

Asian Domain Name Dispute Resolution Center
Beijing Office
Administrative Panel Decision
Case No. CN-1200589

Complainant: Shenzhen Marisfrog Fashion Co., Ltd.

Respondent: Doris Zhu

Domain Name: marisfrog.net

Registrar: GODADDY.COM, LLC

1. Procedural History

On 13 July 2012, the Complainant submitted a Complaint in English to the Beijing Office of the Asian Domain Name Dispute Resolution Center (the ADNDRC) and elected this case to be dealt with by a one-person panel, in accordance with the Uniform Domain Name Dispute Resolution Policy (the Policy) approved by the Internet Corporation for Assigned Names and Numbers (ICANN), the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the ADNDRC Supplemental Rules). On the same date, the ADNDRC sent to the Complainant by email an acknowledgement of the receipt of the Complaint and reviewed the format of the Complaint for compliance with the Policy, the Rules and the ADNDRC Supplemental Rules.

On 13 July 2012, the ADNDRC transmitted by email to ICANN and the Registrar a request for registrar verification in connection with the disputed domain name. On 18 July 2012, the Registrar transmitted by email to the ADNDRC its verification response, confirming that the Respondent is listed as the registrant and providing the contact details.

On 16 August 2012, the ADNDRC notified the Complainant that the Complaint has been confirmed and transmitted to the Respondent and the case officially commenced on August 10 2012. On the same day, the ADNDRC transmitted the Written Notice of the Complaint to the Respondent, which informed that the Complainant had filed a Complaint against the disputed domain name and the ADNDRC had sent the complaint and its attachments through email according to the Rules and the Supplemental Rules. On the same day, the ADNDRC notified ICANN and registrar of the commencement of the proceedings.

The Respondent submitted a Response to the ADNDRC on 5 September 2012. The ADNDRC transmitted the Response to the Complainant on 7 September 2012. The ADNDRC notified both parties for selection of panelist on the same day. Both parties made the selection accordingly.

Having received a Declaration of Impartiality and Independence and a

Statement of Acceptance from Mr. ZHAO Yun, the ADNDRC notified the parties on 18 September 2012 that the Panel in this case had been selected, with Mr ZHAO Yun acting as the sole panelist. The Panel determines that the appointment was made in accordance with Rules 6 and Articles 8 and 9 of the Supplemental Rules.

On 18 September 2012, the Panel received the file from the ADNDRC and should render the Decision within 14 days, i.e., on or before 2 October 2012.

Pursuant to Paragraph 11 (a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding. The language of the current disputed domain name Registration Agreement is English, thus the Panel determines English as the language of the proceedings.

2. Factual Background

For the Complainant

The Complainant in this case is Shenzhen Marisfrog Fashion Co., Ltd. The registered address is 2D, Tianxiang Building, Chegongmiao, Futian District, Shenzhen. The authorized representative in this case is xinhe zhang.

For the Respondent

The Respondent in this case is Doris Zhu. The registered address is Duntou Hai'an, Jiangsu China, Nantong, Jiangsu 226692. The Respondent is the current registrant of the disputed domain names <marisfrog.net> according to the Whois information.

3. Parties' Contentions

Complainant

(1) The Complainant and the "Marisfrog" brand have gained a reputation in the clothing industry

As the parent company of the Complainant and the owner of the "Marisfrog" trademark, Shenzhen Enqing Investment & Development Co., Ltd. (hereafter referred to as Shenzhen Enqing) established the Complainant in November 1999. In 2012, the Complainant's name was changed from Shenzhen Marisfrog Fashion Co., Ltd. to Shenzhen Marisfrog Fashion Stock Co., Ltd.

