



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

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### Decision Submission

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Decision ID	DE-0800161
Case ID	CN-0600116
Disputed Domain Name	www.美宝莲.net
Case Administrator	lihu
Submitted By	Guangliang Tang
Participated Panelist	

Date of Decision	07-04-2008
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### The Parties Information

<b>Claimant</b>	L' OREAL
<b>Respondent</b>	Xiao Xuemei

### Procedural History

The Complaint was filed with the Asian Domain Name Dispute Resolution Centre (the “Center”) on October 27, 2006, which was confirmed by the Center on December 13, 2006 as the Complainant had satisfied all the requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the Centre’s Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”). On December 14, 2006, the Center transmitted by email to the WEB COMMERCE COMMUNICATIONS LIMITED DBA WEBNIC.CC. (Registrar of the domain name) a request for the registrar to verify domain name at issue. The Registrar replied a day later, confirming that the disputed domain name of which the Respondent is the holder was registered with it.

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center transmitted the Complaint to the Respondent on March 1, 2007. On March 29, 2007, Notification of Commencement of Proceedings were sent to the Parties, ICANN and the Registrar. Until April 19, 2007, the deadline for Response fixed by the Center, there was no response submitted by the Respondent to the Center.

As the Respondent had not responded and the Complainant elected one Panelist to decide the case, the Center appointed Tang Guangliang as the sole panelist on April 29, 2007. The Panelist declared that he is capable of being impartial and independent when judging the case. The Center transferred all relevant documents and notifications regarding the case to the Panel on April 29, 2007, and asked the Panel to submit a decision by default before May 13, 2007.

### Factual Background

#### For Claimant

According to the Complaint,

(I) The Complainant enjoys the exclusive right of the trademark “美宝莲” protected by the Chinese law.

The Complainant L’ OREAL was founded in 1907 by a French chemist named Eugene Schueller who invented the first synthetic hair dye in the world. Its headquarters is in Paris. At present, L’ OREAL has become the largest cosmetic group in the world and was listed in the FORTUNE 500, with its products covering body lotion, sun-blocking series, hair care and hair dyes series, make-up series, perfume series, sanitary utensils, cosmetics sold only in drugstores and skin care products used for assistant treatment for skin disease.

The “美宝莲/Maybelline” brand was founded in 1913 in N.Y., U.S.A., and joined the L’ OREAL Group in 1996. At

present, the “美宝莲” brand has become one of the most famous and popular brands of cosmetics in the international cosmetic market. In China, the Complainant has registered the trademarks “美寶蓮” and “美宝莲” in class 3 since 1998. The form below shows the situation of the registration of the trademark “美宝莲” and “美寶蓮”.

At present, the above-mentioned trademarks are all valid.

Furthermore, the Complainant has also registered the trademarks “美宝莲” and “美寶蓮” in some classes in Hong Kong, China.

(II) The Complainant owns the right to use the trade name for “美宝莲”.

“美宝莲” is the trade name of Maybelline (Suzhou) Cosmetics Co., Ltd., the Complainant’s Chinese subsidiary company. Therefore, the Complainant owns the right to use the trade name for “美宝莲”.

(III) The Complainant owns various domain names bearing “美宝莲” in Internet.

The Complainant and its Chinese subsidiary companies “L’ OREAL (China) Co., Ltd.” and “Maybelline (Suzhou) Cosmetics Co., Ltd. Shanghai Branch” registered a series of domain names relating to “美宝莲”, such as “美宝莲.中国”, “美宝莲.公司”, “美宝莲.网络”, and CNNIC keyword “美宝莲”.

### For Respondent

The Respondent in this case is a natural person whose name is Xiao Xuemei, domiciled at Chengdu Qingbaijiang Dawan Zhen, Chengdu, CN. Because the Respondent had not responded, no further information about him(or her) is available.

### Parties' Contentions

#### Claimant

The assertions of the Complainant includes—

I) The main part of the domain name “美宝莲.net” registered by the Respondent is identical with the Complainant’s trademark “美宝莲” in pronunciation, appearance and arrangement of letters, thus is likely to cause confusion.

II) The Respondent does not enjoy any legitimate rights or interests for the registered domain name “美宝莲.net”.

Ø The Respondent does not enjoy the exclusive right of trademark “美宝莲”;

Ø The Complainant has never authorized or licensed the Respondent to use the trademark “美宝莲”, and never transferred the trademark “美宝莲” to the Respondent. As far as the Complainant knows, the Respondent has never obtained authorization or license of the trademark “美宝莲” from any channel;

Ø The Respondent is neither employee of the Complainant, nor person who the Complainant authorized to register the disputed domain name. And, there is no any entrustment or cooperation relationship between the Complainant and the Respondent.

Ø The Respondent has never put the disputed domain name into actual use.

III) The Respondent has registered the disputed domain name in bad faith.

As a well-known trademark owned by the Complainant, “美宝莲” has become familiar to the customers, and is loved by them through long-term operation, numerous advertisements and wide registration. Products of “美宝莲” can be found in any country. Meanwhile, “美宝莲” is also the trade name of the Complainant’s Chinese subsidiary company, which has strong distinctiveness. Thus, the Respondent should know the Complainant’s “美宝莲” brand. It is under this situation that the Respondent registered the disputed domain name in bad faith.

