

**ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE
(KUALA LUMPUR OFFICE)**

**Administrative Panel Decision (“Award”)
Case No. KLRCA/ADNDRC-394-2016**

Complainant: **Genting International Management Limited**
International House, Castle Hill, Victoria Road, Douglas
Isle of Man, IM2 4RB, British Isles
Represented by Mr. Bahari Yeow Tien Hong
Advocates Lee Hishammuddin Allen & Gledhill

Respondent: **MD Yusni MD Haniff**
Blok G 1-10, Setapak
Kuala Lumpur 53200 Malaysia.

Domain Name: **genting99.com**

Registrar: **GoDaddy.com, LLC**
Scottsdale, Arizona, USA

Panelist: **Karen Mills**
KarimSyah Law Firm
Jakarta, Indonesia

Procedural History

The Complainant filed a Complaint dated 3 June 2016, with the Asian Domain Name Dispute Resolution Centre – Kuala Lumpur Office (“ADNDRC”) through their Attorney, Mr. Bahari Yeow Tien Hong, advocates of Lee Hishammuddin Allen & Gledhill Advocates & Solicitors. According to the Complaint, the Complainant has conducted a “Whois” search over the Disputed Domain and the results reveal the details of the Respondent as set out above.

On 6 June 2016, the ADNDRC sent the Notification of Commencement of Proceedings to the Respondent with copy to the Complainant & its authorized representatives and the Registrar, and requested that it file its Response within twenty (20) days therefrom. As the Respondent did not respond within such time, nor at all as of the date hereof, this Panelist has been able only to consider the information submitted by the Complainant.

On 15 July 2016, the ADNDRC appointed the Undersigned as sole Panelist for the captioned domain name dispute in this matter, Ms. Karen Mills. The file was forwarded by the ADNDRC to this Panelist on 15 July 2016.

ADNDRC requires a panel to render its award within 14 days of final submission, which has been interpreted by this Panel to be the date of receipt of the full file, and therefore the deadline for delivery of this Award is 29 July 2016. Nonetheless, this Award has been delivered to ADNDRC on 20 July, 2016.

In its Complaint, the Complainant confirmed that no legal proceedings have been commenced by the Parties in conjunction with or relating to the domain name which is the subject of this dispute, although a cease and desist letter was sent by the Complainant to the Respondent on 14 April, 2016, to which no response had been received as of the date of the Complaint.

Factual background

According to the submission of the Complainant:

1. The Complainant is commonly known as Genting International Management Limited, a subsidiary of Genting Berhad and Genting Singapore PLC, all of which are part of the Genting Group of Companies ("**Genting Group**"), a well known group of companies in Malaysia.
2. Genting Berhad, the investment holding and management company of the Genting Group is the registered proprietor and/or owner or beneficial owner of the Mark "GENTING" (the "**Mark**") in numerous classes in Malaysia, and the Complainant is the registered proprietor and/or owner and/or beneficial owner of the Mark in various classes in a number of jurisdictions including the United States, China, and Singapore. Copies of registration certificates for the Mark in the USA, China, Singapore, Malaysia, the UK and Brunei Darussalam were enclosed with the Complaint.
3. Based on Complaint and Annual Reports also enclosed with the Complaint, it can be seen that the Complainant and/or Genting Group have strong international business presence including but not limited to United States of America, China, Singapore, and Malaysia. The core business of the Complainant and/or Genting Group are leisure hospitality and casino business. The business of the Complainant and/or Genting Group later diversified to include global investments in oil palm plantations, power generation, oil and gas, property development, cruise, biotechnology and other industries. All of the products and/or services bearing the Mark involving the businesses above have been used and provided extensively by the Complainant and/or Genting Group in United States of America, China, Singapore, Malaysia, and in various other jurisdictions.
4. Based on the "Whois" information, the Disputed Domain Name was registered by the Respondent on 24 March 2016 and is valid to 24 March 2017, in the name of genting99.com.

5. The Complainant claims that the use of the Disputed Domain Name, “genting99.com”, which contains the Complainant’s registered trademark “GENTING”, is identical to or confusingly similar to Complainant's registered trademark, is likely to deceive and confuse members of the trade and public into believing that the Disputed Domain is that Complainant’s and/or associate to the Complainant.
6. On 14 April 2016, the Complainant sent cease and desist letters addressed to the Respondent, demanding that they remove, terminate, discontinue and/or de-register or surrender and transfer the Disputed Domain. However, Complainant had no response, nor has any action been taken as of the date of the Complaint.

