



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1400580
Complainant:	DRACCO COMPANY LTD
Respondent:	WHOISGUARD
Disputed Domain Name(s):	angelove.com

1. The Parties and Contested Domain Name

The Complainant is DRACCO COMPANY LTD of Unit 1201-05, 12/F Stelux House, No 698 Prince Edward Road East, Kowloon, Hong Kong.

The Respondent is WHOISGUARD, of 11400 W. Olympic Blvd. Suite 2000, Los Angeles, CA, USA.

The domain name at issue is angelove.com, registered by Respondent with ENOM of address N/A.

2. Procedural History

On February 24, 2014, the Complainant made complaint to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (the "ADNDRC Hong Kong Office") pursuant to the Uniform Policy for Domain Name Dispute Resolution (the "Policy") approved by the Internet Corporation for Assigned Names and Numbers ("ICANN"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") and Asian Domain Name Dispute Resolution Centre Supplemental Rules for Uniform Domain Name

Dispute Resolution Policy (the “ADNDRC Supplemental Rules”). The ADNDRC Hong Kong Office asked the Registrar for the confirmation of the registration information with regard to the disputed domain name on the same day.

On February 25, 2014, the ADNDRC Hong Kong Office received from the Registrar the registration confirmation in connection to the disputed domain name, without further detail of the real registrant of the disputed domain name.

On March 7, 2014, the ADNDRC Hong Kong Office notified the Complainant that the Complaint has been confirmed and transmitted to the Respondent and the case officially commenced, and transmitted the notice of the Complaint to the Respondent informing that the Complainant had filed a Complaint against the registration of the disputed domain name and the ADNDRC Hong Kong Office had sent the Complaint and its attachments through email according to the Rules and the ADNDRC Supplemental Rules. On the same day, the ADNDRC Hong Kong Office notified ICANN and Registrar of the commencement of the proceedings.

The ADNDRC Hong Kong Office had received no Response by the Respondent until March 28, 2014, and notified the parties that no Response had been received yet, and the case would be heard by default.

Having received a Declaration of Independency and Impartiality and a Statement of Acceptance from Mr. Chi Shaojie, the ADNDRC Hong Kong Office informed the disputing parties of the Confirmation of the Appointment of the Sole Panelist on April 3, 2014.

The sole panelist finds that the Panel was properly constituted in accordance with the Rules and the ADNDRC Supplemental Rules.

The procedural language 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 conformity with the language used by the Complainant in the submitted Complaint.

After having gone through the documents submitted by the Complainant, the Panel issued the Procedural Order No. 1, inviting parties to supplement further exhibits and making comments on the supplemental evidence, if any, provided by the other party. The Complainant submitted supplemental documents, and ADNDRC Hong Kong Office transmitted the papers to the Respondent asking for further comments. The Respondent has made no response to the Office.

3. Factual background

The Complainant DRACCO COMPANY LTD of Unit 1201-05, 12/F Stelux House, No 698 Prince Edward Road East, Kowloon, Hong Kong found that the dispute domain name angelove.com was improperly registered by the Respondent WHOISGUARD, of 11400 W. Olympic Blvd. Suite 2000, Los Angeles, CA, USA., and submitted the Complaint against the registration, requiring the Panel to make a decision on the transfer of the disputed domain name.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

The Complainant, Dracco Company Limited, is a well-established manufacturer of merchandise to kids and teenagers, such as toys, stationery, accessories and candy etc., and furthermore its affiliated company's license hundreds of products to licensees across the world. And it is also the designer of on-line games and apps with offices in Hong Kong, Macau, Spain, UK, The Netherlands, Germany, USA and Denmark. The Complainant's products and on-line games are widely marketed in Europe, Russia, Australia, New Zealand, Latin and North America and other markets. The Complainant, through its subsidiaries and/or affiliated companies such as Home Focus Development Ltd (BVI) registered numerous trademarks all over the world.

The Complainant also registered the Disputed Domain Name with Godaddy.com for a number of years immediately before the hijacking took place on February 7, 2014 (US time February 6, 2014).

The Disputed Domain Name, previously owned by the Complainant, contains non-generic trademarks, trade name and/or product name of the Complainant. On Feb 7, 2014 (US time Feb 6, 2014), the Disputed Domain Name were transferred out from GoDaddy.com to Enom Inc. by unknown hackers and the information of the registrant has since been changed to the current Respondent as a result. On February 7, 2014, GoDaddy.com informed the staff of the Complaint by email (see Annexure) but the email account was hacked at the same time. When the Complainant found out about the name server has been changed 3 days later, it immediately reported to GoDaddy.com and the Hong Kong Police.