As it is known to all, the registered domain name could achieve its function and value only after having been connected to a specific website. But while visiting the domain name “美宝莲.net”, it is found that the domain name automatically directs to the store which the Respondent set up on www.taobao.com. According to the information shown on the website, the Complainant found that the main business of the Respondent is the sale of cosmetic, which is the same as that of the Complainant. Thus the Respondent should be familiar with the well-known trademark “美宝莲” owned by the Complainant. However, the Respondent still registered the disputed domain name under this situation. In addition, the Respondent is a natural person and has no relationship with “美宝莲”. The Respondent is neither employee of the Complainant, nor person who the Complainant authorized to register the disputed domain name. What

s more, there is not any entrustment or cooperation relationship between the Complainant and the Respondent. So we can draw a conclusion that such registration is by no means a careless act but for gaining illegal profit through making consumers confused with the complainant's products, services and website and those of its own and misleading consumers to visit its website and order its products online. Therefore, the Complainant has every reason to believe that the Respondent's registration and use of the disputed domain names are for vicious business purpose.

The Complainant considers that the act of the Respondent prevents the Complainant from reflecting its registered trademark in a corresponding domain name and conducting normal business action. The Respondent's act is obviously conducted in bad faith.

The above facts show that the act of the Respondent in registering the disputed domain name is not accidental, while is vicious. Thus, the act of the Respondent has fallen into the circumstances of bad faith provided in Section (ii) and (iv) of Item b of Article 4 of "Uniform Policy for Domain Name Dispute Resolution", namely, "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"; "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".

### Respondent

There's no response from the Respondent.

### Findings

According to Article 4(a) of the Policy, the Complainant has the burden to prove each of the following three elements:

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

### Identical / Confusingly Similar

The Panel acknowledged that, in ANNEX III and IV, the Complainant has proved the existence of the registered trademark "美宝莲" in PRC and Hong Kong, and the identical characteristics of the disputed domain name to the registered trademark.

For the following reasons, the Panel finds that the disputed domain name is identical to the trademark "美宝莲":

1. "美宝莲" is a registered, distinctive, and widely used trademark, but is not a descriptive or generic term;
2. The main part of the disputed domain name has no difference with "美宝莲".

### Rights and Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the Complainant to prove that the Respondent has no right or legitimate interest in the disputed domain name. However, the Panel holds that if the Complainant makes out a prima facie case that the Respondent has no right or legitimate interest, 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.

As the Complainant stated in the Complaint, the Panel finds that the Respondent has no connection with the Complainant whatsoever. The Complainant has not authorized, licensed or otherwise permitted the Respondent to use the trademark "美宝莲". Accordingly, the Respondent does not have any basis upon which he can assert his right or legitimate interest in the disputed domain name and there cannot be any possible legitimate connection or interest between the Respondent and the disputed domain name.

The Panel finds that a prima facie case has been made out by the Complainant. The burden of going forward with the evidence shifts to the Respondent.

As the Respondent failed to respond, the Panel finds that the Respondent has no right and legitimate interest in respect of the domain name "美宝莲".

### Bad Faith

Paragraph 4 (b) of the Policy provides that 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 Respondent has registered or has 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) the Respondent has 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 the Respondent has engaged in a pattern of such conduct; or
- (iii) the Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his/her 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 make the Panel believe that one of the circumstances exists or otherwise there is bad faith in the registration and use of the domain name in dispute.

The Complainant asserts that, as a well-known trademark owned by the Complainant, “美宝莲” has become familiar to the customers, and is loved by them through long-term operation, numerous advertisements and wide registration. You can find products of “美宝莲” in any country. Meanwhile, “美宝莲” is also the trade name of the Complainant’s Chinese subsidiary company, which has strong distinctiveness. Thus, the Respondent should know the Complainant’s “美宝莲” brand. It is under this situation that the Respondent had registered the disputed domain name in bad faith. As it is known, the registered domain name could achieve its function and value only after having been connected to a specific website. But while visiting the domain name “美宝莲.net”, it is found that the domain name automatically directs to the store which the Respondent set up on www.taobao.com. According to the information shown on the website, the Complainant found that the main business of the Respondent is the sale of cosmetic, which is the same as that of the Complainant. Thus the Respondent should be familiar with the well-known trademark “美宝莲” owned by the Complainant. However, the Respondent still registered the disputed domain name. In addition, the Respondent is a natural person and has no relationship with “美宝莲”. The Respondent is neither employee of the Complainant, nor person who the Complainant authorized to register the disputed domain name. What’s more, there is not any entrustment or cooperation relationship between the Complainant and the Respondent. So we can draw a conclusion that such registration is by no means a careless act but is one for gaining illegal profit through making consumers confused with the Complainant’s products, services and website and those of its own and misleading consumers to visit its website and order its products online. Therefore, the Complainant has every reason to believe that the Respondent’s registration and use of the disputed domain name is of for vicious business purpose. The Complainant considers that the Respondent’s act prevents the Complainant from reflecting its registered trademark in a corresponding domain name and conducting normal business action. The Respondent’s act is obviously conducted in bad faith.

The Respondent had no response.

Considering that the Complainant’s trademark and trade name have been widely used in China, country with the most population, and the de facto world-wide influences acquired by the mark “美宝莲” via internet and other means of mass media, the Panel came to the conclusion that the Respondent had no reasonable ground to register the disputed domain name.

Although there is no independent website using the disputed domain name, the link between the domain name and a taobao store is enough to show that the Respondent’s goal is nothing but inducing internet users to a specific internet location. Such a situation is considered to be of bad faith according to Article 4(b)iv, (i.e. by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his/her 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 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.

## Status

www.美宝莲.net

Domain Name Transfer

## Decision

Pursuant to Paragraph 4(a) of the Policy and Article 15 of the Rules, this Panel orders that the domain name “www.美

宝莲.net” be transferred to the Complainant.

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