



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1500695
Complainant:	HABALAN MED & BEAUTY CO., LTD.
Respondent:	Jang Cheol
Disputed Domain Name(s):	<poyasm.com>

1. The Parties and Contested Domain Name

The Complainant is HABALAN MED & BEAUTY CO., LTD., of #907, 219, Gasan Digital 1-ro Geumcheon-gu, Seoul, Korea.

The Respondent is Jang Cheol, of unknown address.

The domain name at issue is poyasm.com, which is currently registered by Respondent with GABIA, INC, of unknown address.

2. Procedural History and Ruling on the Language of the Procedure

2.1 Procedural History

The Complaint was filed with the Hong Kong Office of the Asian Domain Name Dispute Resolution Center ("ADNDRC")["Center"] on January 26, 2015, seeking for a transfer of the domain name in dispute.

On January 26, 2015, the Center sent an email asking for the detailed data of the registrant or the Respondent to the registration organization, and the registration organization, on January 27, 2015, responded with the detailed data checked, including checking over the registrant.

On February 10, 2015, the Center examined whether the Complaint meets formal requirements set out in the Uniform Domain Name Dispute Resolution Policy (the "Policy"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the ADNDRC Supplemental Rules (the "Supplemental Rules").

On February 11, 2015, the Center sent to the Respondent the "Complaint Transmission Cover" along with the Complaint via email as well as via registered mail. The Center informed the Respondent of a due date, March 3, 2015, for the submission of its Response.

On March 4, 2015, the Center confirmed that the Respondent didn't submit the Response Form.

On March 5, 2015, the Center appointed Mr. Doo-Hyung Do to the Sole Panelist of this case, and with the consent for the appointment, impartiality and independence declared and confirmed by the panelist, the Center, in accordance with paragraph 7 of the Rules, organized the Panel of this case in a legitimate way.

2.2 Ruling on the Language of the Procedure

Paragraph 11(a) of the Rules provides that 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.

Having regard to the following circumstances of the administrative proceeding, the Panel, also considering the neutrality of using the language which is not a native language of either the Complainant or the Respondent, determines that the language of the decision shall be English:

- i. The Registrar has confirmed that the Registration Agreement is in Korean.
- ii. The Complaint submitted to the Center is written in Chinese with its Korean translation attached, which appears not to be an exact representation of its Chinese original.
- iii. The languages used in the evidence are Chinese, Korean and English.
- iv. The Panel has a good command of the above three languages, and thus have no difficulty in understanding the Complainant's submission.
- v. The exchange of emails between the Center and Mr. Eric Kim, who appears to represent the interests of the Respondent, was conducted in English.

3. Factual Background

The Complainant is a corporation established in Seoul, Korean and is engaged in the manufacture and sale of hot air therapeutic apparatus, esthetic massage apparatus, massage apparatus and other related products under the trademarks "poya", "poyaSM", "poyaAGA" and "pobling".

The Complainant has its website at www.habalan.com, from which the Complainant advertises its products and solicits orders from Korea as well as other countries.

The Complainant has its trademark "poya" registered in China (June 21, 2012), trademark "poya" registered in Korea (October 4, 2011), trademark "poyaSM", for which the application for trademark registration was filed in China on September 3, 2013 and preliminarily approved by the Chinese Trademark Office as of September 27, 2013.

The Respondent registered the disputed domain name on September 19, 2013.

The website of the disputed domain name, when accessed by the Complainant on January 9, 2015, showed that the website was being operated by a company named HARU and its CEO stated greeting remarks for the customers and further introduced various products carrying trademarks such as "poya", "poyaSM" and "poyaAGA" and even displayed an announcement

alerting customers to the counterfeit products. The Panel accessed the disputed domain name on April 10, 2015 and found that the website of the disputed domain name is no longer in service.