There is no dispute that the Disputed Domain Name are almost identical or confusingly similar to the registered Trademarks, tradename (protected under Paris Convention) and/or product name (unregistered rights) of the Complainant. Some of the websites of the Complainant were under construction before they were hacked and transferred away.

Section 1.4 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition ("WIPO Overview 2.0") recognized both registered rights and unregistered rights of the Complainant. The facts that the hacker chose to transfer away the Disputed Domain Name and 13 other domain names out of a large portfolio of domain names registered by the Complainant is a proof that the hacker and the Respondent is well aware of the goodwill and market value in these domain names.

The Disputed Domain Name represents the trademarks of the Complainant. The Respondent is not entitled to or otherwise authorized or licensed by the Complainant in whatsoever means to use the Trademark in any goods or services. The Respondent will (not be able to demonstrate that its conduct satisfies any of the conditions in paragraph 4(c) of the Policy. Specifically,

- i) the Respondent is not using and has not demonstrated an intent to use the Disputed Domain Name or name corresponding to the Disputed Domain Name in connection with a bona fide offering of goods or services in the course of trade;
- (ii) the Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name, without intent to misleadingly divert consumers or to tarnish the Complainant's marks for commercial gain; and
- (iii) by acquiring and/or re-registering the Disputed Domain Name on February 18, 2014, the Respondent is alleged to have breached, s17 obtaining property by deception and/or s 24 handling stolen goods of Theft Ordinance (Cap 210), Laws of Hong Kong ¹.

Therefore, the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

As set forth below, the Respondent's bad faith is established under paragraphs 4(b)(iii)

and 4(b)(iv) of the Policy, as well as by the other circumstances surrounding the Respondent's registration and use of the Disputed Domain Name.

The Respondent has deliberately registered the Disputed Domain Name with an intention of disrupting the business of the Respondent by changing the DNS of the domain name. The sudden disruption has cost the Complainant severe loss of business and revenue from operating online games. As a result of the hacking, the email servers could not receive any incoming email until this case is adjudicated.

The Respondent, which appears to be a network consultant company and holds about 270 domain names, should be well aware of the previous ownership of this domain name at the time of re-registration by simply conducting WHOIS searches. Alternatively, before the Respondent acquired or transferred the Disputed Domain Name, he should have known or checked the relevant WHOIS records for previous owners but he chose to turn a blind eye. Section 3.7 of WIPO Overview 2.0 provides that transfer of a domain name amounts to new registration². Therefore, the relevant period of time in determining whether the Registrant has registered in bad faith is when this domain name was transferred in February 2014. There is no legitimate reason for the Respondent to register the Disputed Domain Name other than for the purpose of re-selling or disrupting the business of the Complainant.

Further, the Disputed Domain Name is now parked without active use. A few of the hijacked domain names such as <dinoz.com> and <universalstrends.com> have been posted for sale. There are overwhelming WIPO cases stating that no active use or parking can be evidence of bad faith.

On April 10, 2014, the Complainant emailed to ADNDRC Hong Kong Office further statement and proves of the relation between Home Focus Development Limited and the Complainant, and the intangible property license signed between the two entities.

All in all, the Complainant argues that all the three conditions set forth under the Policy have been met and requests that the Disputed Domain Name be transferred to the Complainant.

B. Respondent

The Respondent makes no response in any form against any of the allegations and claims by the Complainant in the whole course of the proceeding.

5. Findings

The Unique feature of the current dispute is that the Complainant alleges that the disputed domain name was registered by the Complainant or its affiliated entities well before the registration in the name of the Respondent who is supposed to be turned into the registrant of the disputed domain name by way of hijacking. Legally speaking, if the Complainant bases itself on the grounding alone, the legal relations formed on the alleged incident should be sort of civil tort, and the Panel shall have no jurisdiction over that sort of dispute. The Complainant may resort to civil remedy by way of judicial proceedings. Thus, the fundamental mentality of the Panel to make the judgment on the current dispute should not deviate from the traditional one for the coming into being of the decision on ordinary domain name dispute.

