



**ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE
(BEIJING OFFICE)**

— A charitable institution limited by guarantee registered in Hong Kong

**ADMINISTRATIVE PANEL DECISION
Case No. CN 0900293**

Complainant:	3M Company
Respondent:	jackpeng
Domain Name:	<3mjd.com>, <zg3m.com>, <cn3m.com> and <bj3m.com>
Registrar:	WEB COMMERCE COMMUNICATIONS LIMITED DBA WEBNIC.CC

1. Procedural History

The Complainant is 3M Company of Minnesota, USA. Its authorized representative is Shen Yudong, and Wang Shan of Suite 1808, China Life Tower, 16 Chaowai Dajie, Chaoyang District, Beijing Zip Code: 100020.

The Respondent is “jackpeng” of Beijing, Beijing cn 100088.

The disputed domain names are <3mjd.com>, <zg3m.com>, <cn3m.com> and <bj3m.com>. The Registrar is WEB COMMERCE COMMUNICATIONS LIMITED DBA WEBNIC.CC of URL : <http://www.webnic.cc>.

On 14 Aug 2009, the ADNDRC Beijing Office (the “Beijing Office”) received hardcopy complaint form by 3M Company (the “Complainant”) pursuant to the *Uniform Policy for Domain Name Dispute Resolution (Policy)*, effective and executed by the Internet Corporation for Assigned Names and Numbers (ICANN) on August 26th, 1999, the *Rules for Uniform Domain Name Dispute Resolution Policy*, effective on October 24, 1999 (*Rules*) and the *ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (Supplemental Rules)*.

On 25 Aug 2009, the Beijing Office confirmed receipt of the Complaint. On the same day, the Beijing Office notified the Registrar of the Complaint. The Registrar was requested to provide the registration information of the disputed domain names.

On 27 Aug 2009, the Beijing Office received confirmation from the Registrar confirming that the Respondent had registered the disputed domain names with it and provided the registration information thereof. In particular, it was confirmed that the Registration Agreement was in English.

On 3 Sept 2009, the Beijing Office sent Transmittal of Claims to the Respondent.

On 8 Sept 2009, the Beijing Office sent “Notification of the Commencement of the Case Proceedings” to the Respondent, ICANN and the Registrar. On the same day, the Beijing Office sent “Notifying the Claims has been Confirmed and Forwarded” to the Complainant with copy to the Respondent.

On 9 Oct 2009, the Beijing Office sent “Notification of No Response Received and Hearing by Default” to the parties.

On 10 Oct 2009, the Beijing Office sent invitation to Mr. Anthony Wu to serve as the sole panelist in this matter.

On 12 Oct 2009, the Beijing Office received from Mr. Anthony Wu his confirmation that he would be available to serve as the sole panelist in this matter and that he will be able to act independently and impartially between the parties.

On the same day, the Beijing Office transferred the case to the Panelist and the decision was required to be rendered by 26 Oct 2009.

On 26 Oct 2009, at the request of the Panelist, the Beijing Office extended the deadline for rendering the decision was 8 November 2009.

The Panel, having regard to the language of the Registration Agreement, pursuant to Paragraph 11 of the Rules for the Policy decided to use English in rendering this decision.

2. Factual Background

For the Complainant

3M Company is the former Mingnisuda Mining & Manufacture Company. There are three M letters in initial letters of the name, therefore, 3M Company is named. The Chinese name has been formally changed to “3M 公司”.

3M Company has set up more than 60 subsidiary companies and nearly 140 manufacturing factories in different countries and regions. Its products are sold in more than 200 countries and regions. In 2004, the sales revenue of 3M Company was more than 20 billion dollars and the net profit is 3 billion dollars. Chinese market is one of the most important and fastest growing markets of 3M Company. In November, 1984, 3M Company established 3M China Company in Shanghai, which was the first foreign invested enterprise outside Chinese economic special zone. In the following 21 years, the business of 3M Company developed quickly in China. Besides Shanghai, 3M Company set up 14 offices in Beijing, Guangzhou, Shenyang, Chengdu, Fuzhou, Wuhan, Shenzhen, Suzhou, Qingdao, Tianjin, Hangzhou, Nanjing, Chongqing and Xi'an.

