



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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Decision Submission

English Print

Decision ID DE-0600083
Case ID HK-0600092
Disputed Domain Name www.macaus10t.com
Case Administrator Dennis CAI
Submitted By Anthony Wu
Participated Panelist

Date of Decision 19-10-2006

The Parties Information

Claimant Sociedade de Lotarias e Aposta
Respondent Xu Ming

Procedural History

On 30-6-2006, the Hong Kong Office (the Hong Kong Office) of Asian Domain Name Dispute Resolution Centre (“ADNDRC”) received a hardcopy Complaint form in English filed by the Sociedade de Lotarias e Aposta (the “Complainant”) pursuant to the Uniform Domain Name Dispute Resolution Policy (the “Policy”) adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) on 24-10-1999. On the same day, the Hong Kong Office received payment for Domain Name Dispute Complaint fee in connection with the case.

On 3-7-2006, the Hong Kong Office informed the Complainant that the language of the proceeding is in Chinese, the language of the Registration Agreement and the Complainant was asked to submit Chinese translations of the complaint within five days. The Complainant on the same day wrote: as discussed, as the registration agreement of the subject domain name is written in both English and Chinese, you have kindly agreed to pursue with the domain name complaint by submitting our complaint in English and do not require us to provide Chinese translation at this stage. In reply, the Hong Kong Office informed the Complainant that: as the dispute resolution provider, we have no jurisdiction on determining the issue pertaining to language of the administrative proceeding, which is subject to a parties agreement on decision of the Panelist. In practice, we shall administer the case bilingually in both Chinese and English.

The Registrar, Xin Net Technology Corporation was notified of the Complaint on 3-7-2006 . The Registrar was requested to confirm that the domain name at issue was registered by the Respondent with them. On the same day, Xin Net Technology Corporation confirmed that the disputed domain name was registered with it by Respondent.

On 15-7-2006, the Hong Kong Office by email notified the Respondent the receipt of a complaint. On 18-7-2006, the Hong Kong Office served a notification of Commencement of the Proceedings on the Respondent together with a copy of the Complaint and the Respondent was asked to submit a Response to the Complaint within 20 days.

On 9-8-2006, the Hong Kong Office notified the parties that as a Response to the Complaint has not been submitted by the Respondent within the required time, the Case Administrator will shortly appoint Panelist for the matter.

On 4-9-2006, the Hong Kong Office of ADNDRC appointed Mr Anthony Wu to serve as Panelist and notified the parties of the appointment. All documents submitted by the parties were sent to the Panelist by letter dated 4-9-2006.

On 26-9-2006, the Panel via the Hong Kong Office drew the attention of the Complainant that the Registration Agreement is in Chinese and therefore the administrative proceeding should have been in Chinese whereas the Complainant so far has not provided Chinese translation for the Complaint in English. If it is the intention of the Complainant to ask the Panel to consider exercising its power under Rule 11 of the Rules of the Policy the parties were to make submissions within three days by e-mail on the issue.

On 27-9-2006, the Complainant set out its contention urging the Panel to elect English as the language of the administrative proceeding.

On 29-9-2006, the Hong Kong Office related the Panel's request to the Complainant to provide a Chinese translation of its email of 27-9-2006.

On 10-10-2006, the Panel directed via the Hong Kong Office that "Unless the Chinese translation of the Complainant's email of 27 September 2006 is provided on or before 11 October 2006, the Panel would proceed to decide the Complainant's application under Rule 11 of the Rules of the Policy without the Chinese translation having been provided."

On 11-10-2006, the Complainant provided the Chinese translation of the email.

On 12-10-2006, the Panel via the Hong Kong Office directed that the Respondent may respond to the Complainant's contention on before 13-10-2006.

As at the date of this decision, no response from the Respondent has been received by the Panel.

