent is Jecy and the disputed domain name "oushili.com" was registered on 1 November 2010.

3. Parties' Contentions

The Complainant

(1) Background of the Complainant and its "oushili", "欧时力" brands

The Complainant TRENDY INTERNATIONAL INVESTMENT LIMITED is a large international investment company, under which there are still Guangzhou TRENDIANO CO., LTD, Guangzhou Ding Shang Co., Ltd. The main business of the Complainant and its subsidiaries is fashion design, production and sales. The brands "oushili", "欧时力" which have experienced a sharply growth was firstly introduced to Chinese market in 1999 by the Guangzhou Ding Shang Co., Ltd. After doing business in China for ten years, the Complainant has established hundreds of

“oushili”, “欧时力” stores and self-counters in major cities, such as in Beijing, Shanghai, Guangzhou, Shenzhen, Dalian, Chengdu, Chongqing, Hangzhou, Wuhan, Xi’an, Changsha and so on. The sales of the “oushili” (“欧时力”) products are among the best and the brand falls swoop become the leader in women’s fashion.

(2) The mark “oushili” (“欧时力”) has been widely used by the Complainant as trademark in Chinese Mainland, and it is of great fame in China

The Complainant and the “oushili” (“欧时力”) brand won the unanimous endorsement of the consumers with its quality products and service and received many honors from communities. At the same time the Complainant always concerned about public welfare and gets a good social assessment. In order to expand the reputation and influence of “oushili” (“欧时力”) brand, the Complainant has done a lot of “oushili” (“欧时力”) brand advertising, and gets a good result. The Complainant and the “oushili” (“欧时力”) brand enjoy a good fame in china with its quality products and good publicity.

The Complainant is the owner of the trademark “oushili” (“欧时力”) and has been using “oushili” (“欧时力”) as trademark in business field over 10 years. Owing to excellent management and extensive promotion, products and services, the “oushili” (“欧时力”) brand is in the front rank around the globe, especially in Chinese Mainland.

Moreover, in 2007, the Complainant’s trademark “欧时力” (Registration NO.:3396320) was recognized as well-known trademark in Guangzhou city, and in Guangdong province in 2008.

(3) The Complainant has prior trademark rights of “oushili” trademark; the disputed domain name is identical with the Complainant’s trademark

It is well-known that “oushili” (“欧时力”) is a worldwide famous trademark which is owned by Complainant. The validity and fame of its trademarks are beyond dispute.

As described above, the Complainant has lots of registered trademarks

in Chinese Mainland. All of them are valid, including the earliest one: “oushili” under No. 1239787 was granted on December 14, 1998. The registration date of all of them is far earlier than the registration date of the disputed domain name, i.e. 1 November 2010. Therefore, the Complainant has prior trademark rights to “oushili”, “欧时力”.

The disputed domain name is “oushili.com”. Apart from the generic top-level domain suffix “.com”, the disputed domain name consists of “oushili”, which omits the space between “OU SHI LI” and obviously confusingly similar to the Complainant’s prior registration “oushili” and “欧时力”. Thus, the disputed domain name is confusingly similar to the Complainant’s prior registered trademark.

Therefore, the Complainant have proven paragraph4 (a) (i) of the Policy.

(4) The Respondent does not have any legitimate rights or interests on the domain name

The Respondent has no legitimate rights on the trademark. The Complainant has conducted searches in the on-line database of the China Trademark Office for trademark registrations in the name of the Respondent “pri” [stated by the Complainant]. But no registration information has been revealed.

The Complainant owns the trademark exclusively, and the Complainant never authorized, permitted the Respondent to register or use the disputed domain name, or to use the trade name or trademark for any purposes. The Complainant has never acquiesced the Respondent to register or use the disputed domain name in any way.

For these reasons, the Complainant considers that, under Paragraph 4 (a) (ii) of the Policy, the Respondent has no rights or legitimate interests for the disputed domain name.

(5) The domain name has been registered and used in bad faith

The trademark has been used in the whole world by Complainant, especially in China. And the trademark enjoys a great reputation in China where the disputed domain name was registered and the Respondent is located, so the Respondent has known or should have known the

Complainant's trademarks when he registered the domain name. For the trademark is a non-inherent English word and was created by the Complainant, it is impossible for the Respondent to create the same word for a domain name registration. Therefore, registration of the disputed domain name which is completely identical with the Complainant's registered trademark "oushili" ("欧时力") has shown the Respondent's bad faith to some extent.

