



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (BEIJING OFFICE)

— ADNDRC is a charitable institution limited by guarantee registered in Hong Kong

Decision Submission

[English](#)
[Print](#)

Decision ID	DE-0200013
Case ID	CN-0200012
Disputed Domain Name	www.ajanta-pharma.com
Case Administrator	anitaw
Submitted By	M Scott Donahey
Participated Panelist	M Scott Donahey
Date of Decision	18-12-2002

The Parties Information

Claimant	Ajanta Pharma Ltd.
Respondent	Electron Info. Co., Ltd.

Procedural History

On October 10, 2002, Beijing office of Asian Domain Name Dispute Resolution Centre (“ADNDRC”) received the Complaint form filed by the Complainant Ajanta Pharma Ltd. (“Complainant”). On October 22, 2002, Beijing Office of ADNDRC received payment in the correct amount for a single-person panel. On October 22, 2002, Beijing Office of ADNDRC transmitted the Complaint to the Respondent, Electron Information Co., Ltd. (“Respondent”). On October 24, 2002, Network Solutions, Inc. confirmed that it was the registrar of record and that the registrant was Electronic Information, Co., Ltd. On October 25, 2002, the Complainant was notified that the Complaint required amendment and that an additional fee was due. On November 1, 2002, Beijing Office of ADNDRC served a Notification of the Commencement of Proceedings on the Respondent, with a copy to the Registrar and submission to ICANN. Beijing Office of ADNDRC received the rankings of the parties of the proposed list of panel candidates on November 5 and 19, 2002. On November 20, 2002 Beijing Office of ADNDRC received the Response, served its Acknowledgment of the Receipt of Response, and forwarded the Response to the Complainant. On November 26, 2002, Beijing Office of ADNDRC informed the parties that it was considering the appointment of Mr. M. Scott Donahey to serve as Panelist, noting that Mr. Donahey was the highest mutually ranked candidate and that he had confirmed that he could act independently and impartially in this matter and requesting any comments from the parties relative to the proposed appointment. On November 27, 2002, Beijing Office of ADNDRC forwarded to the Respondent and to the potential panelist a reply to the Response submitted by the Complainant. On December 4, 2002, Beijing Office of ADNDRC confirmed to the parties that Mr. M. Scott Donahey is appointed as Panelist of the case.

Factual Background

For Claimant

Complainant is a pharmaceutical company headquartered in India, and the domain name at issue was formerly registered to Complainant and had been used by Complainant to resolve to Complainant's primary corporate web site. The registration apparently lapsed in May 2002, when the domain name at issue was registered by Respondent. The domain name at issue corresponds to Complainant's trade name, and Respondent has linked it to a pornographic web site. This is causing Complainant acute embarrassment and is tarnishing Complainant's corporate image. Complainant contacted Respondent, but received no satisfaction. Complainant seeks return of the domain name and Password, and compensation for the losses it has suffered. A copy of the Whois information for the domain name at issue was the only Annex to the Complaint.

For Respondent

Respondent merely stated that it had acquired the domain name legally and intended to open a pharmacy company and make use of the domain name in that venture.

Parties' Contentions

Claimant

Complainant contends that the domain name at issue is identical to the Complainant's corporate name. Complainant contends that Respondent has no rights or legitimate interests in respect of the domain name at issue. Complainant contends that Respondent registered and is using the domain name in bad faith.

Respondent

Respondent contends that it acquired the domain name at issue by legal means and plans to use it in conjunction with a pharmacy business it will be starting.

Findings

Identical / Confusingly Similar

Paragraph 15(a) of the Uniform Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: "A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- 1) that the domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- 2) that the Respondent has no rights or legitimate interests in respect of the domain name; and
- 3) that the domain name has been registered and is being used in bad faith.

Identical or Confusing Similarity

The Panel finds that complainant has failed to allege, let alone prove, that Complainant has rights in a trademark or service mark that is identical or confusingly similar to the domain name at issue. Trade names are currently not protected under the UDRP. In its Report of the Second WIPO Internet Domain Name Process, dated September 3, 2001 ("Second WIPO Report"), the World Intellectual Property Organization recommended that the Domain Name process not be extended to the protection of trade names. Second WIPO Report, 318 and 319.

The Panel recognizes the legitimate concerns of the Complainant and its need for legal redress. Unfortunately, the UDRP procedure is limited in its scope, and the nature of Complainant's claim falls outside that limited scope.

Because Complainant has failed to establish rights in a trademark or service mark that is identical or confusingly similar to the domain name at issue, there is no need to examine whether Respondent has rights and interests in respect of the domain name, nor whether the domain name at issue has been registered and is being used in bad faith.

Rights and Legitimate Interests

Bad Faith

Status

www.ajanta-pharma.com

Complaint Rejected

Decision

For the foregoing reasons, the Panel decides that Complainant has failed to establish that the domain name registered by Respondent is identical to a trademark or service mark in which the Complainant has rights. Accordingly, the Complaint in this matter must be dismissed.

[Back](#)

[Print](#)