

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE
(Beijing Office)
ADMINISTRATIVE PANEL DECISION
Case No. CN-0900326

Complainant: Qiaodan (China) Co., Ltd.(乔丹(中国)有限公司)

Jinjiang Maike Xiesuo Co., Ltd.(晋江麦克鞋塑有限公司)

Respondent: NIKE, Inc.

Domain Name: qiaodan.com

Registrar: eNom Inc.

1. Procedural History

On December 23, 2009, the Complainant submitted a Complaint in English version to the Beijing Office of the Asian Domain Name Dispute Resolution Center (the "ADNDRC Beijing Office"), in accordance with the Uniform Domain Name Dispute Resolution Policy (the "Policy") adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN"), the Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "Rules") approved by ICANN, and Asian Domain Name Dispute Resolution Center Supplemental Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "ADNDRC Supplemental Rules").

On December 25, 2009, the ADNDRC Beijing Office transmitted by email to ICANN and eNom Inc. (the Registrar of the dispute domain name) a request for registrar verification in connection with the domain name at issue.

eNom Inc., on March 31, 2010, transmitted by email to the ADNDRC Beijing Office its verification response confirming that, the domain name at issue was registered under its domain registrar, and the Respondent is listed as the registrant.

On April 5, 2010, ADNDRC Beijing Office transmitted the Claims to the Respondent by email.

On April 13, 2010, ADNDRC Beijing Office notified the Complainant by email that the Complaint was reviewed and forwarded to the Respondent and confirmed with the parties and Registrar by email that the captioned case was formally commenced. The ADNDRC Beijing Office also requested the Respondent to file a Response within 20 calendar days scheduled time.

Till May 11, 2010, the last day of the fixed period of Response, no submission came from the Respondent. The ADNDRC Beijing Office noticed the Parties that, as there's no response from the Respondent, The ADNDRC Beijing Office would appointed the Panelist shortly, and the case would be decided by default.

Upon receiving the declaration of impartiality and independency and the statement of acceptance from the candidate Panelist, the Center appointed Tang Guangliang as the sole

panelists in this matter on July 6, 2010. Then the Center transferred all the case materials to the panel on the day, and asked the panel to submit a decision before July 20, 2010.

2. Factual Background

For the Complainant

In this case, the Complainant 1 Qiaodan (China) Co., Ltd.(乔丹(中国)有限公司) and the Complainant 2 Jinjiang Maike Xiesuo Co., Ltd.,(晋江麦克鞋塑有限公司) are associated corporations, both were invested by the same party. According to the Complaint, the two Complainants may be called “the Complainant” as one person.

The Complainant locates in Xibian Industry Area, Chendai Town, Jinjiang City of Fujian Province, China(福建晋江市陈埭镇溪边工业区), who owns the trademark “QIAO DAN” which has been registered by a number of applications from 1999, and the trademark “QIAO AND 乔丹” which has been registered by a number of applications from 1998. The Complainant empowered Duan Zhiyong (段志勇) as its agent in this case.

For the Respondent

The Respondent is NIKE, Inc., who’s Address is One Bowerman Drive, DF/4 Beaverton, OR 97005 US. The Respondent registered the disputed domain name on Dec. 17,2001 through the Registrar. The Respondent made no response in the fixed period of time, and no agent or representative empowered thereof in this case.

3. Parties' Contentions

The Complainant

According to the Complaint, the assertion of the Complainant includes—

(1) The Respondent’s Domain Name is identical or confusingly similar to the Complainant’s Marks in which the Complainant has rights

The Complainant has many registrations for the Trade Mark and its trade mark registrations are valid and subsisting and serve as prima facie evidence of its ownership and the validity of the Trade Mark. WIPO Panel decisions have held that registration of a mark is prime facie evidence of validity, which creates a rebuttable presumption that the mark is inherently distinctive. The Respondent has the burden of refuting this assumption (EAUTO LLC v Triple S. Auto Parts d/b/a King Fu Yea Enterprises, Inc., ICANN Case No. D2000-0047).

