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Asian Domain Name Dispute Resolution Centre

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1600849
Complainant:	Marquee Holdings Ltd
Respondent:	1. w88 w88 2. Unknown Registrant/Holder 3. ydefacai11 ydefacai11 4. youdw88facai88 youdw88facai88
Disputed Domain Name(s):	<w88.net> <w88001.com> <w88444.co> <w88555.com> <w88005.com> <w88111.co> and <w8.cc>

1. The Parties and Contested Domain Name

The Complainant is Marquee Holdings Ltd, of Akara Bldg, 24 De Castro Street, Wickhams Cay 1, Road Town, Tortola, British Virgin Islands.

The 1st Respondent is w88 w88, of w88, w88, w88, w88, China; the 2nd Respondent is "Unkown Registrant/Holder"; the 3rd Respondent is ydefacai11 ydefacai11 of Guangdong, Guangdong, Guangdong, 510000 China; the 4th Respondent is youdw88facai88 youdw88facai88 of Guangdong, Guangdong, Guangdong, 510000 China (collectively, the "Respondents").

The domain names at issue are <w88.net>, registered by the 1st Respondent with Name.com, Inc.; <w8.cc> registered by the 2nd Respondent, <w88555.com> registered by the 3rd Respondent, <w88001.com>, <w88444.co>, <w88005.com> and <w88111.co> registered by the 4th Respondent all with GoDaddy.com LLC.

2. Procedural History

On 5 February 2016, the Complainant filed the Complaint with the Hong Kong office of the Asia Domain Name Dispute Resolution Centre (the "Centre") in accordance with the Uniform Domain Name Dispute Resolution Policy ("Policy") adopted by the Internet Cooperation for Assigned Names and Numbers ("ICANN") on 24 October 1999.

On 5 February 2016, the Centre transmitted by email to the Registrars a request for confirmation that the Disputed Domain Name will be prohibited from being transferred to a third party. On 5 February 2016, GoDaddy.com LLC confirmed by email that the Disputed Domain Names <w88001.com>, <w88444.co>, <w88555.com>, <w88005.com>, <w88111.co> and <w8.cc> had been locked.

On 29 February 2016, the Centre transmitted by email to the Complainant a Notification of Deficiencies of the Complainant, informing the Complainant that the Disputed Domain Names are registered by more than one entity and that under normal circumstances, the case should be split into four different cases. The Centre also informed that Complainant that, alternatively, pursuant to Paragraph 3(c) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), if the Complainant had reasons to believe the Disputed Domain Names were registered by the same registrant or holder, and wished to refer this issue to the Panel, the Complainant should provide the Centre with its reasons and supporting documents. On 4 March 2016, the Complainant submitted a revised Complaint.

In accordance with paragraphs 2(a) and 4(a) of the Rules, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on 8 March 2016. In accordance with paragraph 5(a) of the Rules, the due date for the Response was 28 March 2016. The Respondent did not submit any response. Accordingly, the Center notified the parties of the Respondent's default on 5 April 2016.

The Center appointed Ms Gabriela Kennedy as the Presiding Panelist, and Mr Douglas Clark and Mr Raymond Ho as Co-panelists in this matter on 20 April 2016. The Panel finds that it was properly constituted. The Panel submitted Statements of Acceptance and Declaration of Impartiality and Independence, as required by the Centre to ensure compliance with paragraph 7 of the Rules.

Upon review of the Complaint, the Panel noted that the Complainant relies on trade marks registered in the name of Powermight Technology Limited, and that the Complainant claims to be the exclusive licensee for these trade marks. No supporting documents to substantiate this had been provided. On 5 May 2016, the Panel issued the Administrative Panel Order No. 1 requesting the Complainant to provide documentation by 11 May 2016 supporting its statements that it has rights in the trade marks on which it relies. On 10 May 2016, the Complainant submitted two license agreements dated 10 December 2013 and 1 March 2014 respectively conferring on the Complainant an exclusive license to use the relevant trade marks.

3. Factual background

The Complainant is well-known in China, Vietnam, Indonesia, Cambodia, Thailand, Japan, Korea and Malaysia as a provider of online gambling and betting services through a website at <w88.com> ("Complainant's Website"). The Complainant purchased the domain name <w88.com> from a previous registrant in 2013, and launched the Complainant's Website on 31 August 2013. The Complainant is the exclusive licensee for Singapore Trade Mark No. T1319876C for "优德 W88 and device" and Singapore Trade Mark No. T40201512153Y for "W88 and device", both of which are registered in the name of Powermight Technology Limited.

Judging from the registration information of the Disputed Domain Names, the Respondents appear to be based in China. Each of the Respondents' Disputed Domain Names resolve to websites which are largely similar and make reference to the Complainant, the Complainant's interactive gaming licence and the Disputed Domain Name <w88.net> ("Respondents' Websites").