For more than a decade, the Complainant has been specializing in the design, manufacturing, and operation of women fashions under the two brands "Marisfrog" and "Masfersu". By incorporating various fashionable essences from different cultures and accumulating rich experience, the Complainant has gained wide recognition and popularity among consumers. Today, "Marisfrog", the primary brand of the Complainant, has over 300 retail outlets served by

2100 employees in high-end stores in major large- and medium-sized cities in China. With an annual sales volume over 500,000 pieces of luxury fashions, an annual turnover of nearly RMB 1 billion, and an annual profit of RMB 300 million, the Complainant pays nearly RMB 124 million in taxes each year. “Marisfrolg” has grown into one of the most renowned Chinese brands of women’s luxury clothing.

The Complainant put enormous efforts to launch various forms of brand promotions, from large-scale annual product launch events under widespread attention and coverage by the media to intensive advertisements on famous fashion magazines. After years of efforts in brand promotion, the “Marisfrolg” brand has enjoyed a leading position in the clothing market.

Because of the Complainant’s unremitting efforts in brand operation and promotion, the “Marisfrolg” brand has become renowned and influential in the clothing industry and won a series of awards. These awards include: in 2010, Marisfrolg trademark was recognized as Guangdong Province’s Famous Brand for its women’s clothing; In 2007, Marisfrolg was awarded Publicly-Recognized Top 10 Brands for Women Clothing of the Year; in 2008, Marisfrolg was awarded Shenzhen Regional Women’s Clothing Brand by the Shenzhen Regional Women’s Clothing Brand Promotion Committee; in 2010, women’s clothing under Marisfrolg was recognized as Guangdong Province’s famous-brand high-quality products; in June 2010, Marisfrolg was honored as Most Influential Chinese Brand 2010. In 2011, Marisfrolg was rated as Most Popular Clothing Brand by the Shenzhen Futian Economic Promotion Bureau.

In addition, the Complainant, which operates the “Marisfrolg” brand, also received a number of honors and awards. For example, in 2011, with its profit margin ranking No. 1, total profits No. 5, and product revenues No. 88, the Complainant was awarded 2010 Top 100 Enterprises of China Clothing Industry by the China National Garment Association (CNGA); the Complainant was awarded Top 100 Taxpayers for five consecutive years from 2006 to 2010 by the Shenzhen Futian District Government; in 2010, the Complainant received the third prize for paying over RMB 100 million in taxes from the Shenzhen Futian District Government.

(2) As the parent company of the Complainant, Shenzhen Enqing independently created and thus has undisputable priority over the “Marisfrolg” trademark, Shenzhen Enqing grants the Complainant the exclusive license to use the “Marisfrolg” trademark and authorized the Complainant to discretionally safeguard the trademark rights.

As early as 28 October 2002, Shenzhen Enqing applied for the “Marisfrolg” trademark which covered swimwear, baby suits, waterproofs, clothing, shoes, socks and stockings, scarves, ties, hats, and gloves (clothing). Thereafter Shenzhen Enqing registered the “Marisfrolg” trademark in a wide range of commodity categories. These categories cover almost all categories of commodities and services provided by the law and are all within their effective periods. Shenzhen Enqing also applied for and registered the “Marisfrolg” trademark in other countries and regions, including the United States, Canada, the European Union, Japan, Hong Kong, Taiwan, Macao, Singapore, New Zealand, Italy, and India, with clothing covered by the specified application

range of each of these said trademarks. Therefore, Shenzhen Enqing possesses undisputable rights to the “Marisfrog” trademark.

To promote the “Marisfrog” brand, Shenzhen Enqing established the Complainant in 1999, granted the Complainant the exclusive license to use the “Marisfrog” trademark and, in Article 6 of the relevant Contract, authorized the Complainant to discretionally safeguard the trademark rights.

As early as 2004, the Complainant launched its primary website for business operation with the domain name www.marisfrog.com and has been promoting the Marisfrog brand on the website. Therefore, as the earliest registrant, Shenzhen Enqing possesses undisputable priority over the “Marisfrog” trademark.

(3) The disputed domain name is completely the same as the trademark which is exclusively possessed by the Complainant.