The Respondent’s registration of the Disputed Domain Name postdates the Complainant’s registration priority dates for the Trade Mark.

The Disputed Domain Name comprises the word “qiaodan” in its entirety, which is identical to the Trade Mark.

Accordingly, the Complainant submits that the Disputed Domain Name is identical or confusingly similar to the Complainant’s Marks in which the Complainant has rights or interests under Paragraph 4(a)(i) of the Policy.

(2) The Respondent has no rights or legitimate interest in respect of the Disputed Domain Name

The Complainant submits that the Respondent does not have any rights or legitimate interests in respect of the Disputed Domain Name based on the following grounds:

The Respondent does not hold any registered trade mark rights in respect of the Trade Mark. The Complainant has conducted registration searches in all classes via the online trade mark search engine of the Trade Mark Office of the State Administration for Industry and Commerce in China. The search result did not reveal any registrations by the Respondent for any “qiaodan” trade marks in China at all.

The Complainant has prior rights in the Trade Mark, which precede the Respondent’s registration of the Disputed Domain Name. The Complainant operates under the Trade Mark and is well known in PR China, where the Respondent also does business. The Respondent could not therefore have been in ignorance that trade mark rights were vested in the Trade Mark, and that any use of the same without the consent of the trade mark owner is prohibited.

The Complainant has not authorized, licensed, endorsed or otherwise permitted the Respondent to register or use the Disputed Domain Name or to use the Trade Mark in relation to its business as a business name or otherwise. The Complainant has not in any way acquiesced to the Respondent’s registration or use of the Disputed Domain Name or the use of the Complainant’s Trade Mark or similar marks in relation to the Respondent’s business or otherwise.

The Respondent’s use of the Trade Mark, or confusingly similar marks, is infringing. Such unlawful use of the Disputed Domain Name cannot be considered bona fide (G.D Searle & Co. v Entertainment Hosting Services. Inc., NAF Case No. FA00110783 (3 June 2002) (the respondent’s use of the disputed domain name to solicit orders without licence or authorization to use the Complainant’s mark was not a bona fide offering of goods).

The Disputed Domain Name does not reflect the Respondent’s common name, and the website to which the Disputed Domain Name is resolved (please see further details below) does not in any way reflect or refer to the Respondent’s common name.

There is no evidence that the Respondent has ever had any bona fide interest in establishing any legitimate business or activities under the Disputed Domain Names or any variant thereof.

There can be no valid suggestion that the Respondent is making a legitimate non-commercial or fair use of the Disputed Domain Name (see Paragraph 4(c)(iii) of the Policy).

Finally, it is well established that, where the Complainant contends the Respondent has no rights or legitimate interests in a disputed domain name, the burden of proof shifts to the Respondent to come forward with proof to the contrary (Clerical Med. Inv. Group Ltd. v Clericalmedical.com, WIPO Case No. D2001-1228; Do The Hustle, LLC v Tropic Web, WIPO Case No. D2000-064). Absent a showing to the contrary by the Respondent, the Complainant has therefore established that the Respondent has no rights or legitimate interests in the Disputed Domain Name.

For the reasons stated above, the Complainant submits that the Respondent has no rights or

legitimate interest in respect of the Disputed Domain Name under Paragraph 4(a)(ii) of the Policy.

(3) The Disputed Domain Name was registered and is being used by the Respondent in bad faith

The Complainant submits that the Disputed Domain Name was registered and is being used by the Respondent in bad faith on the following grounds:

(a) The domain name was registered in bad faith, which had been recognized in a prior Decision of the Panel of Asian Domain Name Dispute Resolution Center, in which the panel supported the Complainant's complaint and decided that the former registrant of the domain name, YZ. Com Inc., registered and used the disputed domain name in bad faith.

(b) The Reputation and the Respondent's Knowledge of the Trade Mark

The Complainant is famous in PR China, and the Trade Mark is used to designate the Complainant's products. The Trade Mark carries substantial goodwill throughout PR China. It is inconceivable that the Respondent, who also doing business in China, did not have knowledge of the Trade Mark before the Respondent got the Disputed Domain Name.