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

- i. The Complainant's Website currently attracts in excess of 50,000 users per month and achieves an estimated 200,000 page views per month. The Complainant generates yearly revenue to the tune of millions of US dollars from the Complainant's Website. Since the launch of the Complainant's Website, the Complainant has spent approximately US\$200,000 a month advertising the services provided on the Complainant's Website through other websites, forums, magazines, and at promotional events held in China, Vietnam, Indonesia, Cambodia, Thailand, Japan, Korea and Malaysia.
- ii. The Complainant believes that the Disputed Domain Names are under unified control and/or all of the Respondents are one and the same entity, for the following reasons:
 - (a) The Respondents' Websites adopt the same look and feel.
 - (b) The Respondents' Websites offer the same services.
 - (c) The Respondents' Websites utilize the same mark at the header of each website.
 - (d) The introduction pages of the Respondents' Websites (except for <w8.cc> where the Complainant could not access the introduction page, and <w88.net> which had no introduction page) state that they are operated by "Marquee Holdings Ltd (w88.net)".
 - (e) The Respondents' Websites utilise the same trade marks (which include the Trade Marks).
 - (f) The website at <w8.cc> states its main website is <w88.net>.
 - (g) The Respondents' Websites (except for <w88.net>) can be accessed through <w88.net>.
 - (h) The Respondents' Websites (except for <w8.cc> and <w88.net> where the Complainant could not access the introduction page) all display the same interactive gaming license.
- iii. The Complainant is the exclusive licensee of, and therefore has rights in, Singapore Trade Mark No. T1319876C for "优德 W88 and device" and Singapore Trade Mark No. T40201512153Y for "W88 and device" (collectively, the "Trade Marks"), both of which are trade marks that have been registered in Singapore in respect of gaming services (including sports betting).
- iv. The Disputed Domain Names (except for <w8.cc>, which however contain links to <w88.net>) contain "w88", which is a dominant part of the Trade Marks.
- v. Although the Respondents are offering services on the Respondents' Websites, such offering of services is not bona fide for the following reasons:
 - (a) The Respondents' Websites are confusingly similar to the Complainant's Website.

- (b) According to searches on the Internet Archive, the Respondents' main website at <w88.net> started to resemble the Complainant's Website on or around 12 September 2014, almost one year after the date of the launch of the Complainant's Website.
 - (c) The Respondents have stated on the Respondents' Websites that these websites are operated by the Complainant. The Respondents have also reproduced the Complainant's interactive gaming licence on the Respondents' Websites. Such activities have been conducted despite the Respondents having no relationship with the Complainant and the Respondents receiving no permission from the Complainant to use the Complainant's interactive gaming licence. This is particularly damaging to the Complainant because the Respondents' reproduction of the Complainant's interactive gaming licence will mislead unsuspecting Internet users to believe the Respondents are related to the Complainant.
 - (d) The Respondents are providing online gambling and sports betting services on the Respondents' Websites, which are services that compete with those provided by the Complainant, and moreover such services are provided under trade marks which are confusingly similar to the Trade Marks.
- vi. The Respondents do not have any trade mark registration for "w88" and are also not commonly known by the name "w88".
- vii. The following grounds support the Complainant's allegation of bad faith registration and use, and expose a premeditated attempt by the Respondents which falls within the circumstance outlined in paragraph 4(b)(iv) of the UDRP Policy:
- (a) The services provided on the Complainant's Website and the Respondents' Websites are identical.
 - (b) The Respondents have given, the impression that the services that they are offering are being provided by the Complainant when in fact they are not. This is damaging to the Complainant.
 - (c) The Respondents' main website at <w88.net> was virtually unused since its registration until after the Complainant's Website was launched. The other Disputed Domain Names were only registered after the Complainant's Website was launched.
 - (d) The domain name information for the Respondents' main website at <w88.net> was updated on 5 September 2014, which incidentally is the time when the main website started to resemble the Complainant's Website. It is likely that the Respondents acquired the domain name <w88.net> (which was at that time already registered by another party) for the purposes of improperly benefiting from the goodwill the Complainant acquired in the Complainant's Website. It is doubtful that the Respondents, would have acquired the Disputed Domain Names without knowledge of the Complainant or the Trade Marks.
 - (e) The Respondents have diverted individuals looking for the Complainant's Website to the Respondents' Websites thereby improperly benefiting from the goodwill that the Complainant acquired in the Complainant's Website. In fact, the Complainant first found out about the Respondents' Websites when the Complainant started experiencing a reduction in traffic on the Complainant's Website. After conducting some investigation, the Complainant discovered

that there was another series of websites (belonging to the Respondents) that bore striking similarities to the Complainant's Website. Since then, the Complainant's customers have also been asking the Complainant if it was related to the Respondents.

- (f) The content of the Respondents' Websites is confusingly similar to the Complainant's Website.

B. Respondent

The Respondents did not file a Response.

The fact that the Respondents have not submitted a Response does not automatically result in a decision in favour of the Complainant. However, the Respondents' failure to file a Response may result in the Panel drawing certain inferences from the Complainant's evidence, and the Panel may accept all reasonable and supported allegations and inferences flowing from the Complainant's submissions as true (see *Entertainment Shopping AG v. Nischal Soni, Sonik Technologies*, WIPO Case No. D2009-1437, and *Charles Jourdan Holding AG v. AAIM*, WIPO Case No. D2000 0403).