For the Respondent

1. The Respondent has not submitted any response to the Complainant’s Complaint within the time period provided by the ADNDRC, nor at any time subsequent, at least up until the delivery of the documentation to this Panelist.
2. Thus the decision of this Panel can only be based upon the information and materials submitted by Complainant.
3. This Panelist did seek to open the website of: <http://www.genting99.com>, the disputed Domain Name, but received an error message that the server could not be found. It would thus appear that the Disputed Domain Name is not being used as such by the Respondent, nor by any other party.

Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

1. The Disputed Domain Name contains the Complainant’s registered and worldwide well known trade mark “GENTING” and is thus, if not exactly the same is, at the very least, highly and confusingly similar to the Complainant’s trademarks.
2. The Respondent has no rights or legitimate interest in the Disputed Domain Name, which it has registered without any such right. The Respondent has no registered right in the trademark/tradename GENTING, is not affiliated with the Complainant, and has obtained neither consent nor authorization of Complainant to use or register the Disputed Domain Name.
3. The Complainant alleges that the registration by the Respondent of the disputed Domain Name is “clearly tainted with *mala fide* intention” knowing well that the Mark is the intellectual property of the Complainant, and that the Respondent has

registered the domain name “for unlawful financial benefits, and/orwhether immediately and/or in the new future (sic).”Thus this proceedings is initiated as a Pre-emptive step to prevent further damages.

B. Respondent

The Respondent did not file any response to the Complainant’s Complaint and thus has not provided its own position.

Findings of the Panel

In determining the dispute, the Panelist is to decide a complaint based on the documents provided and in accordance with the ICANN Uniform Domain Name Dispute Resolution Policy (the “Policy”), the Rules for ICANN Uniform Domain Name Dispute Resolution Policy and the ADNDRC Supplemental Rules (collectively the “Rules”).

The Policy provides, at Paragraph 4 (a), that each of three findings must be made in order for a Complainant to prevail:

- A. Respondent’s domain name is identical or confusingly similar to a trademark orservice mark in which Complainant has rights; and
- B. Respondent has no rights or legitimate interests in respect of the domain name; and
- C. Respondent’s domain name has been registered and is being used in bad faith.

Based upon the submissions, the Panel finds as follows :

- A. Is the disputed Domain Name registered by the Respondents identical or confusingly similar to the trademark or service mark in which the Complainant has rights?

It would seem quite evident that the domain name: “genting99.com” is, if not identical at least confusingly similar to “Genting.The addition of one or more words or numbers to a tradename protected by trademark has often been held to be identical, or at the very least confusingly similar, to the registered trademark name. The name “Genting” has been registered as a trademark or servicemark by the Complainant in numerous jurisdictions, including that of Respondent, and has been used as its primary business name for many years.Consumers may assume that anything bearing the Genting name is in some manner related to the Genting group of companies, belonging to Complainant and its group.

Therefore this Panel finds that the use of the word “genting” in the domain name in question is identical or confusingly similar to the name Genting, in which the Complainant has intellectual property rights pursuant to its trademarks.

B. Does the Respondent have any interest or legitimate right in the domain name in dispute?

Generally a legitimate interest or right in a domain name might be established where the name is the same as the first or family name of a respondent, where the respondent has registered a trade or service mark under such name, does business under that name, holds a license or franchise from the owner of the trademark of such name, or distributes or sells products under such name.

The Respondent has failed to answer the allegations of the Complainant and thus has not made any effort to establish that it has any legitimate interest in the name Genting. Nor is this Panelist able to find any indication whatsoever of any such interest. Respondent has apparently not even sought to use the name in a website or otherwise.

The Complainant has stated that the Respondent is neither connected, associated, or affiliated with the Complainant. The Complainant also stated that no consent or authorization has been provided to the Respondent to register the Disputed Domain Name nor to use the Complainant's trademark.

This Panel therefore is unable to find any legitimate right to use the domain name on the part of the Respondent, and thus can only find that it has none.