Note: Language of the proceedings

The Complainant urged the panel to exercise discretion to allow on the following grounds:

1. as the Registration Agreement in respect of the domain name in question is available in both English and Chinese, the Panel has full power to elect either English or Chinese as the language of the administrative proceeding in question.
2. the Complainant filed a complaint in English on 30 June 2006 pursuant to Rule 11 and based on its understanding that the Registration Agreement in respect of the domain name in question is available in both English and Chinese. It will cause great inconvenience to the Complainant if it is required to translate the Complaint into Chinese, further time and costs will be incurred, and the proceedings will be inevitably delayed.
3. in any event, as all previous correspondence/notices issued by ADNDRC on this case to the parties are in both English and Chinese, the registrant should be well aware of the development of the case and should have sufficient opportunities to raise any concern it may have.

As noted above, the Respondent did not respond.

The Panel's ruling

The first and foremost consideration for the Panel is whether the Respondent had a fair opportunity in responding to the Complaint. Having regard to the fact that all email correspondence with both parties has been rendered in both languages, the Panel believes that should the Respondent have difficulty in any way with the Complaint, he would have asked for the necessary translation. In particular, the Respondent was given a specific opportunity to oppose the application of the Complainant to have the proceedings conducted in English and he did not respond. Furthermore, the evidence against the Respondent is quite overwhelming and it is in the interests of justice that the decision should be issued as soon as possible. In the circumstances, discretion is hereby exercised to allow the Complaint in English to stand. Further, in view of the Complaint being in English, it is not inappropriate that the decision should also be rendered in English.

Factual Background

For Claimant

The Complaint is based on the Complainant's registrations for the mark "MACAUSLOT" ("Mark"). Particulars of registrations are set out as follows:

Hong Kong 11 September 2003 16, 41 300077698 Class 16: paper, cardboard and goods made from these materials, not included in other classes; printed matter; photographs; stationery.

Class 41: sports results services; sports information services.

Macau 7 April 2004 16 N/012501 Paper, cardboard and goods made from these materials, not included in other classes; printed matter; photographs; stationery.

Macau 7 April 2004 41 N/012502 Betting services; casino services; gaming services; gambling services; telephone betting; offshore telephone betting; online betting and/or betting facilities provided via the Internet; rental of betting, gaming and/or gambling apparatus, equipment and/or machines; provision of betting, gaming and/or gambling facilities;

betting, gaming and/or gambling results services; information services relating to all the aforesaid; sports services; sports club services; organizing and arranging of sporting activities and/or competitions; sports results services; sports information services.

The Complainant is the proprietor of the Mark. This Complaint is based on the Complainant's registrations for the Mark registered in classes 16 and 41 in Hong Kong and Macau as set out above and the Complainant's common law rights generated as a result of uses of the Mark by the Complainant.

The word "Macauslot" is derived from the company name of the Complainant "Sociedade de Lotarias e Apostas Mutuas de Macau, Lda". The Complainant has since at least 1998 used the Mark in its business of legal betting and sports information services provider. The Mark has since then been extensively used and advertised by the Complainant.

The Complainant was established in 1989. The Complainant is the sole legal operator of both soccer and basketball betting business in Macau and some parts in Asia. The Complainant has registered, inter alia, the domain name "macauslot.com" ("Complainant's Domain Name") on 7 February 1998. The Complainant has been operating its official website under the domain name "macauslot.com" since 1998 ("Complainant's Website"). The Complainant's Website provides soccer and basketball news and information to Internet users free of charge. The Complainant's Website is one of the most popular sports information website in the Chinese language community. The Complainant's Website has a hit-count of 30 million per month, which is amongst the top 200 websites worldwide in terms of hit-count per month. The Complainant also operates a betting website at <http://www.macau-slot.com>. Due to extensive advertising and promotion, the Complainant has established a protectable reputation in the Mark and the Complainant's Website, and the trade and the public will associate the Mark and the Complainant's Website exclusively with the Complainant.

For Respondent

The Respondent did not file any response.

Parties' Contentions

Claimant

Identical/Confusingly Similar

The Respondent has registered the domain name "macaus10t.com" ("Disputed Domain Name") without its knowledge or authorisation. The Disputed Domain Name is confusingly similar to and is deliberate imitation of the Mark and the Complainant's Domain Name in which the Complainant has rights. In this regard, "1" and "0" which form part of the Disputed Domain Name are confusingly similar to "l" and "o" which form part of the Complainant's Domain Name.

