



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

— A charitable institution limited by guarantee registered in Hong Kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1000291
Complainant:	Aedas Limited
Respondent:	AEDAS International

1. The Parties and Contested Domain Name

The Complainant is Aedas Limited, a private liability company incorporated under the laws of Hong Kong, with a registered business office at 31st Floor, One Island East, 18 Westlands Road, Quarry Bay, Hong Kong represented by Deacons, solicitors of Hong Kong.

The Respondent is AEDAS International, with an unknown place of incorporation and a given address of C-137, Greater Kailish – 1, New Delhi, 110048, India, unrepresented in these proceedings.

The domain name at issue, <**aedasinternational.com**>, is registered with Directi Internet Solutions Pvt. Ltd., doing business as, Publicdomainregistry.com, of Mumbai, India.

2. Procedural History

The Complaint was filed with the Hong Kong office of the Asian Domain Name Dispute Resolution Center (the “Center”) on May 13, 2010. On May 13, 17 and 18, 2010, the Center transmitted by email to Directi Internet Solutions Pvt. Ltd a series of requests for registrar verification in connection with the domain name at issue. On May 19, 2010, Directi Internet Solutions Pvt. Ltd transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy”), the Rules of Procedure under the Policy (the “Rules”), and the Center’s Supplemental Rules.

In accordance with the Rules, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on May 24, 2010. In accordance with the Rules, the due date for Response was June 13, 2010. No Response was submitted and the Respondent was notified of its default on

The Center appointed Debrett G. Lyons as the sole panelist in this matter on June 21, 2010. The Panel finds that it was properly constituted and has acted impartially in reaching its conclusion.

3. Factual background

A. For Complainant

1. The Complainant is one of an international group of companies which do business under the trademark AEDAS and which provide, amongst other things, architectural, planning, and building services.
2. The AEDAS group first used the trademark in 2002. Since 2006, the Complainant has been a licensed user of the trademark.
3. A group holding company is the registered proprietor of the trademark AEDAS in numerous countries including India.
4. The Complainant has not licensed or otherwise permitted the Respondent to use the trademark or to register or use any domain name incorporating the trademark.
5. The Complainant petitions the Panel to order transfer the disputed domain name from the Respondent to the Complainant.

B. For Respondent

6. The Respondent registered the disputed domain name on August 9, 2005.
7. There is no evidence of a website corresponding with the disputed domain name.

4. Parties' Contentions

A. Complainant

The Complainant asserts rights in the trademark AEDAS and states that the disputed domain name is confusingly similar to the trademark.

The Complainant alleges that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant alleges that the Respondent registered and used the disputed domain name in bad faith.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

5. Findings

Notwithstanding the fact that the Respondent did not offer a response to the Complaint, the Rules instruct the Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Rule 10(a) states that the "Panel shall conduct the arbitration proceeding in such manner as it considers appropriate in accordance with the Dispute Resolution Policy, the Rules of Procedure and the Provider's Supplemental Rules."

Rule 10(d) states that the “Panel shall determine the admissibility, relevance, materiality and weight of the evidence presented to it.” In that respect, the Panel is entitled to accept reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory (see *Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc.*, FA 95095 (Nat. Arb. Forum July 31, 2000) holding that the respondent’s failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true; see also *Talk City, Inc. v. Robertson*, D2000-0009 (WIPO Feb. 29, 2000) stating that “In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.”).

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

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

A) Identical / Confusingly Similar

The Complainant has shown that registration of the trademark AEDAS in numerous countries or regions. Although the registrations are not in the name of the Complainant, the consensus of former panellists examining this aspect of the Policy is that rights in a trademark accrue to a Complainant in circumstances where it is shown that a complainant is part of a group of companies and is licensed to use a group trademark. Those facts are shown here and so the Panel has no hesitation in finding that the Complainant has rights in the trademark acquired through registration with governmental authorities (see *State Farm Mut. Auto. Ins. Co. v. Malain*, FA 705262 (Nat. Arb. Forum June 19, 2006) finding that “Complainant’s registrations with the United States Patent and Trademark Office of the trademark STATE FARM establishes its rights in the STATE FARM mark pursuant to Policy ¶ 4(a)(i).”; see also *Mothers Against Drunk Driving v. phix*, FA 174052 (Nat. Arb. Forum Sept. 25, 2003) finding that the complainant’s registration of the MADD mark with the United States Patent and Trademark Office establishes the complainant’s rights in the mark for purposes of Policy ¶ 4(a)(i)).