C. Was the domain name in question registered and used in bad faith?

The Policy provides guidance to assist in determining whether there has been bad faith, listing four circumstances that, without limitation, could constitute evidence that the registration and use of a domain name is done in bad faith. These are:

- (a) circumstances indicating that registrant did so primarily for the purpose of selling, renting or otherwise transferring the domain name to the complainant who is the owner of the relevant trademark/service mark or to a competitor of that complainant, for valuable consideration in excess of the registrant's documented out-of-pocket costs directly related to the domain name involved;
- (b) the registrant did so to prevent the owner of the relevant trademark or service mark from reflecting the mark in a corresponding domain name, provided that the registrant has engaged in a pattern of such conduct;
- (c) the registrant did so for the purpose of disrupting the business of a competitor;
or
- (d) by using the domain name in question, the registrant intentionally attempted to attract, for commercial gain, internet users to the registrant's website, by creating confusion with the complainant's mark as the source, sponsorship,

affiliation, or endorsement of the registrant's website or of a product or service on the registrant's website.

Let us examine which, if any, of these elements appear to be present in the instant situation.

- (a) There is no indication that any attempt was made by Respondent to offer to sell the disputed domain name to the Complainant. However, as the Respondent has not posted any website using the domain name, it is always possible that it had been Respondent's intention to offer to sell the domain name to Complainant. There is no evidence of any such intention, however.
- (b) In many cases where a domain name is registered in bad faith, it is done for the purpose of "cybersquatting" or preventing the rightful owner from using its name. Normally such cybersquatters register many names and then try to sell them for profit. There has been no indication that this Respondent is in the habit or business of cybersquatting, nor any evidence presented to the effect that it has registered any other domain names improperly. However, the very fact of registration of a domain name does prevent anyone else, including the rightful owner of the intellectual property in the name itself, from registering and/or using such domain name. As it does not appear that the Respondent registrant has in any way used the domain name, it would seem as likely as not that the purpose may have been in the nature of cybersquatting.
- (c) There is no indication that the purpose, nor the result, of the registration by Respondent of the domain name in question has been disruptive to the business of Complainant, nor has Complainant so claimed.
- (d) There also has been no indication that the purpose of Respondent in registering the disputed domain name is for purposes of attracting business, seeing that no website appears to have been established under the disputed domain name (unless of course Respondent did originally establish such a website but took it down after receiving Complainant's cease and desist letter, but there is no way for this Panelist to make any such determination now.)

It would appear that none of the criteria set out in the Policy to indicate bad faith have been established without doubt in this situation. However, the wording of the Policy makes it clear that these criteria are without limitation. Nor is the burden to prove bad faith one of proof beyond reasonable doubt. Thus the Panelist is entitled to decide the matter based upon balance of likelihood, preponderance of evidence and other matters of justice and reasonableness.

Clearly if a registrant of a domain name has no interest in such domain name, and the domain name is identical or very similar to a name or mark in which a party in good faith does have rights and that rightful party brings an application to ADNDRC or another ICANN approved body to cancel the registration of registrant, is it just and

equitable for such wrongful registrant to be able to evade responsibility and retain its registration simply by ignoring the complainant's complaint and presenting no justification whatsoever? Surely the failure to respond, in itself, would seem evidence of bad faith. This is the dilemma presented to a Panelist in this situation.

Complainant has not requested that the registered domain name be transferred to it. It has requested that the registration be cancelled, as it says as a pre-emptive measure to prevent the kind of damage that could occur if the registration were to remain in the name of the Respondent, thereby allowing Respondent to undertake exactly the kind of bad faith actions mentioned in the Policy guidelines.

Under the circumstances, seeing that the Respondent is not utilizing the disputed Domain Name in any manner, and thus will suffer no damage by its cancellation, and that if it remains registered to the Respondent the Complainant does run the risk of suffering damages in the future, including the possibility of extension of registration by the Respondent when the registration expires next year, this Panelist is of the view that the likelihood of bad faith on the part of Respondent is greater than the possibility of good faith, of which no evidence or justification has been presented whatsoever.

This Panelist therefore finds that the likelihood that the domain name was registered and is being used (or being NOT used) in bad faith is sufficiently likely to warrant a finding of bad faith.

Award

Based upon the Policy, the Complaint and the above analysis, this Panel finds that the domain name registered by the Respondent is identical or confusingly similar to trademarks in which the Complainant has rights; that Respondent does not have any legitimate right or interest in respect of the domain name; and that, absent any evidence to the contrary, the domain name was registered and is being used (or withheld from use) in bad faith.

Therefore this Panelist hereby orders that the registration of the domain name: genting99.com be cancelled and, to the extent possible, the registrar be enjoined from reregistering such name if so requested by Respondent.



Karen Mills
Sole Panelist
20 July, 2016