



WIPO Arbitration and Mediation Center

ADMINISTRATIVE PANEL DECISION

Hong Kong Trade Development Council v. Huang Yun

Case No. D2001-0100

1. The Parties

The Complainant is Hong Kong Trade Development Council, a statutory body incorporated in Hong Kong, having a registered office at 38/F, Office Tower, Convention Plaza, 1 Harbour Road, Wanchai, Hong Kong SAR of P. R. China.

The Respondent is a physical person Ms. Huang Yun with her contacting address at 9#401 No.3 Garden Villiage, Zhang Jis Gang, 215600, Jiang Su, China.

2. The Domain Name and Registrar

The domain name in dispute is [香港貿易發展局.com] (BQ--3CMZS3RPRS7WME3WPROFKXCA.COM)], which is registered with the registrar Internet Names Worldwide of Melbourne, Level 2, 120 King Street, Melbourne Victoria 3000, Australia.

3. Procedural History

The WIPO Arbitration and Mediation Center (the "Center") received the Complaint of the Complainant on February 5, 2001 by email and the amended Complaint by email on February 27, 2001 and in hard copy on March 2, 2001.

The Center sent to the Registrar a request for verification of registration data on February 27, 2001. On February 27 and 28, 2001, the Registrar confirmed that the domain name in dispute is registered with Internet Names Worldwide and the Respondent is the current registrant of the domain name.

The Center completed the formal Requirements Compliance Checklist on March 6, 2001.

On March 8, 2001, the Center sent to the Respondent the Notification of Complaint and Commencement of the Administrative Proceeding. This notification was sent by the methods required under paragraph 2(a) of the Rules. The formal date of the

commencement of this administrative proceeding is March 8, 2001.

On March 26, 2001, the Center received a fax letter from Ms. Huang Yun (Respondent), and sent to the Respondent the Center's acknowledgement of receipt of the fax letter on March 27, 2001.

On March 28, 2001, the Center received the email from Complainant that he has not received the fax letter sent by Respondent. The Center gave its reply to Complainant in the same day.

On March 29, 2001, the Center sent to the Respondent Notification of Respondent's Default.

On April 19, 2001, after receiving a completed and signed Statement of Acceptance and Declaration of Impartiality and Independence, the Center notified the parties of the appointment of a single-member panel consisting of Mr. Li Yong and informed the parties that a decision would be issued by May 2, 2001 absent exceptional circumstances.

4. Factual Background

The Complainant is a statutory body incorporated in Hong Kong since 1966 under the Hong Kong Trade Development Council Ordinance (Annex 3 of the Complaint), and its main function is to promote, assist and develop Hong Kong's overseas trade, with particular reference to exports.

The Chinese character of the disputed domain name is the official Chinese name of the Complainant.

The domain name [<香港貿易發展局.com> (BQ--3CMZS3RPRS7WME3WPROFKXCA.COM)] was created on November 30, 2000, according to the search result made by the Complainant shown in the Annex 1 of the Complaint.

The domain name at issue has not been put into use up to now, and there is currently no content located at the www.香港貿易發展局.com web site.

5. Parties' Contentions

The Complainant contends that Hong Kong Trade Development Council is a statutory body incorporated in Hong Kong since 1966 with its mission to create and facilitate opportunities in international trade for Hong Kong companies. The Chinese character of the disputed domain name is the official Chinese name of the Council

The Complainant believes that the domain name is a unique service and reflects the identity and functions of its organization. Other organization, which has registered the Chinese domain name same as their official Chinese name, would project a wrong impression that they are the Council or represent the Council, both of which are not true.

As such, the Complainant contends that they have good reasons to believe that the current holder of the domain name at issue has no rights or legitimate interests in respect to the domain name.

The Complainant requests the Administrative Panel issue a decision that the contested domain name be transferred to the Complainant.

The Respondent failed to submit formal Response according to paragraph 5 (a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the Policy), but sent a fax letter to the Center on March 26, 2001. In the letter, the Respondent argued that the registration of the disputed domain name was in compliance with the relevant on-line registration regulations as well as the first-registration principle envisaged by NIS. The Respondent requested the Center to inform the Complainant that she agreed to settle the issue with Complainant and all expenses in connection with the registration of the disputed domain name should be born by the Complainant. The Respondent stated “If both parties reach the settlement, the domain name shall be transferred to the Complainant immediately. That is, it should be returned to the owner to whom it should have attached.”

6. Discussion and Findings

In accordance with the Policy, the Complainant asking for transfer of the domain name must prove the following three elements: 1) the Respondent's domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; 2) the Respondent has no rights or legitimate interests in the domain name; and 3) the Respondent has registered the domain name and is using it in bad faith. (ICANN Policy, 4 (a)).

