



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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Decision Submission

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Decision ID	DE-0700113
Case ID	HK-0700122
Disputed Domain Name	www.windbrella.com
Case Administrator	Dennis CAI
Submitted By	Matthew Laight
Participated Panelist	

Date of Decision	15-06-2007
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The Parties Information

Claimant	Windbrella Products Corp. (Address: 1916 Corporate Drive, Boynton Beach, FL 33426, USA)
Respondent	Ji YuHai (Address: RM.603, No.7 Building, QinYin Zone, No.158 ShuangLong RD, WhenZhou ZheJiang 325000, China)

Procedural History

On 21 March 2007, the Complainant submitted the Complaint to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (the “ADNRC” or 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 26 August 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”).

The Complainant has sought a one-person Panel.

On 24 March 2007, the Centre confirmed to the Complainant receipt of the Complaint and forwarded a copy to the Respondent by on-line notification on 4 April 2007. The 20 day deadline for the Respondent to respond calculated from 4 April 2007 expired on 24 April 2007. The Respondent did not file a Response with the Centre.

On 25 April 2007, the Centre contacted the Complainant by email and confirmed that no Response to the Complaint had been submitted by the Respondent to the Centre before the deadline and Centre would then proceed to appoint a Panelist for the matter. The email was copied to the Respondent but the Respondent did not submit any response.

On 22 May 2007, the Centre contacted the Complainant and Respondent by email informing them that the Centre has appointed a one-member Panel to decide the dispute. The Respondent did not submit any response.

On 22 May 2007, the Centre contacted the Panelist by email and transferred the case file to him by post. The Panelist finds that the Administrative Panel was properly constituted and appointed in accordance with the Rules and the ADNDRC Supplemental Rules.

Factual Background

For Claimant

The following facts are asserted by the Complainant in the Complaint and have not been disputed. The Panelist finds that

these facts are proved.

The Complainant has been manufacturing and selling umbrellas using the trade name “WINDBRELLA” since August 1996. Since at least 1998, the Complainant has been shipping their umbrellas to various jurisdictions, including Europe, Japan, Canada, Central America, South America, the Caribbean and Australia. All umbrellas manufactured by the Complainant since 1996 bear the trade name “WINDBRELLA” .

The Complainant owns the domain name “windbrella.net” and operates a website under this domain name providing general information about the Complainant’ s business and products and offering online shopping services.

The Complainant has submitted evidence in the form advertising materials to show that it has established a substantial reputation and goodwill in the trade name “WINDBRELLA” . The Complainant has also submitted evidence in the form of trade mark registration certificates to show that it owns various trade marks involving the word “WINDBRELLA” in Class 18 in the United States and Europe. It has also submitted trade mark registration certificates to show that it owns the trade marks “GEORGETOWN” and “SOLARTECK” in Class 18 in the United States.

The Complainant makes it clear that it is in no material way related to or connected with the Respondent.

On inspection by the Panelist on 29 May 2007, the Disputed Domain Name was found to resolve to no active website. Internet browsers are unable to find any website when the Disputed Domain Name is entered.

For Respondent

The Respondent did not respond to the Complaint or participate in these proceedings.

Parties' Contentions

Claimant

According to the Complainant, the Respondent is not a registered vendor of the Complainant’ s products. The Complainant asserts that it has no record of ever selling umbrellas for resale or any other purpose to the Respondent. Moreover, the Complainant asserts that it is an active participant in the worldwide umbrella market, it is generally aware of both competitors and third party resellers of umbrellas, and to the best of its knowledge, the Respondent is not and has never been involved in the manufacture and/or sale of umbrellas.

The Complainant asserts that the Disputed Domain Name resolves to a website which contains links using its trade marks, namely “WINDBRELLA” and “GEORGETOWN” , the latter of which is a trade mark which the Complainant uses to market a line of umbrellas named the “Georgetown Folder” which is shown as one of the links in the website.

Further, additional links in the website use the terms “Solartech Windbrella” and “Windbrella 48 Solartech” . The Complainant asserts that the term “Solartech” as shown in the link is confusingly similar to its registered trade mark “SOLARTECK” , which the Complainant uses to market another line of umbrellas, which includes a 48” fashion umbrella. The Complainant further asserts that the use of the term “Solartech” appears to be a misguided attempt to misappropriate said trade mark.