The Complainant has acquired the exclusive right to use trade mark No. 884963 based on the approval of the National Trademark Bureau. The word part of the trademark is “3M”, valid from October 21st, 2006 to October 20th, 2016, and now it valid within the term. The approved commodity category in Class 17 and the specified commodities are: anti-slippery adhesive tape, electronic tape, cellophane tape and others.

The Complainant “3M Company” has registered “3M.com” as its domain name. and 3M is the complaint’s business name.

For the Respondent

The Respondent did not respond to the Complaint.

According to the Whois information, the Respondent is jackpeng. The disputed domain names <3mjd.com>, <zg3m.com>, <cn3m.com> and <bj3m.com>, were registered on 14th August, 2006.

3. Parties' Contentions

The Complainant

The Complainant's contentions are as follows:

(1) The complainant has the exclusive rights of the registered trademark 3M, which is the main part of "3mjd.com", "zg3m.com", "cn3m.com" and "bj3m". The domain names of the respondent are similar to the trademark of the complaint, which may cause the confusion:

(i) The complainant has registered the trademark "3M" world widely which including in China and it has become a well-known trademark in the world.

3M Company was established in 1902, with a business history of 103 years and total assets of nearly 20 billion dollars. 3M Company is a famous multi-national company, with a wide development, research and business area, as well as 32 key technologies, including anti-slippery adhesive tape, electronic tape, cellophane tape and others.

3M Company is the owner of the 3M trademark and its business name. *Business Weekly* lists 3M as one of the top 100 international brands. The trademark 3M is ranked No. 38 among the top 50 key brands. 3M Company and its brand have been listed in *Encyclopedia Britannica*, *World Famous Company Lists*, *World Famous Enterprises Lists* and other books.

The complainant's 3 M trademark has been registered in more than 100 countries and regions. In China the 3M trademark has been registered in July 5th 1980. By now the complainant has obtained dozens of trademark registrations in 42 categories' of the goods and services in China. Due to the name change of the 3M Company, all the trademark registrations have been amended correspondingly and later published on the trademark notices.

3M Company has invested a large amount of funds on promoting the 3M brand. The funds invested in China in recent years are as follows:

In the year of 2000: 21,685,408.74 Yuan,

In the year of 2001: 25,068,217.80 Yuan;

In the year of 2002: 27,223,463.92 Yuan,

In the year of 2003: 37,883,451.02 Yuan;

In the year of 2004: 65,921,941.95 Yuan.

3M is the parental brand of the brands owned by the company. 3M, as a logo, is widely used on the more than 60000 products and services manufactured by the 3M Company. 3M trademark is the most widely used trademark in the world. 3M, as the business name and trademark of 3M Company, is used by press in the news report in China. 3M, a business logo, has been deeply rooted in relevant Chinese public's work and life and is common and familiar to the public.

In 1999 and 2000, the registered trademark of 3M in China has been included in *National Prior Protection Trademark List*.

The Trademark Bureau of State Administration for Industry & Commerce and Trademark Review & Adjudication Board have recognized that 3M trademark is well-known during the cases since 1995, and 3M trademark is protected in multiple types.

In sum, 3M trademark and 3M business name have formed a famous business logo with well-known reputation.

(ii) Domain names in dispute are confusingly similar to 3M serial trademarks of complainant.

The identification part of the domain name “3mjd.com” in dispute is “3mjd”, and the meaning of letters “jd” can refer to the Chinese meaning “Beijing Jingguangda Adhesive Tape Factory” explained in webpage, whose main products are adhesive tapes. Therefore, jd is short for the Pinyin of “adhesive tape”. Except for the letters “jd”, it is not distinctive from the registered trademark of complaint “3M”, and 3m are the beginning letters of “3mjd”, which is the distinctive character of the main part of “3mjd”.

The identification part of domain name “zg3m.com” in dispute is “zg3m”, and the meaning of letters “zg3m” are “zhong guo 3M”, therefore, zg is short for the Pinyin of “China”. Except for the letters “zg”, it is not distinctive from the registered trademark of complaint “3M”.

The identification part of domain name “cn3m.com” in dispute is “cn3m”, and the meaning of letters “cn3m” are “China 3M”, therefore, cn is short for “China”. Except for the letters “cn”, it is not distinctive from the registered trademark of complaint “3M”.