Applying the principles developed and now broadly accepted under the Policy, the Panel also finds the disputed domain name to be confusingly similar to the trademark. The disputed domain name wholly incorporates the Complainant’s trademark. The addition of the purely descriptive word, “international”, and the gTLD, “.com” are trivial and do nothing to defeat the Complainant’s claim of confusing similarity (see *Rollerblade, Inc. v. McCrady*, WIPO Case No. D2000-0429 finding that the top level of the domain name such as “.net” or “.com” does not affect the domain name for the purpose of determining whether it is identical or confusingly similar; see also *Wal-Mart Stores, Inc. v MacLeod d/b/a For Sale*, WIPO Case No. D2000-0662 holding confusing similarity when the domain name includes the trademark, or a confusingly similar approximation, regardless of the other non-distinctive terms in the domain name; see also *Wal-Mart Stores, Inc. v Tauer*, WIPO Case No. D2000-1076; finding <walmartrx.com> confusing similar to the WAL-MART trade mark).

The Panel finds that the Complainant has satisfied the first element of the Policy.

B) Rights and Legitimate Interests

The Complainant has the burden to establish that the Respondent has no rights or legitimate interests in the domain name. Nevertheless, it is well settled that the Complainant need only make out a *prima facie* case, after which the onus shifts to the Respondent to demonstrate rights or legitimate interests (see *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. D2000-0624; *Hanna-Barbera Prods., Inc. v. Entm't Commentaries*, NAF Case No. 741828; *AOL LLC v. Gerberg*, NAF Case No. 780200).

Paragraph 4(c) of the Policy states that any of the following circumstances which if found by the Panel to be proved based on its evaluation of the evidence, demonstrate rights or legitimate interests to a domain name for purposes of paragraph 4(a)(ii):

- (i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Complainant has established its trademark rights. There is no evidence that the Respondent has similar rights, registered or not. The WHOIS data does not support any argument that the Respondent might be commonly known by the domain name. The Complainant has stated there to be no relationship between the parties.

The Respondent is not using, nor has it made demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services.

The Panel finds that the Complainant has succeeded in making a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, and that the Respondent in failing to reply has not discharged the onus which fell to it as a result. The Panel finds that the Respondent has no rights or legitimate interests in the domain name and so the Complainant has established the second limb of the Policy.

C) Bad Faith

Paragraph 4(b) of the Policy sets out the circumstances which shall be evidence of the registration *and* use of a domain name in bad faith. They are:

- (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 Complaint does not expressly rely on these *de facto* cases of bad faith use and registration, but it uses in part the language of paragraphs 4(b)(ii) and (iv) of the Policy.

In terms of paragraph 4(b)(ii), there is no evidence before the Panel that the Respondent has engaged in a pattern of conduct aimed at preventing the Complainant or another trademark owner from reflecting its trademark in a corresponding domain name. The Panel cannot apply paragraph 4(b)(ii).

In terms of paragraph 4(b)(iv), there is no evidence of use of the disputed domain name by the Respondent. Nevertheless, the Panel is prepared to find so-called "passive holding" in accordance with the principles laid down in the case of *Telstra Corporation Limited v. Nuclear Marshmallows* WIPO Case No. D2000-0003. In particular, the *Telstra* case and the countless decisions which have adopted its reasoning have found bad faith *use* in circumstances where the domain name is not in use and has never been used, the Complainant's trademark is well known, the Respondent lacks any rights in the name, and no plausible scenario can be foreseen in which the Respondent might come to use the domain name in good faith. Those factors are all present and satisfied here.

The Panel is in agreement with the Complainant that the Respondent's actions fall squarely under paragraph 4(b)(iv) and that the disputed domain name was registered and used in bad faith.

Accordingly, the Complainant has satisfied the third and final element of the Policy.

6. Decision

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the domain name "aedasinternational.com" be transferred to the Complainant.



Debrett G. Lyons
Sole Panelist

Date: June 29, 2010