The parent company has granted the Complainant the exclusive license to use Trademark No. 3349192 and Trademark No. 5333743, and authorized the Complainant to discretionally safeguard the trademark rights in the Exclusive-License Contract mentioned above. The center word of the disputed domain name “marisfrog.net” is identical with the “Marisfrog” trademark which is exclusively possessed by the Complainant.

(4) The Respondent possesses no legitimate rights to the disputed domain name.

As described earlier, the Marisfrog trademark was independently created and registered by the Complainant’s parent company in 2002. In addition, this trademark has been registered in a majority of commodity and service categories in China and also registered in many other countries and regions. The Complainant’s parent company possesses priority over the “Marisfrog” trademark.

The Respondent, as a natural person in Jiangsu Province of China, does not have any connection with the Complainant or with the owner of the “Marisfrog” trademark. Whereas the Complainant’s parent company has granted the Complainant the exclusive license to use the “Marisfrog” trademark, any individual or enterprise except the Complainant has no right to use the trademark. In addition, the Respondent has never been authorized in any form to use the trademark. The Respondent registered the disputed domain name on 14 May 2011, which was many years after the parent company of the Complainant registered the trademark and the Complainant launched its official website.

(5) The current holder of the disputed domain name registered and used the domain name for obvious malicious purposes.

Whereas the “Marisfrog” brand and trademark have high recognition and great influence in the clothing (particularly women’s clothing) industry, the Respondent had already known the value of this brand before registering this

domain name.

On the website under the disputed domain name marisfrog.net, the Respondent uses “Marisfrog women’s clothing”, “Marisfrog’s official website” and other icons that are identical with the trade name and the key words used on the official website of the Complainant, and meanwhile, marisfrog.net uses promotional pictures and description text presented on the Complainant’s official website. The Respondent also sells clothing of the Complainant on the website marisfrog.net without any form of authorization from the Complainant. In addition, the Respondent links the disputed domain name to his/her other online shops on www.taobao.com, where the Respondent sells clothing under the Marisfrog brand without any authorization of the Complainant.

These facts adequately show that the Respondent already knows very well of the Complainant and the “Marisfrog” brand, and has engaged in illegal business operations for commercial profits. The registration of the disputed domain name is an integral part of the Respondent’s malicious activities.

In addition, after registering the disputed domain name, for multiple times, the Respondent has attempted to contact the Complainant through a third-party agency by phone, seducing the Complainant to purchase the disputed domain name at an exorbitant price.

All the behavior of the Respondent reveals that he registered the disputed domain name for illegal commercial profits: on the one hand, the Respondent use the trade name, icons and pictures that is in exclusive possession of the Complainant in the purpose of enticing consumers to visit the website under the disputed domain name and other related links; on the other hand, the Respondent attempts to sell the disputed domain name to the Complainant for illegal profits. Obviously, the Respondent registered the disputed domain name in the intention to prevent the Complainant from registering it.

In accordance with Paragraph 4(b)(i) of the Policy, the Complainant requests the Panel to issue a decision to transfer the Disputed Domain Names to the Complainant.

Respondent

The product information on marisfrog.net comes from alimama.com which is affiliated to Alibaba Group. Alimama.com is an officially recognized and renowned website which allows the Respondent to use its information to make a website. All the links on the website marisfrog.net come from alimama.com and the Respondent does not have any online shops on www.taobao.com and the Complaint does not show any evidence but has defiled the name of the Respondent. In addition, after registering the disputed domain name, the Respondent has never taken the initiative to contact the Complainant, only to get a phone call from some sort of consulting company who tried to buy the domain name.

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:

- 1) 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
- 2) the Respondent has no rights or legitimate interests in respect of the domain name; and
- 3) the domain name has been registered and is being used in bad faith.