Rights or Legitimate Interests of the Respondent

The Respondent's name is different from the Disputed Domain Name he has registered and clearly the Respondent is not commonly known by the Disputed Domain Name. The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. As can be observed from the WHOIS search, the Respondent has not given his full address and contact details for the registration record. This demonstrates the Respondent's scheme to evade being located for legal liability.

Bad Faith

The Disputed Domain Name has been registered and used in bad faith. The Respondent has attempted to confuse and mislead the public into believing that the website operated under the Disputed Domain Name ("Respondent's Website") is connected to or authorised by the Complainant and/or the Complainant's Website:-

(a) The Respondent has deliberately registered the Disputed Domain Name which is confusingly similar to and an imitation of the Complainant's Mark and the Complainant's "macauslot.com" domain name in which the Complainant has rights, with an intention of causing confusion to the public that the Respondent and/or the Respondent's website is related to or authorised by the Complainant and/or the Complainant's Website. As an example, when the website address of the Respondent's Website <http://www.macaus10t.com> appears in the form of a hyperlink in emails or websites, Internet users will very likely be confused to believe that the hyperlink which actually leads to the Respondent's Website will lead to the Complainant's Website.

Further, as demonstrated in (b) below, the Respondent is clearly aware of the Complainant and the Complainant's

Website. It cannot be a mere co-incidence that the Respondent has chosen the Disputed Domain Name, which is substantially similar to and is an imitation of the Mark and the Complainant's Domain Name, as his domain name. It is obvious that the Respondent is riding on the reputation of the Complainant and uses the Disputed Domain Name deliberately in order to confuse and mislead the public and to attract, for commercial gains, Internet users to the Respondent's Website.

(b) In the main page of the Respondent's Website, the Respondent has, without the Complainant's authorisation, reproduced the Complainant's "SLOT" and "Soccer Device" trademarks and Chinese company name "澳門彩票有限公司", representing that the Respondent's Website is operated or authorised by the Complainant. The Respondent has also, without the Complainant's authorisation, reproduced in the Respondent's Website banners and content copied from the Complainant's Website. The telephone number "8986388" depicted on the right-hand side of the main page of the Respondent's Website is an enquiry hotline number of the Complainant in Macau.

Further, as revealed by the source code of the main page of Respondent's Website, the Respondent has used "MacauSlot Slot Home" as the title of the Respondent's Website and the Chinese description "亞洲首創唯一合法足球博彩" meaning "the first and only legal operator of soccer betting business in Asia" which refers to the business of the Complainant.

The Complainant has registered the "SLOT" and "Soccer Device" trade marks in Hong Kong and Macau. The Complainant has registered the "Soccer Device" mark in Macau as early as on 6 June 2001 in class 41 in respect of "education and entertainment services" under registration number N/007526.

(c) Almost all of the hyperlinks included in the Respondent's Website are linked to the Complainant's Website, without the Complainant's authorisation.

There is however one webpage at <http://www.macaus10t.com/tel.htm> of the Respondent's Website, requesting VIP members to input their username, password and mobile phone number. It also requires VIP members not to make any enquiries by calling any department of the home office. Instead, it suggests users to call the telephone number "00853-6176135" and contact a person called "Lam Cheung Sang". The Complainant confirms that the telephone number "00853-6176135" is not a telephone number of the Complainant and the person "Lam Cheung Sang" is not authorised by the Complainant.

By referring to the Complainant's name and requesting users not to make any enquiries with the "home office", it is apparent that the Respondent intends to deceive members of the public and tries to illegally obtain login information of Internet users' betting accounts with the Complainant, by creating a false association with the Complainant.

The Respondent has been operating the Respondent's Website for commercial gain. As mentioned in (c) above, it is apparent that the Respondent is trying to illegally obtain login information of Internet users' betting accounts with the Complainant by creating a false association with the Complainant. Once the Respondent obtains the login information, it may access the user's account with the Complainant and may transfer money out of the betting account.