Identical or Confusingly Similar

The Chinese character “香港貿易發展局” is the official Chinese name of the Complainant. The Complainant is a body corporate established under the Hong Kong Trade Development Council Ordinance since 1966, and has been performing its missions in its English and Chinese name. After so many years’ development, the Complainant has been awarded the good reputation and is quite famous in related commercial community in China. In fact, the Chinese name of the Complainant has, in practice, become the service mark of the Complainant, which not only represents the organization itself but also its services and functions, albeit not registered in a trademark office. A corporate name, indeed any name, might acquire intellectual property rights over time as goodwill is accumulated in the name through business practice, reputation, notoriety, advertising, etc., even if not registered, and numerous decisions under the Policy have so held (see Onu S.R.L. v. Online Sales, LLC, Case No. AF-0672). On the other hand, the Policy itself does not contain the provisions that trademarks or service marks shall be the registered ones to enjoy protection under the Policy. Keeping this in mind, the Panel believes that the Complainant enjoys the service-mark right over its Chinese name “香港貿易發展局”.

The domain name at issue is [<香港貿易發展局.com> (BQ--3CMZS3RPRS7WME3WPROFKXCA.COM)]. The Panel finds that the Chinese character of this domain name “香港貿易發展局” is completely identical with the Complainant’s official Chinese name, the service mark solely owned by the Complainant. The top level

domain designator ".com" is only a necessary portion to form a business-related domain name and cannot function to distinguish that name from the Complainant's service mark. Therefore, the Panel believes that the first element of the ICANN Policy, 4(a) is met.

Respondent's Rights or Legitimate Interests in the Domain Name

The Respondent has not provided evidence of circumstances of the type specified in the ICANN Policy, 4(c). There exists no evidence that the Respondent, before receipt of any notice of the dispute, has used the domain name or a name corresponding to the domain name in connection with bona fide; or that the Respondent has been commonly known by the domain name; or that the Respondent is making a legitimate noncommercial or fair use of the domain name. Furthermore, the Respondent has not provided evidence of any other circumstances giving rise to a right or legitimate interest in the domain name. Instead, in the letter to the Center, the Respondent makes the promise that, if the settlement is reached, the disputed domain name should be returned to the owner to whom it should have attached. As such, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed Domain Name.

Domain Name Registered and Used in Bad Faith

Paragraph 4(b) of the ICANN Policy specifies four types of circumstances that could be evidence of the registration and use of a domain name in bad faith. According to the ICANN Policy, circumstances of bad faith are not limited to the listed ones.

The Panel finds that the domain name was registered and used in bad faith based upon the following reasons:

- 1) The Complainant is established in 1966 and its activities have spread over many countries and regions of the world. Its official Chinese name “香港貿易發展局” is well known by relevant community throughout some countries and regions in Asia, especially in mainland China and Hong Kong SAR. It is unconceivable that the Respondent residing in China and using the very identical characters to register her domain name does not know that the Complainant is a big organization incorporated in Hong Kong. Therefore, the Panel infers that the Respondent was aware of the Complainant's legitimate interest in its official Chinese name “香港貿易發展局” when the Respondent obtained the domain name at issue.
- 2) The Complainant is a statutory body incorporated in Hong Kong SAR and has been using its official English name and Chinese name to perform its functions throughout the world before the creation of the disputed domain name. The Chinese character of the disputed domain name is the official Chinese name of the Complainant. The panel is of the opinion that the domain name is a unique service. By common knowledge, using the Chinese wording “香港貿易發展局” as the second level of a domain name can be a very direct, exact and preferred way to reflect the Complainant's identity and its functions. The Respondent's conduct of acquiring and holding the domain name [`<香港貿易發展局.com>` (BQ--3CMZS3RPRS7WME3WPROFKXCA.COM)] has prevented the Complainant from reflecting its service mark in a corresponding domain name.

- 3) The Respondent is neither the employee of the Complainant nor authorized person to register or to hold the disputed domain name on the latter's behalf. No evidence shows that the Respondent has any relationship with the Complainant. In fact, in the letter to the Center, the Respondent admits that she is not the proper holder of the disputed domain name. The domain name <香港貿易發展局.com> is so obviously connected with the Complainant and its services that its very use by someone with no connection with the Complainant suggests opportunistic bad faith (see Deutsche Bank AG v. Diego-Arturo Bruckner, Case No. D-2000-0277).

For the reasons above-mentioned, the Panel finds that the Respondent's registration and use of the domain name at issue is in bad faith.

7. Decision

The Panel concludes (a) that the domain name [<香港貿易發展局.com> (BQ--3CMZS3RPRS7WME3WPROFKXCA.COM)] is identical to the service mark owned by the Complainant, (b) that the Respondent has no rights or legitimate interest in the domain name and (c) that the Respondent has registered and used the domain name in bad faith. Therefore, the Panel orders that the domain name [<香港貿易發展局.com> (BQ--3CMZS3RPRS7WME3WPROFKXCA.COM)] be transferred to the Complainant.

Li Yong
Sole Panelist

Dated: May 2, 2001