Identity/Confusingly Similarity

The Complainant and its parent company specialize in the designing, manufacturing and operation of fashions, especially women’s fashions, in China. The evidence shows that the parent company has registered the “marisfrolg” trademark in mainland China as early as June 2004, much earlier than the registration date of the disputed domain name (i.e. 13 May 2011). The evidence further shows that the parent company granted the Complainant the exclusive license to use the trademark “marisfrolg” (trademark No. 3349192 and No. 5333743), and authorized the Complainant to safeguard the trademark rights in the Exclusive-License Contract concluded on 24 December 2006. The exclusive period lasts from 31 December 2006 to 13 December 2015. It has been widely recognized that a licensee of a trademark or a related company such as a subsidiary or parent to the registered holder of a trademark shall have rights in a trademark under the UDRP. In this case, both trademarks were exclusively granted to the Complainant till 2015; both trademarks, registered in 2004 and 2009 respectively, were registered earlier than the disputed domain name, and are still within the protection period; the Panel has thus no problem in finding that the Complainant enjoys the prior rights in the trademark “marisfrolg”.

The disputed domain name is “marisfrolg.net”. As the suffixes “.net” only indicates that the domain name are registered under the gTLD and is not distinctive, the main part of the disputed domain name is “marisfrolg”. Obviously, the main part of the disputed domain name is identical to the Complainant’s trademark “marisfrolg”.

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.

Under Paragraph 4 (c) of the Policy, the following are relevant examples a Panel may take as evidence of the Respondent's rights or legitimate interests to the disputed domain name:

- (i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Obviously, the above circumstances do not exist in the current case. The Respondent has failed to show (and did not include in the Response any points) that the Respondent has any rights or legitimate interests in respect of the disputed domain name. The act of registering the disputed domain name and the Respondent's choice of "10-letter combinations" do not automatically endow any legal rights or interests with the Respondent. The Respondent is not commonly known by the disputed domain name. Neither is the Respondent making a legitimate noncommercial use or fair use of the disputed domain name.

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.

The Respondent contends that the Respondent does not have any online shops or intention to sell disputed the domain name to the Complainant. It is

noted that the examples listed in Paragraph 4(b) of the Policy is not exhaustive.


The Complainant was set up in November 1999 by its parent company in the fashion industry. The evidence shows that the parent company registered the trademark “marisfrolg” in China as early as 2004 and has since then promoting its products with this trademark. The Complainant was exclusively licensed to use this trademark in 2006 and a lot of efforts have been put to promote the products and services bearing the trademark. The trademark “marisfrolg” itself is not a normal English word, it was created by the Complainant’s parent company to represent its products. Evidence shows that the trademark “marisfrolg” has achieved a strong reputation through extensive use, promotion, advertisement. As shown by the evidence submitted by the Complainant, the trademark won a series of awards, including Guangdong Province’s Famous Brand for its women clothing, Top 10 Brands for Women’s Clothing in 2007, Guangdong Province’s famous-brand high-quality products, Most-influential Chinese Brand. The trademark, by winning so many awards, has been well known by the consumers. As such, the public has come to recognize and associate the trademark as originating from the Complainant (and its parent company) and no other.

The website of the disputed domain name shows that the website contains “Marisfrolg women’s clothing”, “Marisfrolg’s official website” and other icons bearing the trademark. The products shown in the website are exactly the same products of the Complainant. As such, the Respondent’s conduct of registering the term as the main part of the disputed domain name cannot be reasonably explained by coincidence or inadvertence. While the Panel would not make any assertions as to the intention of including these terms and the Complainant’s trademark in the website, the above fact serves to prove that the Respondent should have been aware of the existence of the Complainant and its trademark. The action of registering and using the disputed domain name *per se* has thus constituted 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 ICANN Policy, the Panel concludes that relief should be granted. Accordingly, it is ordered that the <marisfrolg.net> domain name should be TRANSFERRED to the Complainant, Shenzhen Marisfrolg Fashion Co., Ltd.

Panelist: 

DATED: 27 September 2012