

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

(Beijing Office)

ADMINISTRATIVE PANEL DECISION

Case No. CN-1200611

Complainant: AVON PRODUCTS, INC.

Respondent: zhouronghua (周荣华)

Domain Name: yafang365.com

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

1. Procedural History

On 24 September 2012, the Complainant submitted its Complaint to the Beijing Office of the Asian Domain Name Dispute Resolution Centre (the “Centre”), 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 24 September 2012, the Centre confirmed the receipt of the Complaint and sent an email to the ICANN and the Registrar of the domain name in dispute, Web Commerce Communications Limited dba Webnic.cc to confirm the registration information of the disputed domain name.

On 24 September 2012, the Centre received the Registrar’s confirmation, confirming that the Respondent is listed as the registrant and providing the contact details .

On 16 October 2012, the Centre notified the Complainant that the Complaint has been confirmed and transmitted to the Respondent and the case officially commenced on 16 October 2012. On the same day, the Centre transmitted the Written Notice of the Complaint to the Respondent, which informed that the

Complainant had filed a Complaint against the Respondent over the disputed domain name and the Centre had sent the Complaint and its attachments to the Respondent through email according to the Rules and the Supplemental Rules. On the same day, the Centre notified ICANN and Registrar of the commencement of the proceedings.

On 21 November 2012, the Centre sent the Notification of No Response Received and Hearing by Default.

On 23 November 2012, the Centre notified the Proposed Panelist Ms. Xue Hong to see whether she is available to act as the Panelist in this case and if so, whether he or she is in a position to act independently and impartially between the parties.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Ms. Xue Hong, on 3 December 2012, the Centre informed the Complainant and the Respondent of the appointment of the Panelist, and transferred the case file to the Panelist on the same day.

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.

2. Factual Background

For the Complainant

The Complainant in this case is AVON PRODUCTS, INC.. The registered address is 1345, Avenue of the Americas, New York, NY10105-0196, U.S.A. The authorized representative in this case is Yongsen Dong and Hanmei Wang.

The Complainant that is primarily in the business of beauty and related products is the owner of the trademarks “雅芳” and “雅芳 YAFANG”, both of which have been registered in China on the products including cosmetic, cleanser and etc.

For the Respondent

According to the record in the Whois database, the Respondent is zhouronghua (周荣华) and the disputed domain name “yafang365.com” was registered on 20 July 2012.

3. Parties’ Contentions

The Complainant

(1) The disputed domain name is confusingly similar to the trademarks in which the Complainant has rights.

The Complainant has been in existence since 1886 under the laws of the State of New York, United States of America, and is the world’s leading direct seller of beauty and related products with a global annual turnover of \$6 billion. The Complainant markets to nearly 8 million customers in 145 countries and areas through over 4.8 million independent Sales Representatives. Its product lines include an extensive range of cosmetics, perfumery, fashion jewellery, lingerie, clothing, fashion accessories, healthy food and gifts, etc. The Complainant has gained extensive reputation and great influence world-widely, and through the many years it has been granted a number of awards and recognitions.

The Complainant entered into China market in 1990, and established its Sole Proprietorship subsidiary AVON CHINA to manufacture and sell its products. Now the Complainant operates 77 branches and over 6000 Special Shops and numerous Special Booths around China. The Complainant has registered trademarks “雅芳 YAFANG”、“雅芳” and “雅芳 AVON” in many Chinese speaking jurisdictions such as China (mainland), HongKong, Taiwan and Singapore etc. In China mainland, the Complainant has the following registered trademarks “雅芳 YAFANG”、“雅芳” and “雅芳 AVON”. In China, “雅芳 YAFANG”、“雅芳” and “雅芳 AVON” have become well-known marks to the consumers as the Complainant has made substantial use of its marks and has actively promoted its goods and services sold under these trademarks. As a result, “雅芳” and “YAFANG” have become associated with the Complainant. The total sales of the products bearing “雅芳” and “雅芳” derivatives marks for the years 2000-2004 are \$ 681,214,000. The promotional expenses for the years 2000-2004 are \$6,134,000. Both the Complainant and its marks enjoy a

substantial reputation and goodwill in connection.

Based on the great distinctiveness and high fame enjoyed by the Complainant, the Trademark Office (TMO) of China recognized the Complainant's trademark "雅芳 AVON" as well-known trademark in 2007.