On March 4, 2015, Mr. Eric Kim of HARU LH sent an email to the Center, stating that HARU LH intends to transfer the disputed domain name to the Complainant on the condition that the latter gives the domain fee to HARU LH, which is deemed to be the same entity as HARU in light of the similarity of the names as well as the identical telephone number listed in both the above website and the above email.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

- i. The Complainant has an exclusive right for the trademark "poya", which was registered in Korea on October 4, 2011 and in China on June 21, 2012 for the 10 designated products such as hot air therapeutic apparatus, esthetic massage apparatus, massage apparatus, medical apparatus and instruments, diagnostic apparatus for medical purposes, sterilizing and disinfecting instruments, galvanic belts for medical purposes (massage apparatus), skin massage apparatus (massage apparatus) and high frequency skin massage apparatus (massage apparatus).
- ii. The disputed domain name contains "poya" and merely adds "sm" at the end and "poyaSM" is a trademark for one line of the Complainant's "poya" products, which include "poyaAGA" products as well.
- iii. The products being introduced and sold at the website of the disputed domain name and bearing trademarks "poya" and "poyaAGA" are identical to those products currently manufactured and sold by the Complainant.
- iv. The Respondent has neither obtained any license from the Complainant for the use of the trademarks "poya", "poyaSM", "poyaAGA" and other related trademarks, nor any right for selling and distributing products bearing the above trademarks. However, the Respondent falsely claimed at website of the disputed domain name that the Respondent is the only legitimate distributor of the products bearing the above trademarks. All the products sold at the above website are counterfeits and the Complainant incurred a lot of damages due to the illegal sales by the Respondent of counterfeit "poya" products.
- v. The Complainant's products bearing trademark "poya" and other related trademarks containing "poya" are well known in China, Korea and Japan and the Complainant has spent a lot of money for the advertisement of these products in the above countries.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

5. Findings

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

Though the trademark "poya" registered in the name of the Complainant in China and Korea is not identical to the portion of "poyasm" of the disputed domain name, the latter can be reasonably divided into, and recognized as a combination of, two parts of "poya" and "sm", and since "poya" is common to both the above trademark and the disputed domain name, the latter is deemed to be very similar to the Complainant's trademark.

On the other hand, the disputed domain name can be seen to be very similar to the trademark "poyaSM" in which the Complainant has legitimate right since the Chinese Trademark Office preliminarily approved the trademark application for this trademark on September 27, 2013, which was filed in China on September 3, 2013.

The difference of whether capital letters were used between the Complainant's trademark "poyaSM" and "poyasm", the distinctive element of the disputed domain name, is negligible and thus irrelevant when determining whether a domain name is confusingly similar to a registered trademark.

Furthermore, the addition of a generic top-level domain extension such as ".com" is irrelevant when determining whether a domain name is confusingly similar to a registered trademark.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks "poya" and "poyaSM", and that the Complainant has satisfied the first element of the Policy.

B) Rights and Legitimate Interests

The Policy provides, at Paragraph 4(c), for some examples without limitations of how a respondent can demonstrate a right or legitimate interest in a domain name:

- i. Before receiving any notice of the dispute, the respondent used or made demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services; or
- ii. The respondent has been commonly known by the domain name; or
- iii. The respondent is 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 at issue.

Based on the Respondent's default and on the *prima facie* evidence in the Complaint, the Panel finds that the above circumstances are not present in this particular case and that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant has not licensed nor authorized the use of its trademark to the Respondent, and there is no indication that the Respondent is commonly known by the disputed domain name.

The present record provides no evidence to demonstrate the Respondent's intent to use or to make demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services.

Consequently, the Panel is satisfied that the Respondent has no rights or legitimate interests in the disputed domain name, and the Complainant has proven the second element of the Policy.

C) Bad Faith

The Policy states, at Paragraph 4(b), that the following circumstances in particular, but without limitation, shall be evidence of registration and use of a domain name in bad faith:

i. Circumstances indicating that the respondent has registered or 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 documented out-of-pocket costs directly related to the domain name; or

ii. The respondent 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 the respondent has engaged in a pattern of such conduct; or

iii. The respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

iv. By using the domain name, the respondent has intentionally attempted to attract, for commercial gain, internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location.

The webpage published at the disputed domain name before its service was terminated by the Respondent after the beginning of this procedure clearly shows 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's mark as to the source of the "poya" and other related products on its website.

Therefore, in doing so, the Respondent:

Disrupts the business of the Complainant by confusing the visiting customers into thinking that the Complainant's products are commercially dealt with only at the website of the disputed domain name; and

Deprives the Complainant from selling its products to prospective customers who are clearly looking for the genuine products of the Complainant.

Accordingly, the Panel finds that the Complainant has proved that the disputed domain name was registered and is being used in bad faith, satisfying the third element of the Policy.

6. Decision

For the foregoing reasons, in accordance with the paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <poyasm.com> be transferred to the Complainant.

Do, Doo-Hyung
Sole Panelist

Date: April 10, 2015