The identification part of domain name “bj3m.com” in dispute is “bj3m”, and the meaning of letters “bj3m” are “beijing 3M”, therefore, bj is short for the Pinyin of “Beijing”. Except for the letters “bj”, it is not distinctive from the registered trademark of complaint “3M”.

Therefore, the domain names in dispute “3mjd.com”, “zg3m.com”, “cn3m.com” and “bj3m.com” are confusingly similar to the 3M serial trademarks.

(2) The domain names in dispute are confusingly similar to the trademark 3M registered in China and other countries and regions. The respondent has no legal rights and interests towards the domain name in dispute.

The name of respondent is jackpeng. The name promoted in website are “Beijing Jingguangda Adhesive Tape Factory”, which is irrelevant to the main part “3mjd”, “zg3m”, “cn3m” and “bj3m” of the domain names “3mjd.com”, “zg3m.com”, “cn3m.com” and “bj3m.com”. Meanwhile, the respondent has no other relevant civil rights such as the exclusive use right of trademark “3mjd”, “zg3m”, “cn3m” and “bj3m”. Therefore, the respondent has no legal rights and interests over the domain name in dispute.

(3) Respondent are malicious when registering and using the domain name in dispute “3mjd”, “zg3m”, “cn3m” and “bj3m”.

The respondent publicized its products through the registered websites “3mjd.com”, “zg3m.com”, “cn3m.com” and “bj3m.com”, specializing in the sales of tape

products.

The company name on the website of the respondent is Beijing Jingguangda Adhesive Tape Factory. 3M is emphasized before the company name.

Products listed in the left of website are: “3M adhesive tape series”, “3M anti-slippery products”. The respondent is the business operator in the field, who shall know the 3M brand of the complainant. The respondent made use of the reputation of the complainant’s trademark “3M” with intention. The Complainant has been producing the relevant products such as anti-slippery adhesive tape, electronic tape, cellophane tape, and the trademark is 3M. Not all the products sold by the respondent on website are produced by the complainant. The respondent acquired unjust commercial interests by free riding, and misleading the consumer, causing the purchaser to believe that there is a certain relationship between the complainant and the respondent, so as to improve the good will to increase its commercial chance, which shall belong to the complainant.

The respondent acknowledges the reputation of 3M brand of the complainant. The registration and use of the domain name of the complainant intentionally make use of the reputation of 3M commercial logo. The behavior of the respondent is a kind of unfair competition. Therefore, the complainant has reasons to believe that the respondent is malicious when registering and using the domain name.

To summarize, the Complainant has proved the three elements prescribed by 4a of the Policy. The complainant requests the panelist to verdict that: the domain name in dispute “3mjd.com”, “zg3m.com”, “cn3m.com” and “bj3m.com” shall be transferred to the complainant.

The Respondent

Respondent did not respond to the Complaint.

4. Findings

Identical or Confusing Similarity

The Complainant has the burden of proving that the disputed domain names are identical to or confusingly similar to the “3M” mark. The Respondent’s failure to respond does not relieve this burden or its burden of proof over either of the other two elements of Paragraph 4(a) of the Policy. However, the failure to deny any of the Complainant’s allegations and evidence does entitle the Panel to take the Complainant’s allegations and evidence as true and to draw appropriate inferences.

The Panel accepts the evidence of the Complainant that by virtue of its long and extensive use, the advertising efforts and the registration of the mark in China and elsewhere it has rights over the trademark of “3M” as detailed by the Complainant in china and elsewhere in the world.

“Confusingly similar turns on the inherent distinctiveness of the trademark, the extent of use of the trademark, the extent of time the trademark has been in use, the nature of the wares, services and business, the similarity in sound, appearance

and idea suggested by the trademark and the domain name, among other factors.”

As analysed by the Complainant, the disputed domain names are composed of 3M together with suffix, such as jd (in “3mjd.com”) or prefixes such as zg (in “zg3m.com”), cn (in “cn3m.com”) and bj (in “bj3m.com”). Having regard to the long and great reputation of the trademark of 3M of the Complainant, the distinctive part of the respective disputed domain names are 3M. As contended by the Complainant, the other parts of the domain names are merely generic: cn (short for China) and bj (short for Beijing), and zg (short for Pinyin of zhong guo) and jd (short for the Pinyin of “adhesive tape”). The Panel noted that the Respondent did not respond to the contentions and there is no evidence that these other parts are otherwise distinctive. The Panel is satisfied that the domain names in dispute, “3mjd.com”, “zg3m.com”, “cn3m.com” and “bj3m.com”, are confusingly similar to the 3M trademark.