It is significant for the parties to understand the legal nature of the current proceeding that is totally different from that of arbitration or litigation. Though the proceeding is known as administrative proceeding, it is really NOT the proceeding by a government agency. The jurisdiction by the Panel over the current dispute on the domain name registered by the Respondent comes from the authorization by the organization for the administration of domain name registration and maintenance. Anyone intends to register a domain name needs to sign a registration agreement with the administrative authority which makes no substantive examination on the registration application, but stipulates in the registration agreement that whenever a claim against the registration is submitted, the registrant is obliged to be a procedural party which has rights to make arguments against the claim, but subject to a decision made by a Panel constituted in conformity with the stipulated procedural rules. As it is, the current proceeding is a part of the whole proceeding for the registration and maintenance of domain names. As such, the fundamental feature of the Panel's making a judgment on the entitlement to the disputed domain name is to decide on a core issue of which party should be the rightful holder of the disputed domain name, so as to be in conformity with the basic requirements set forth under the Policy and to help

keep the good operative order for the running of the internet, and to be beneficiary to the protection of common interests of the web-users.

The indispensable pre-condition for the Panel to find out the disputing facts is to base itself upon the allegations and defenses by the parties, which does not exist in the judgment of present dispute due to the lack of any defense by the Respondent. The email exchanges between ADNDRC Hong Kong Office and the revealed Registrar show that the real name of registrant can hardly be found out, which fact discloses the queer side of the registration. In view of this, what the Panel is going to do for the fact-finding is to base itself upon the submissions and exhibits by the Complainant alone. Unless the Panel has a reason to reject any submission or evidence by the Complainant in view of the panelist's professional sense to make judgment and personal experiences in making decisions on domain name disputes, the facts are to be held by the adoption of the Complainant's submitted evidences.

One of the prerequisites for the Respondent to register the disputed domain name through the Registrar is to accept the Policy as the binding regulations for the registration. As mentioned, the Policy applies to this dispute as the substantive criteria for making the judgment of whether the Complainant's request is to be sustained or rejected. As stipulated in the Paragraph 4(a) of the Policy, when claiming back a domain name registered by the Respondent, the Complainant must prove each and all of the following:

- i. Respondent's domain name must be 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.

Based itself upon the stipulations under the Policy, what the Panel needs to do is to find out whether each AND all of the three basic facts can be attested by the Complainant. If the answer is yes, the Panel makes a decision in the Complainant's favor in accordance with the relevant stipulations under the Policy, the Rules and the ADNDRC Supplemental Rules. If not, the claim by the Complainant shall be rejected.

A) Identical / Confusingly Similar

Pursuant to Paragraph 4(a) (i) of the Policy, the Complainant must prove that the domain name at issue is identical OR confusingly similar to a trademark or service mark to which it is entitled. As stipulated in the Policy, the Complainant needs to prove either the IDENTITY or the CONFUSING SIMILARITY. To meet the requirement, the Complainant submits copies of trademark registration certificates, intending to prove that it is entitled to the trademarks “ANGELOVE” which was registered earlier than the registration of the disputed domain name. The Panel examines all the relevant exhibits by the Complainant in relation to the entitlement to the registered trademark “ANGELOVE” etc., and finds no reason for NOT holding the Complainant-stated fact, in particular, under the circumstance of no objection by the Respondent to whatever the Complainant states.

The Complainant submits relevant exhibits proving that the trademark in word of AGELOVE was registered in the European Community and some other places prior to the date of the disputed domain name being owned by the Respondent. Obviously, the identifying part of the disputed domain name “angelove” is identical to the trademark. However, the Panel finds that the Complainant’s name does not appear on the certificates of trademark registration, thus the accompanying fact-finding is whether the Complainant can prove its entitlement to the registered trademark ANGELOVE.

The Complainant’s exhibit No. 11 reveals that the Complainant and the owner of the registered trademark ANGELOVE are affiliated entities, which may underline the licensing deal between the two as shown in the exhibit No.12 by the Complainant. The Panel notices that the license agreement does not bear the word trademark ANGELOVE, but mentions that “all the property of the licensor including names, copyright, merchandising and other ancillary property rights related thereto.” Obviously, the scope of the licensed subject matter under the agreement is much wider than any single intellectual property item, e.g. patent, trademark or copyright, etc. Generally, the word “MERCHANDISING” relates to the use of relevant trademark. On the other hand, the contractual parties have the priority in the interpretation of the meaning of any term and condition under the contract, unless discrepancy between the parties arises. Up to the date of this decision, the Panel does not see any contradictory evidence to the contrary of the holding of the Complainant’s entitlement to the trademark ANGELOVE.

The exhibit No. 12 by the Complainant shows that the term of the license should be in conformity with the stipulation in the License Agreement, which says, “This agreement shall continue to be valid until any one party has given the other party one month’s notice in writing for termination.” No evidence shows that the license has been terminated. Hence, the Panel holds that the Complainant is entitled to the trademark ANGELOVE and in a proper position to claim against the Respondent for the disputed domain name.