When visiting the domain name, it is shown on the website that "The domain name oushili.com may be for sale if you want to purchase the domain, please Click Here to make an offer" and there are OUSHILI(欧时力) clothing being distributed on the website which fall under the circumstances in Paragraph 4(b)(i)(iv), i.e. (i) The Respondent has registered 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. (iv) By using the domain name, the Respondent has 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.

For the above reasons, the Complainant considers that According to Paragraph 4 (a) (iii) of the Policy, the Respondent has registered and used the disputed domain name in bad faith.

The Complainant requests the disputed domain name "oushili.com" be transferred from the Respondent to the Complainant.

The Respondent

The Respondent did not submit the Response.

4. Findings

As stipulated in the Paragraph 4 (a) of the Policy, when claiming a domain name registered by Respondent, the Complainant must prove all of the followings:

- (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 is being used in bad faith.

Identity or Confusing Similarity

Pursuant to the Policy, paragraph 4(a)(i), a complainant must prove that the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights. In line with such requirement, a complainant must prove its trademark rights and the similarity between the disputed domain name and its trademark.

The Panel notes that the trademark “ou shi li” had been registered (Registration Number 1230787) by an enterprise affiliated with the Complainant on clothes, shoes and many other products in China on 14 December 1998. The trademark registration for “ou shi li” (Registration Number 1230787) was assigned to the Complainant on 13 November 2010 and the Complainant has been the owner of this registered mark ever since. The Complainant therefore enjoys the exclusive trademark rights therein.

The disputed domain name is “oushili.com”. Apart from the generic top-level domain suffix “.com”, the disputed domain name consists of “oushili”, which merely omits the space between “ou shi li” and obviously confusingly similar with the Complainant’s registered trademark “ou shi li”.

The Panel therefore finds that the disputed domain name “oushili.com” is confusingly similar to the Complainant’s registered trademark “ou shi li”. Accordingly, the Complainant has proven the first element required by

paragraph 4(a) of the Policy.

Rights or Legitimate Interests of the Respondent

The Complainant asserts that the Respondent has no rights or legitimate interests in the disputed domain name and, as stated above, the Respondent did not provide any information to the Panel asserting any right or legitimate interest it may have in the disputed domain name.

The Complainant proves that the Respondent does not have any trademark registration in China and confirms that the Respondent has no connection with the Complainant or its business. Paragraph 4(c) of the Policy lists a number of circumstances which can be taken to demonstrate a respondent's rights or legitimate interests in a domain name. However, there is no evidence before the Panel that any of the situations described in paragraph 4(c) of the Policy apply here. To the contrary, the lack of a Response leads the Panel to draw a negative inference.

Therefore, and also in light of the Panel's findings below, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name "oushili.com". Accordingly, the Complainant has proven the second element required by paragraph 4(a) of the Policy.

Bad Faith

The Complainant contends that the Respondent had bad faith. The Respondent did not respond.

The evidence submitted by the Complainant shows that "ou shi li" is a distinctive sign without any meaning other than the Complainant's trademark and has acquired considerable reputation and recognition in the Chinese fashion market through consistent use for more than a decade. The Respondent, however, publicly offer to sell on the website "www.oushili.com" the disputed domain name itself as well as the fashion products marked with "欧时力", which is not only the Complainant's registered trademark but phonetically identical with the mark "ou shi li". The Respondent did not contend the Complainant's above-mentioned

submissions.

The Panel finds that the Respondent registered and is using the disputed domain name “oushili.com” to intentionally attract, for commercial gain, Internet users to the website “www.oushili.com”, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website or of a product on that website.

The Panel therefore rules that this is adequate to conclude that the Respondent has bad faith under the Policy, paragraph 4(b)(iv). Therefore, the Complainant has successfully proven the third element required by paragraph 4(a) of the Policy.

5. Decision

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the domain name “oushili.com” be transferred to the Complainant TRENDY INTERNATIONAL INVESTMENT LIMITED (赫基国际投资有限公司).

Panelist: 薛虹

Dated: 26 April, 2012