Such knowledge of the Complainant's rights therefrom underscores the Respondent's bad faith registration/ holding and use of the Disputed Domain Name (Samsonite Corp. v Colony Holding, FA 94313 (Nat. Arb. Forum May 27, 2003, Yachin, Arb.).

(c) The domain name is resolved to a web page, which causes prejudice to the Complainant.

The Respondent resolves the disputed domain name to a web page, which contains some keywords, most concerning sports and sport shoes. When click the keywords in the webpage, the internet users are led to the search result of the search engine, GOOGLE. Most of the links in the search result are related to the competitors of the Complainant, which surely causes prejudice to the Complainant, for the internet users, who visit the webpage expecting to get information of the products with the Complainant's trademark, are diverted to the web pages in relation to the products of the Complainant's competitors.

(d) The Respondent has no prior right to and no authorization from the Complainant

The Respondent has no prior right to the Trade Mark and no authorization from the Complainant to use the Trade Mark in any form. Thus, holding the Disputed Domain Name was not made with a bona fide intention.

For the reasons stated above, the Complainant submits that the Respondent has registered and is using the Disputed Domain Name in bad faith under Paragraph 4(a)(iii) of the Policy.

The Complainant claims that the disputed domain name is identical to its trademark, and requires the Panel to decide that the domain name transferred to the Complainant Qiaodan (China) Co., Ltd.(乔丹(中国)有限公司).

The Respondent

There's no Response came from the Respondent.

4. Findings

As stipulated in the Paragraph 4(a) of the Policy, when claiming dispute to a domain name registered by another, the Complainant must prove each of the following:

- (i) That the domain name of the Respondent's is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) That the Respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) That the domain name has been registered and used in bad faith.

Based on the relevant stipulations under the Policy, the Rules and ADNDRC Supplemental Rules, to make the Claim to be supported by the Panel, the Complainant needs to satisfy each of the afore-said prerequisites.

With regard to the current dispute, a fundamental fact is that the Respondent failed to submit a defense or a response of any sort. Particularly, the Respondent did not exhibit any intention to RETAIN the disputed domain name. As stipulated in Paragraph 5(e) of the Rules, "If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint". In light of this stipulation, the Panel has no choice but to make the decision based primarily on the Complainant's contentions and the accompanying exhibits unless proven otherwise or that the Panel, based upon its professional experiences, thinks that the Complainant's allegations are not logical or obviously contradictory to a prior judgment or any other enforceable decisions.

Identical or Confusing Similarity

Pursuant to Paragraph 4(a) (i) of the Policy, the Complainant must prove that the domain name in dispute is identical or confusingly similar to a trademark or service mark in which the Complainant has right.

According to the Complainant's assertion and evidences presented therewith, the Complainant has registered a number of trademarks with the sign of "QIAODAN" since 1998. During the proceeding, the Panel searched the trademark registration information via China Trademark Web, found that the Complainant first got his exclusive right from the year 2000, which was still earlier than the registration time of the disputed domain name. Accordingly, the Panel agreed with the Complainant that before the registration of the disputed domain name, the Complainant has already got the right protectable.

When making a judgment on the issue of identity or confusing similarity, the Panel often compares the identifying part of the questioned domain name with that of the registered trademark. In this case, the disputed domain name is "qiaodan.com", where the identifying part is "qiaodan", which is identical with the trademark. Therefore, the Panel holds that, the Complainant satisfies the first prerequisite as set forth in the Policy.

Rights or Legitimate Interests of the Respondent

Paragraph 4(c) of the Policy stipulates how a Respondent can effectively demonstrate its

rights or legitimate interests with regard to the disputed domain name, as an argument against the Complainant's claim.