According to the Complainant, it began using in commerce the marks “WINDBRELLA” , “WINDBRELLA VENTED MESH” , “GEORGETOWN” and “SOLARTECK” in August 1996, 10 June 2002, 1997 and 20 January 2001, respectively. The Complainant asserts that it was publicly using these marks prior to the first registration date of the Disputed Domain Name of 22 November 2002.

The Complainant asserts that the only purpose of the Respondent in registering the Disputed Domain Name was to extort money from the Complainant, and that the Respondent has registered the Disputed Domain Name in bad faith. The Complainant further asserts that the Respondent is merely keeping the website up to confuse the Complainant’ s potential clients in the hope that the Complainant will pay money to the Respondent for the Disputed Domain Name.

Respondent

The Respondent did not participate in these proceedings.

Findings

The Policy requires a complainant to establish that:

- (i) the domain name which is the subject of the dispute is identical or confusingly similar to a trade mark or service mark in which the complainant has rights;
- (ii) the registered holder of the disputed domain name has no rights or legitimate interests in respect of the domain name;
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Panel is bound by the Policy to make a decision based on the information provided to the Panel during the course of the proceedings.

Identical / Confusingly Similar

The Complainant relies on its registrations and use of various trade marks involving the word “WINDBRELLA” (the “Mark”) and asserts that the Dispute Domain Name has incorporated the entirety of the Mark. The Panel is satisfied that the Complainant has met the requirements of paragraph 4(a)(i).

Rights and Legitimate Interests

Paragraph 4(c) of the Policy provides a list of three circumstances, any of which is sufficient to demonstrate that the Respondent has rights or legitimate interests in the disputed domain name:

- (i) use of, or preparations to use, the domain name in connection with a bona fide offering of goods or services;
- (ii) the fact that the Respondent has commonly been known by the domain name; and,
- (iii) legitimate non-commercial or fair use of the domain name.

The Panel is of the opinion that the Respondent has failed to establish a legitimate right or interest under paragraph 4(c) (ii) and (iii) in that there is no evidence to support a finding that the Respondent is commonly known by the domain name nor is there any evidence that the Respondent has a legitimate non-commercial or fair use of the domain name.

Furthermore, the Complainant has not authorized, licensed, endorsed or otherwise permitted the Respondent to register or use the Disputed Domain Name or to use the Complainant’s trade mark “WINDBRELLA” in relation to its business as a business name or otherwise. The Complainant has prior rights in the trade mark “WINDBRELLA” which precede the Respondent’s registration of the Disputed Domain Name. Moreover, the Respondent is not (either as an individual, business or other organization) commonly known by the Disputed Domain Name.

The Panel is also of the opinion that the Respondent has failed to establish a legitimate right or interest under paragraph 4 (c)(i), i.e. that the Respondent has failed to demonstrate the existence of the use of, or preparation to use, domain name in connection with a bona fide offering of goods or services.

Although the Panel is well aware that the principle of stare decisis does not apply in these proceedings and that the Panel is not bound by decisions reached by earlier panels, the Panel has regard to and adopts the reasoning in *Charles Schwab & Co., Inc. v. Polanski*, WIPO Case No. D2001-0959 (September 21, 2001), in so far as there was no apparent reason for the Respondent to have chosen the contested domain name other than to profit from the traffic generated by the likely initial expectation of users that it is a name associated with the Complainant and its services. This is further evidenced by the use of the Complainant’s other trade mark “GEORGETOWN” and the mark “Solartech”, which is confusingly similar to the Complainant’s trade mark “Solartek”, in links contained within the website operated by the Respondent.