The Respondent has deliberately registered the Disputed Domain Name in order to attract, for commercial gain, Internet users to the Respondent's Website, by creating a likelihood of confusion with the Complainant's Mark and the Complainant's Website as to the source, sponsorship, affiliation, or endorsement of the Respondent's Website or location or of a product or service on Respondent's Website or location.

The Respondent has registered the Disputed Domain Name primarily for the purpose of deceiving members of the public and disrupting the business of the Complainant as a competitor.

The full address of the Respondent is not revealed from the WHOIS record. A cease and desist letter sent by the Complainant to the Respondent on 23 June 2006 by way of fax to the number 86 021 021021021 and email to the address 021021@16316.com as shown in the WHOIS record could not be successfully transmitted because both the fax number and email address are invalid.

Respondent

The Respondent did not respond

Findings

Identical / Confusingly Similar

The Complainant has the burden of proving that the domain name in dispute is identical to or confusingly similar to the “MACAUSLOT” 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 registration of the mark of MACAUSLOT” as set out above, the Complainant has rights over the Mark.

“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.” See *AltaVista Company v. Geoffrey Fairbairn*, Case No. D2000-0849.

The Panel finds that the disputed domain name is confusingly similar to the trademark “MACAUSLOT”. The respondent clearly was aware of the Mark and the domain name of “macau-slot” of the Complainant. The disputed domain name has minor differences in spelling. Visually it is very similar to “MACAUSLOT”.

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

Rights and Legitimate Interests

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.

On the evidence, the Panel accepts that the Complainant has shown prima facie that the Respondent does not have right or legitimate interest in the Disputed Domain Name. The evidence is that the Respondent is attempting, to say the least, to confuse and mislead the public into believing that the website operated under the Disputed Domain Name (“Respondent’s Website”) is connected to or authorised by the Complainant and/or the Complainant’s Website.

It falls on the Respondent to raise matters under Paragraph 4 (c) of the Policy. The Respondent however did not respond.

The Panel is satisfied that the requirements of Paragraph 4(a)(ii) are met with.

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.

The fact that the Respondent has chosen not to submit a response is particularly relevant to the issue of whether the Respondent has registered and is using the domain name in bad faith. Paragraph 14(b) of the Rules provides that, in the absence of exceptional circumstances, a Panel shall draw such inferences as it considers appropriate from the failure of a party to comply with a provision or requirement of the Rules. See *Société pour l’ Oeuvre et la Mémoire d’ Antoine de Saint Exupéry – Succession Saint Exupéry – D’ Agay v. Perlegos Properties*, Case No. D2005-1085.

The Panel finds no exceptional circumstances for the Respondent's failure to submit a response. The Panel draws the inference that the Respondent does not deny the facts which the Complainant asserts and accepts the evidence adduced by the Complainant.

Having regard to the contention of the Complainant and the evidence adduced by the Complainant, the Panel is satisfied that Sub-paragraph(iv) is proved by the Complainant. The Panel comes to the conclusion that the intention of the Respondent in registering and using the disputed domain name was an attempt to attract, for commercial gain, Internet users to the website at the disputed domain name, by creating a likelihood of confusion with the Complainant's mark as to affiliation, or endorsement of the website at the disputed domain name or of the product on the website. Further, the Panel accepts that the intention of the Respondent was to obtain illegal gain. This could be further covered by Paragraph 4 itself even if this would not fall within the strict terms of Sub-paragraph (iv).

The Panel finds that the domain name has been registered and is being used in bad faith. The requirements under Paragraph 4(a)(iii) are met with.

Status

www.macaus10t.com

Domain Name Transfer

Decision

It is the finding of the Panel that all requirements of paragraph 4(a) are proved by the Complainant. In paragraph 9 of the Complaint, Complainant sought to have the domain name in question transferred to it. Having regard to circumstances of the case, the Panel believes that it is appropriate to transfer the domain name www.macaus10t.com to Complainant and so orders.

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