Accordingly, the Panel is satisfied that the requirements of Paragraph 4(a)(i) are met with.

Rights or Legitimate Interests of the Respondent

Paragraph 4(c) of the Policy requires the Complainant to prove that the Respondent has no right or legitimate interest in the disputed domain name. However, it is the consensus view among Panelists that if the Complainant makes out a prima facie case that the Respondent has no rights or legitimate interests, and the Respondent fails to show one of the three circumstances under Paragraph 4(c) of the Policy, then the Respondent may lack a legitimate interest in the domain name.

The Panels finds that the Complainant has made out a prima facie case. The Complainant clearly has a long and worldwide reputation over its trademark and the Respondent ought to have known of the trademark at the time when he registered the disputed domain name. This is fortified by the fact that, for the reasons as shall be referred to here below, the Respondent is likely to be in the same trade and he had registered the disputed domain with 3M in mind to allure internet users to visit his website. The Complainant did authorise the Respondent to use the mark. The burden of going forward with the evidence shifts to the Respondent. The Respondent is uniquely in the position of adducing evidence on his rights or legitimate interests in the disputed domain name. The Respondent has elected not to respond, and this Panel may therefore treat Complainant’s assertions as true. Under the circumstances, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant meets with the requirements under Paragraph 4(a) (ii).

Bad Faith

It is provided under Paragraph 4 (b) of the Policy that:

“For the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that you have registered or you have 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 your documented out-of-pocket costs directly related to the domain name; or

(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; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

The onus of proof is on the Complainant to satisfy the Panel that one of the circumstances exists or otherwise there is bad faith in the registration and use of the domain name in dispute.

Having regard to the Complainant's contention, the Panel is satisfied that on the evidence adduced by the Complainant that the registration and use of the dispute domain name by the Respondent is caught by the circumstance as set out in sub-paragraph (iv) of Paragraph 4 (b) of the Policy.

The Panel finds that in the website of the disputed domain names the Respondent had intentionally represented itself as a 3M or a 3M related website for the sale of the products of a company by the name of Beijing Jingguangda Adhesive Tape Factory.

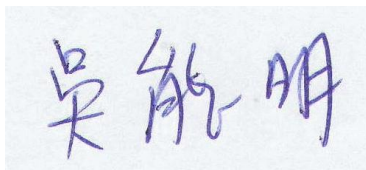
While the company name on the website of the Respondent was Beijing Jingguangda Adhesive Tape Factory, 3M was emphasized in the web page. The products of the Respondent were listed together with products of the Complainant such as: “3M adhesive tape series”, “3M anti-slippery products”. The Beijing Jingguangda Adhesive Tape Factory is in the same business as 3M. The Respondent is most likely, in the circumstances of the case, to be related to the Beijing Jingguangda Adhesive Tape Factory, and he would have known of the Claimant's reputation in the field. The reasonable inference is that he was trying to allure the customers of 3M who would visit the website on the mistaken belief that the Respondent is related to the Complainant in the terms as set out in of sub-paragraph (iv) of the Policy to go to the Respondent's website. This would enhance the sales of the sale of the products of the Beijing Jingguangda Adhesive Tape Factory and thereby making commercial gain.

As a result, the requirements under Paragraph 4(a)(iii) of the Policy are met with.

5. Decision

It is the finding of the Panel that the Complainant proves all requirements of Paragraph 4(a) of the Policy. In paragraph 9 of the complaint, Complainant sought to have the domain names in question transferred to it. Having regard to circumstances of the case, the Panel believes that it is appropriate to transfer the domain names <3mjd.com>, <zg3m.com>, <cn3m.com> and <bj3m.com> to the

Complainant and so orders.

Handwritten signature in blue ink on a light blue background. The characters are '吳能明' (Wu Nengming).

Anthony Wu

Dated: 8 November 2009