In this respect, the Complainant's claims include: 1) the Respondent does not hold any registered trade mark rights in respect of the Trade Mark. 2) The Complainant has not authorized, licensed, endorsed or otherwise permitted the Respondent to register or use the Disputed Domain Name or to use the Trade Mark in relation to its business as a business name or otherwise. 3) The Complainant has not in any way acquiesced to the Respondent's registration or use of the Disputed Domain Name or the use of the Complainant's Trade Mark or similar marks in relation to the Respondent's business or otherwise. 4) The Disputed Domain Name does not reflect the Respondent's common name. 5) There is no evidence that the Respondent has ever had any bona fide interest in establishing any legitimate business or activities under the Disputed Domain Name or any variant thereof. and 6) There can be no valid suggestion that the Respondent is making a legitimate non-commercial or fair use of the Disputed Domain Name.

The Respondent didn't reply in any way. Based on such a situation, the Panel holds that the Complainant satisfies the second prerequisite as set forth in the Policy.

Bad Faith

The Complainant also needs to establish the Respondent's bad faith as set forth in the Paragraph 4(a)(iii) of the Policy. Under Paragraph 4(b)(i) of the Policy, the following circumstances in particular shall be considered as 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 web site 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 web site or location or of a product or service on your web site or location."

The Complainant claims that the Disputed Domain Name was registered and is being used by the Respondent in bad faith, the grounds of which include:

(1) The domain name was registered in bad faith, which had been recognized in a prior Decision of the Panel of Asian Domain Name Dispute Resolution Center, in which the panel

supported the Complainant's complaint and decided that the former registrant of the domain name, YZ. Com Inc., registered and used the disputed domain name in bad faith.

(2) The Reputation and the Respondent's Knowledge of the Trade Mark.

The Complainant is famous in PR China, and the Trade Mark is used to designate the Complainant's products. The Trade Mark carries substantial goodwill throughout PR China. It is inconceivable that the Respondent, who also doing business in China, did not have knowledge of the Trade Mark before the Respondent got the Disputed Domain Name.

Such knowledge of the Complainant's rights therefrom underscores the Respondent's bad faith registration/ holding and use of the Disputed Domain Name.

(3) The domain name is resolved to a web page, which causes prejudice to the Complainant.

The Respondent resolves the disputed domain name to a web page, which contains some keywords, most concerning sports and sport shoes. When click the keywords in the webpage, the internet users are led to the search result of the search engine, GOOGLE. Most of the links in the search result are related to the competitors of the Complainant, which surely causes prejudice to the Complainant, for the internet users, who visit the webpage expecting to get information of the products with the Complainant's trademark, are diverted to the web pages in relation to the products of the Complainant's competitors.

(4) The Respondent has no prior right to and no authorization from the Complainant.

The Respondent has no prior right to the Trade Mark and no authorization from the Complainant to use the Trade Mark in any form. Thus, holding the Disputed Domain Name was not made with a bona fide intention.

There's no argument came from the Respondent.

The Panel finds that, according to the Complainant's assertion, the acts of Respondent fall under the circumstances in Paragraph 4(b)(ii) and (iii), and shall be considered as evidence of the registration and use of the disputed domain name in bad faith and thus the Complainant satisfies the third prerequisite under the relevant articles of the Policy.

Based on all the above findings and comments, the Panel rules that the Complainant satisfies all the conditions provided in Paragraph 4(a)(i)(ii) (iii) of the Policy, hence its claims shall be supported.

5. 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:

(1) That the identifying part of the disputed domain name "qiaodan.com" is identical to the Complainant's registered trademark "QIAODAN"; and

(2) That the Respondent has no right or legitimate interest with regard to the identifying part of the disputed domain name; and

(3) That the domain name was registered and subsequently used in bad faith.

As the final decision, the Panel requires the domain name “qiaodan.com” be transferred to the Complainant Qiaodan (China) Co., Ltd.(乔丹(中国)有限公司).

Panelist:

A handwritten signature in black ink on a light gray grid background. The signature is stylized and appears to be the name 'F. J. G.' or similar.

July 20, 2010