By reason of the matter aforesaid, it is an unassailable fact that the Complainant has established a formidable international reputation for its "雅芳 YAFANG"、"雅芳" and "雅芳 AVON" marks.

"yafang" is part of the Complainant's mark "雅芳 YAFANG", and is the Chinese transliteration (Pinyin) of "雅芳", thus the disputed domain name "yafang365" is confusingly similar to the trademarks of "雅芳 YAFANG" and "雅芳".

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

The Respondent has neither ever registered any trademarks of "YAFANG" or "雅芳", nor has any other rights for "YAFANG" or "雅芳". Complainant never licenses Respondent to use its marks, sell its products with the marks "YAFANG" or "雅芳" or use the related pictures of the Complainant's products. The Respondent does not have any rights or legitimate interests in respect of the disputed domain name.

(3) The disputed domain name has been registered and is being used in bad faith.

As indicated above, the Complainant is an international cosmetic company with great fame around the world. Both the Complainant and its brands enjoy very good reputation. In the public's view, the Complainant is closely associated with "雅芳" and "yafang". Therefore the disputed domain name will be taken by the public as belonging to the Complaint or is affiliated to the Complainant. Apparently the Respondent is quite clear about the above facts, as the contents in its website are all about the Complainant and its brands and products. This exactly shows the Respondent's purpose of registering the disputed domain name is to mislead internet users who are not aware of the truth to access his own website, by creating such a likelihood of confusion with the complainant's

marks as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site.

The disputed domain name links to a Chinese website which is obviously mainly for consumers in China and other Chinese speaking jurisdictions. The title of the website is “雅芳 AVON, 雅芳化妆品, 雅芳专卖店, 雅芳化妆品专卖, 雅芳护肤品, 雅芳香水, 雅芳小黑裙”. There are abundance of introductions about the Complainant's “雅芳 YAFANG” and “雅芳” derivative brands and products. Specifically, there are a large number of pictures of the Complainant's products and advertisements used on the website, which have infringed the Complainant's copyright. There is not any affiliation or relation between the Complainant and Respondent, and the Complainant has never granted license to the Respondent to use its trademarks or authorized the Respondent to advertise/sell its products. However, the Respondent puts all those trademarks and information of the Complainant and its products and pictures on his website as advertisements and promotion for himself. Those unauthorized conducts cause disturbance to the business of the Complainant, disrupt the normal marketing order and license business mode of the Complainant, and unavoidably endanger the good fame of the Complainant and its trademarks.

Therefore, the disputed domain name has been registered and is being used in bad faith, and for all the foregoing reasons, the Respondent has infringed the Complainant's right.

The Complainant requests the disputed domain name “yafang365.com” be transferred to the Complainant.

The Respondent

The Respondent did not submit the Response.

4. Findings

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 Complainant registered trademarks “雅芳” and “雅芳 YAFANG” and therefore enjoys the exclusive trademark rights therein.

The disputed domain name is “yafang365.com”. Apart from the generic top-level domain suffix “.com”, the disputed domain name consists of “yafang365”, which can easily be read as “yafang” and “365”. The former part, i.e. “yafang”, is the Latinized phonetic transliteration of the Complainant’s trademark “雅芳” and directly embraces the substantive part of the Complainant’s mark “雅芳 YAFANG”. The latter part, i.e. “365”, is generic rather than distinctive.

The Panel therefore finds that the disputed domain name “yafang365.com”, as a whole, is confusingly similar to the Complainant’s registered trademarks “雅芳” and “雅芳 YAFANG”. 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 “yafang365.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 the marks “雅芳” and “雅芳 YAFANG” have acquired considerable reputation and recognition in relation to cosmetic and cleanser products through many years’ consistent use and promotion. The Complainant also provides the notarized evidence showing that the Respondent publicly offers to sell on the website “www.yafang365.com” cosmetic products marked with “雅芳” and “雅芳 YAGANG”. The website at the disputed domain name is titled as “雅芳化妆品专卖”.

The Panel finds that the Respondent registered and is using the disputed domain name “yafang365.com” to intentionally attract, for commercial gain, Internet users to the website “www.yafang365.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 cosmetic products offered 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 “yafang365.com” be transferred to the Complainant, AVON PRODUCTS, INC..

Sole Panelist: 

Dated: 17 December 2012