



Asian Domain Name Dispute Resolution Centre

hongkong

**(Hong Kong Office)**

## **ADMINISTRATIVE PANEL DECISION**

---

<b>Case No.</b>	HK-1300538
<b>Complainant:</b>	Vivien Chan & Co
<b>Respondent:</b>	Shenzen Development
<b>Disputed Domain Name:</b>	<vivienchanandco.com>

---

### **1. The Parties and Contested Domain Name**

The Complainant is Vivien Chan & Co. of 38/F, Cosco Tower, 183 Queen's Road Central, Hong Kong.

The Respondent is Shenzen Development of 23 Sterling House, 70 Sterling House, SE18 6UR, Great Britain.

The domain name at issue is <vivienchanandco.com> (the "Domain Name"), registered by the Respondent with 1&1 Internet Limited, of 10-14 Bath Road, Aquasulis House SL1 3SA, BRK, Slough, Great Britain (the "Registrar").

### **2. Procedural History**

The Complaint was filed with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (the "Centre") on August 21, 2013.

On August 21, 2013, the Centre transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On August 22, 2013, the Registrar transmitted by email to the Centre its verification response confirming that the Respondent is the registrant and providing the contact details.

The Centre verified that the Complaint satisfied the formal requirements of the ICANN Uniform Domain Name Dispute Resolution Policy (the "Policy"), the ICANN Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the Centre's Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2(a) and 4(a), the Centre formally notified the Respondent of the Complaint, and the proceedings commenced on August 29, 2013. In accordance with the Rules, paragraph 5(a), the due date for Response was September 18, 2013.

No Response was filed and the Centre notified the parties of the Respondent's default on September 19, 2013.

The Centre appointed Alan L. Limbury as the sole panelist in this matter on September 19, 2013. The Panel finds that it was properly constituted. The Panel has informed the Centre of his impartiality and independence, to ensure compliance with the Rules, paragraph 7.

The language of the proceeding is English, being the language of the Registration Agreement.

### **3. Factual background**

The Complainant is a law firm established in 1985 by Ms. Vivien Chan in Hong Kong. It is the only law firm in Hong Kong with the name Vivien Chan & Co. In 1993 it established a representative office in Beijing.

The Domain Name was registered on January 11, 2013. It resolves to a website of "Vivien Chan & Co. Solicitors".

### **4. Parties' Contentions**

#### **A. Complainant**

The Complainant's contentions may be summarized as follows:

- i. The Domain Name is identical or confusingly similar to the Complainant's trade name, in which it has rights.
- ii. The Respondent has no rights or legitimate interests in respect of the Domain Name. The Complainant's reputation has been known since 1985, long before the registration of the Domain Name. The Respondent is not known by the name Vivien Chan and Co., has no trademark rights in that name and no business relationship with or authorization from the Complainant. Some of the information presented on the Respondent's website copies material from the Complainant's website and some details of the "attorneys" are false.
- iii. The Domain Name has been registered and is being used in bad faith. The "Our Attorneys" page of the Respondent's website exhibits information about the Complainant's senior partner, Ms. Vivien Chan and lists other persons as attorneys practising in Hong Kong who are unknown to the Complainant and who do not appear to hold practising certificates from the Law Society of Hong Kong. The "Contact Us" page shows the Complainant's Hong Kong address yet the telephone/fax number and email address are not those of the Complainant. Accordingly, in purporting to be an established law firm, the website is a sham to perpetrate fraud.
- iv. It is apparent that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant as to the source of services on the Complainant's website and thereby perpetuating fraud.
- v. The Respondent's acts, in purporting to be an official website of the Complainant with the Respondent's email contacts, may potentially lead to the Respondent giving advice in the name of the Complainant without the approval of the

Complainant. Such acts are particularly damaging to the reputation of the Complainant as a law firm and professional solicitors, if not equally damaging to the interests of the public. Hence the Domain Name has been registered primarily for the purpose of disrupting the business of a competitor.

vi. The Complainant seeks cancellation of the Domain Name.

B. Respondent

The Respondent did not respond to the Complaint.

**5. Findings**

The Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- i. the Respondent's Domain Name must be identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- ii. the Respondent has no rights or legitimate interests in respect of the Domain Name; and
- iii. the Respondent's Domain Name has been registered and is being used in bad faith.

A respondent is not obliged to participate in a proceeding under the Policy but if it fails to do so, asserted facts may be taken as true and reasonable inferences may be drawn from the information provided by the complainant. See *Reuters Limited v. Global Net 2000, Inc.*, WIPO Case No. D2000-0441. See also *Microsoft Corporation v. Freak Films Oy*, WIPO Case No. D2003-0109; *SSL INTERNATIONAL PLC V. MARK FREEMAN*, WIPO Case No. D2000-1080 and *ALTAVISTA COMPANY V. GRANDTOTAL FINANCES LIMITED et. al.*, WIPO Case No. D2000-0848.

**A) Identical / Confusingly Similar**

The Complaint annexes numerous respected publications, such as Who's Who Legal, demonstrating that the name Vivien Chan & Co. has enjoyed an international reputation as a law firm for many years. It is clear that the Complainant has common law trademark rights in that name, established through continuous use since 1985.

The Domain Name is identical to the Complainant's trademark, save for the gTLD ".com", which is inconsequential and to be disregarded. See *Magnum Piering, Inc. v. The Mudjacks and Garwood S. Wilson, Sr.*, WIPO Case No. D2000-1525; *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. D2000-0429.

The Complainant has established this element.

**B) Rights and Legitimate Interests**

The Panel finds that the VIVIEN CHAN & CO mark is distinctive and well known. The Complainant's assertions are sufficient to constitute a *prima facie* showing of absence of rights or legitimate interest in respect of the Domain Name on the part of the Respondent. The evidentiary burden therefore shifts to the Respondent to show by concrete evidence that it does have rights or legitimate interests in respect of that name: *Do The Hustle, LLC*

*v. Tropic Web*, WIPO Case No. D2000-0624 and the cases there cited. The Respondent has made no attempt to do so.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the Domain Name.

The Complainant has established this element.

### **C) Bad Faith**

The material provided by the Complainant establishes that the Respondent's website, in copying material from the Complainant's website and using the Complainant's Hong Kong office address without any authority from the Complainant, is masquerading as the website of the Complainant.

Accordingly, the conclusion is inescapable that the Respondent had the Complainant in mind when registering the Domain Name and has used the Domain Name to mislead Internet users into believing they are dealing with the Complainant.

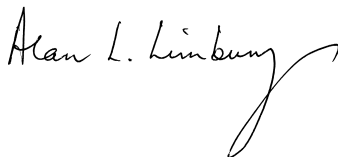
The Panel therefore finds that the Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor and that, by using the Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the affiliation of the Respondent's website and of the services offered on its website. Under paragraph 4(b) of the Policy, these circumstances are evidence of the registration and use of the Domain Name in bad faith for the purposes of paragraph 4(a)(iii) of the Policy.

The Panel therefore finds that the Domain Name was registered and is being used in bad faith.

The Complainant has established this element.

## **6. Decision**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name <vivienganandco.com> be cancelled.



---

Alan L. Limbury  
Sole Panelist

Dated: September 24, 2013