5. Findings

The Panel accepts the Complainant's contentions in paragraph A.ii. above that the Disputed Domain Names are under the control of the same entity. The Panel, therefore, determines that the proceedings may be consolidated into one set of proceedings against all the Respondents.

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

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

A) Identical / Confusingly Similar

In view of the evidence submitted to the Panel by the Complainant on 10 May 2016 namely, the license agreement dated 10 December 2013, the Panel is satisfied that the Complainant is the exclusive licensee for the Trade Marks and therefore has rights in the Trade Marks.

The Trade Marks comprise of "w88" and/or "优德" plus a device.

The Disputed Domain Name <w88.net> comprises of "w88", which is identical to "w88" in the Trade Marks.

The Disputed Domain Names <w88001.com>, <w88444.co>, <w88555.com>, <w88005.com> and <w88111.co> comprise of "w88" followed by a generic 3-digit number.

The Disputed Domain Name <w8.cc> comprises of "w8", which is confusingly similar to "w88" in the Trade Marks.

As for the generic Top-Level Domains ("gTLD") ".net", ".com" and the country code Top-Level Domains ("ccTLD") ".co" and ".cc", it is well established that in making an inquiry under the Policy as to whether a domain name is identical or confusingly similar to a trade mark, the gTLD / ccTLD suffixes may be disregarded. See *Rohde & Schwarz GmbH & Co. KG v. Pertshire Marketing, Ltd.*, WIPO Case No. D2006-0762.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B) Rights and Legitimate Interests

As stated in paragraph 2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition ("WIPO Overview 2.0"), once a complainant establishes a *prima facie* case in respect of the lack of rights or legitimate interests of a respondent, the respondent then carries the burden of demonstrating that it has rights or legitimate interests in the disputed domain name. Where the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Respondents are not known by the name "w88". Whilst the Respondents appear to be operating the Respondents' Websites under the name "W88.net", the Respondents are also trying to pass off their websites as being operated by the Complainant, which cannot be considered a legitimate non-commercial or fair use of the Disputed Domain Names. The Panel finds that the Complainant has made a *prima facie* case here. It is therefore for the Respondent to show that this is not the case.

The Respondents have not filed a response.

The Panel therefore finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C) Bad Faith

The Respondents registered the Disputed Domain Names <w88555.com> in August 2014 and <w88001.com>, <w88444.co>, <w88005.com> and <w88111.co> in April 2015, over a year after the launch of the Complainant's Website in August 2013.

As for the Disputed Domain Name <w88.net>, the Panel notes the Complainant's contentions in paragraph A.vii.(d) above that the Respondents likely acquired the registration of <w88.net> around 5 September 2014. Pursuant to paragraph 4.5 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition ("WIPO Overview 2.0"), the Panel reviewed the Whois history of <w88.net> and confirmed that the registration of <w88.net> was indeed updated on 5 September 2014. However, the Panel further noted that the registration of <w88.net> was further updated on 5 February 2016 with the information of the current registrant, "w88

w88" of the Respondents. The Panel takes the view that where after the creation date of a domain name its registration changes hands, the relevant time for the purpose of determining whether the domain name was registered in bad faith by the current registrant, should be the time when the current registrant took possession of the domain name. See *HSBC Finance Corporation v. Clear Blue Sky Inc. and Domain Manager*, WIPO Case No. D2007-0062 and *Ideenhaus Kommunikationsagentur GmbH v. Ideenhaus GmbH* WIPO Case No. D2004-0016. Accordingly, the Panel considers that <w88.net> was registered by the Respondents on 5 February 2016, two and a half years after the launch of the Complainant's Website in August 2013.


The Panel has also reviewed the Whois history of <w8.cc> and notes that the registration of <w8.cc> was last updated on 11 November 2014 with details of the registration concealed. The Panel considers that <w8.cc> was registered by the Respondents on 11 November 2014, over a year after the launch of the Complainant's Website in August 2013.

Taking into account the timing of the Respondents' registrations of the Disputed Domain Names, the services offered on the Respondents' Websites, the reference to the Complainant, the reproduction of the Complainant's interactive gaming licence on the Respondents' Websites and the overall design of the Respondents' Websites, the Panel takes the view that the Respondents clearly knew about the Complainant and the Complainant's Website at the time they registered the Disputed Domain Names. For the same reasons, the Panel considers that the Respondents registered the Disputed Domain Names with the intention of using them to resolve to websites that would mislead Internet users into believing that the Respondents' Websites are operated by the Complainant, thereby disrupting the business of the Complainant and/or attracting Internet users to the Respondents' Websites for commercial gain.

The Panel finds that the Respondent registered and has been using the Disputed Domain Names in bad faith, and that paragraph 4(a)(iii) of the Policy has been satisfied.

6. Decision

For all the foregoing reasons, in accordance with paragraph 4(i) of the Policy and paragraph 15 of the Rules, the Panel orders that the Disputed Domain Names be transferred to the Complainant.



Gabriela Kennedy
Presiding Panelist



Douglas Clark
Co-Panelist



Raymond Ho
Co-Panelist

Dated: 18 May 2016