Based on the above deduction of reasoning, the Panel holds that the Complainant meets the first requirement for the transfer of the disputed domain name.

B) Rights and Legitimate Interests

Pursuant to Paragraph 4(a)(ii), the second requirement for the Complainant to meet in terms of the request for the transfer of the disputed domain name is to prove that the Respondent does not have rights to or legitimate interests in the domain name at issue. Reading the expression of the stipulation, it seems to be the Complainant who shall take the burden of proof to establish the fact that the Respondent does NOT have rights or legitimate interests in connection to the disputed domain name. Since the Complainant claims that it is entitled to the disputed domain name and the Respondent has nothing to do with it except having hi-jacked it in bad faith, it can hardly submit any evidence to prove something it does not think existing. Probably for this reason, the Panel pays more attention to whatever the Respondent argues with regard to the rights or legitimate interests in respect to the disputed domain name. The Policy gives chances to the Respondent to make argument on this issue by stipulating several could-be circumstances in the relevant article of the Policy. Unfortunately, the Respondent makes no argument to say it has certain right or legitimate interest in regard to the domain name at issue. Under the circumstances, how could the Panel hold that it is the Respondent who is entitled to the disputed domain name?

On the other side, the Complainant submitted exhibits to certify that the identifying part of the disputed domain name was innovated and created by the Complainant and its affiliated entities; and not at least lawful relation with regard to the disputed domain name exists between the two disputing parties, or between the Respondent and some other party who is entitled to the any right in the dispute. Based upon comprehensive analyses of all the

relevant evidences by the Complainant, the Panel has reason to ascertain that it is none other than the Complainant who has rights and legitimate interests in connection to the disputed domain name; and further holds that the Complainant meets the second requirement set forth under Paragraph 4(a)(ii).

C) Bad Faith

The Complainant has yet to establish the fact of bad faith on the part of the Respondent as set forth in the Paragraph 4(a)(iii) of the Policy. Under the Paragraph 4(b) of the Policy, the following circumstances, in particular, shall be considered evidence of the registration and use of a domain name in bad faith: “..... (ii)you have 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 you have engaged in a pattern of such conduct;” The Complainant claims, “the Respondent is not using and has not demonstrated an intent to use the Disputed Domain Name or name corresponding to the Disputed Domain Name in connection with a bona fide offering of goods or services in the course of trade.” No evidence proves that the Respondent has other intent than the one said in the Paragraph 4(b) of the Policy.

Furthermore, the logical thinking of the Panel is when a party registers a domain name which is NOT created by the party with its distinctive feature known in the real world, but identical or confusingly similar to a mark or logo or sign to which the other party has rights and legitimate interests with high market value, the intention of the registration is clear, namely taking illegal advantages by causing confusion to the consumers or preventing the lawful owner to register the same domain name for its business activities. On the other hand, if the registrant is NOT intentionally to take others’ advantage, it should create a distinctive domain name to make web-users easily tell the name from others. What is more, if someone registers a domain name in bad faith, it is hard for him to make use of the registered subject matter in good-faith, otherwise the ill-intention of the registrant would not be realized. The conduct of “register only” may be regarded as sort of passive form of ill-use. That seems to be underlying the stipulation under Item (ii) of Paragraph 4(b) of the Policy. This fundamental logic further supports the holding of bad-faith fact in the foregoing paragraph. In view of this, the Panel holds that the Complainant meets the requirement set forth under Paragraph 4(a)(iii) of the Policy.

Based upon all the above findings, the Panel comes to final conclusion that the Complaint fulfills each AND all of the conditions provided in Paragraph 4(a)(i)(ii) (iii) of the Policy.

6. Decision

In light of all the foregoing findings and in accordance with Paragraphs 4(a), 8(a) of the Policy and 5(e) of the Rules, the Panel holds:

- a) That the disputed domain name “angelove.com” is identical to the trademark “ANGELOVE” to which the Complainant has rights and legitimate interests; and
- b) That the Respondent has no rights to or legitimate interests in the disputed domain name; and
- c) That the domain name was registered and used in bad faith.

As such, the Panel rules that the disputed domain name “angelove.com” shall be transferred to the Complainant DRACCO COMPANY LTD.

The Sole Panelist:

A handwritten signature in black ink, appearing to be 'R. J. ...', written over a horizontal line.

Dated: April 15, 2014