Although the Disputed Domain Name resolves to a website which contains links appearing to relate to the Complainant’s umbrellas, the Respondent is using the Disputed Domain Name to provide links to other web pages for commercial gain (the “Other Web Pages”). Examples of the Other Web Pages include airline search link pages and dating pages. There is no apparent association between the Disputed Domain Name and the Respondent’s name and activities or the Other Web Pages to which the Respondent’s website links and no apparent reason why the Respondent should have chosen www.windbrella.com as a domain name. The use of a domain name which is confusingly similar to another party’s trademark, with a view to directing Internet traffic to websites in which the Respondent has a financial interest (and which have no connection with the trade mark owner), cannot constitute a "bona fide offering of goods or services", or a "legitimate non-commercial or fair use" of the Domain Name (Paragraphs 4(c)(i) and (iii) of the Policy). Such use falls within paragraph 4(b)(iv) of the Policy, as an express instance of bad faith use. Good faith is a key issue in determining whether use of a domain name is bona fide under the Policy (*World Wrestling Federation Entertainment Inc. v Rift*, WIPO Case D2000-1499 and *Ciccone v Parisi*, WIPO Case D2000-0847).

Accordingly, the Panel finds that the use of the Dispute Domain Name by the Respondent is not bona fide.

In *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. D2000-0624, the Panel stated: “Where a complainant has asserted that the respondent has no rights or legitimate interests in respect of the domain name, it is incumbent upon the respondent to come forward with concrete evidence rebutting this assertion.” In this case, the Respondent does not

bring any evidence that would demonstrate any legitimate interest or right in the domain name.

The Panel is therefore satisfied that the Complainant has met the requirements of paragraph 4(a)(ii).

Bad Faith

Paragraph 4(b) of the Policy sets out four non-exclusive circumstances any of which, if found by the Panel, shall be evidence of registration and use of a domain name in bad faith.

Although the Respondent registered the Disputed Domain Name before the Complainant's "WINDBRELLA" trade mark was registered in the United States and in the European Union, it is clear that the Complainant had built up a reputation in the WINDBRELLA mark prior to registration of the trade mark. In fact, the WINDBRELLA mark was first used in commerce to identify the source of the Complainant's goods in August 1996 and the Complainant filed its trade mark with the USPTO and registered the domain name windbrella.net in 1998. It is clear that the Respondent's use of the WINDBRELLA mark is not a coincidence and that the Respondent was well aware of the Complainant's rights in the WINDBRELLA mark at the time of registration of the Disputed Domain Name, a conclusion further evidenced by the Respondent's use of the Complainant's other trade marks in links within the Respondent's website. The Panel finds that the Respondent, in having registered a domain name which includes the Complainant's "WINDBRELLA" trade mark in its entirety, and choosing a domain name which is similar to the Complainant's existing domain name windbrella.net was using the name to funnel traffic intended for the Complainant to the Respondent's website for commercial profit, in violation of paragraph 4(b)(iv) of the Policy.

The Panel does not however consider it necessary to find any sustained confusion of users as to the Complainant's association with the sites linked with the domain name after the initial moment of calling up the pages to which the domain name resolves. In this regard, it refers to the Panel's observations in *AT&T Corp v. Yong Li*, WIPO Case No. D2002-0960 (December 11, 2002).

The Panel also finds that the inclusion in the Respondent's website of (i) links which contain the Complainant's "WINDBRELLA" trade mark; (ii) the link "Georgetown Folder", which is the exact name of one the Complainant's line of umbrellas and (iii) links which contain the name "Solartech", which is both phonetically and visually similar to the Complainant's "SOLARTECK" trade mark indicates an intention on the part of the Respondent to confuse the public into thinking that the Disputed Domain Name has a connection with the Complainant.

The registration and use of the Disputed Domain Name interferes with the Complainant's ability to control the use of its own trade marks on the Internet, including choosing whether and how domain names incorporating those trademarks resolve to particular web pages, and is therefore found by the Panel to constitute bad faith.

In conclusion, the Panel is satisfied that the Complainant has met the requirements of paragraph 4(a)(iii) in showing bad faith registration and use of the disputed domain name.

Status

www.windbrella.com Domain Name Transfer

Decision

Based on the information provided to it and on its findings of fact, the Panel concludes that the Complainant has established its case.

The Complainant asks that the Disputed Domain Name be transferred to it. The Panel orders that the Disputed Domain Name be transferred to the Complainant.

Panelist: Matthew Laight

Dated: 15 June 2007

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