



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (BEIJING OFFICE)

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Decision Submission

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Decision ID	DE-0700132
Case ID	CN-0700156
Disputed Domain Name	www.myteaforte.com
Case Administrator	Xinmin Cui
Submitted By	Lulin Gao
Participated Panelist	
Date of Decision	24-10-2007

The Parties Information

Claimant	Tea Forte, Inc
Respondent	TEAFORTE

Procedural History

The Complainant of this case is Tea Forte, Inc. Its address is at 23 Bradford Street Concord, MA,U.S.A. Its authorized representative is Qiangguo Fu.

The Respondent of this case is TEAFORTE with addresses at 585 Zhong Shan Bei Road, Shanghai, China.

The Disputed Domain Name is myteaforte.com. The Registrar of the Disputed Domain Name is NETWORK SOLUTIONS LLC.

A Complaint, made pursuant to the Uniform Domain Name Dispute Resolution Policy (“UDRP”) implemented by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on 24 October, 1999, and under ICANN Rules for UDRP and Asian Domain Name Dispute Resolution Center (“ADNDRC”) Supplemental Rules for UDRP, was received by ADNDRC Beijing Office on 20 July 2007. On 24 July 2007, the ADNDRC Beijing Office requested the Registrar by email for the provision of information at their WHOIS database in respect of the Disputed Domain Name, and the registration information was confirmed by the Registrar on the same day.

On 10 August 2007, ADNDRC Beijing Office transmitted the Complaint to the Respondent by email.

On 17 August 2007, 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. ADNDRC Beijing Office also requested the Respondent to file a Response within the 20 days scheduled time.

On 6 September 2007, ADNDRC Beijing Office received the Respondent’ s answer to Complaint in which the Respondent applied for postponing the deadline for submitting the Response and requested the case be heard by three-member Panel. On 7 September 2007, ADNDRC Beijing Office notified the parties of extending the deadline of filing the Response to 13 September 2007. However, the Respondent did not file a further Response within the required time.

On 17 September 2007, ADNDRC Beijing Office requested the parties by email for selection of the Panelist and notified that for the Respondent failed to pay half of the fees for three-member Panel, one-member Panel should be appointed. Then ADNDRC Beijing Office received the list of the five candidates submitted by the Complainant and Respondent on 19 September 2007 and 25 September 2007 respectively.

On 26 September 2007, ADNDRC Beijing Office gave notice to the potential candidate of the Panelist Dr. Lulin Gao, requesting him to confirm whether he would accept the appointment as a Panelist for this case, and if so, whether he could maintain impartiality and independence between the parties in this case. On 28 September 2007, Dr. Lulin Gao

confirmed by email to ADNDRC Beijing Office his agreement to accept the appointment and declared his being able to maintain impartiality and independence in dealing with this case.

On 8 October 2007, ADNDRC Beijing Office informed by email the parties that Dr. Lulin Gao would be the sole Panelist of this case and transferred the files of this case to the Panel formally thereafter.

Factual Background

For Claimant

The Complainant is Tea Forte, Inc. with addresses at 23 Bradford Street Concord, MA, U.S.A.

1. US Trademark Certificate: Word mark: Tea forte; Register: Peter Hewitt; Goods and Service: International Classification No. 030, US Classification No. 046; Goods and Service: Tea, tea bags, tea for infusions; Registration Date: Jan 10, 2006; Renewal Date: Jan 10, 2016; this trademark is now owned by the Complainant Tea Forte Inc.

2. OHIM Trademark Certificate: Word mark: Tea forte; Owner: Tea Forte; Nice Classification: 21, list of Goods and Service:tea services; tea caddies and trays for domestic purpose.....; Nice Classification: 30, list of Goods and Service:tea and beverage made of tea.....; Nice Classification: 32, list of Goods and Service:non-alcoholic beverage, in particular ready to drink tea.....; Nice Classification: 43, list of Goods and Service:services for providing food and drink, in particular, tea rooms.....; Registration Date: Jan 20, 2006; Renewal Date: Oct 14, 2014.

3. WIPO Trademark Certificate: Word mark: Tea forte; Owner: Tea Forte; Goods and Service: Classification 30, Tea, tea bags, tea for infusions; Registration Date: Aug 9, 2006; Renewal Date: Aug 9, 2016.

4. Hong Kong Trademark Certificate: Word mark: Tea forte; Owner: Tea Forte; Goods and Service: Classification 30, Tea, tea bags, tea for infusions; Registration Date: Sept 5, 2006; Renewal Date: Setp 5, 2016.

For Respondent

The Respondent is TEAFORTE with addresses at 585 Zhong Shan Bei Road, Shanghai, China.

Parties' Contentions

Claimant

1. The domain name being complained is confusingly similar to the trademark of the Complainant

(1) The Complainant owns the “Tea forte” registered trademark in USA, European Union and Hong Kong SAR of PRC (Please refer to the details in the above 7: Complaint) and all of the foresaid trademarks were registered earlier than the registration date of the Disputed Domain Name, namely Feb 12, 2007. Therefore the Complainant enjoys a prior right over the trademark “Tea forte”. ICANN is the highest level administrative authority in Internet and according to the Policy stipulated by ICANN, any trademark protected by law in any country or area of world can be the basis for domain name dispute. Therefore the registered trademark of the Complainant registered in USA, European Union and Hong Kong SAR can be the basis for initiating domain name dispute proceedings with the Beijing Office of ADNDRC.

(2) The recognizable part “myteaforte” in the Disputed Domain Name “myteaforte.com” is formed by adding an English word “my” before the trademark of the Complainant. Comparing “teaforte” with the trademark “Tea forte” of the Complainant, they are completely same except for the space between “tea” and “forte” and initial capital letter “T”. Therefore “teaforte” is not distinguished from the registered trademark “Tea forte” of the Complainant. Furthermore, the word “my” means “mine”, which is very common in English and widely used. When combining two parts together, the meaning of “myteaforte” is my teaforte product. Considering the distinction and popularity of the Complainant’s trademark “Tea forte”, it is very possible and easy to make relevant public to believe the Disputed Domain Name is used by the Complainant or is used upon the authorization of the Complainant and therefore believe the Respondent has certain relation with the Complainant. Therefore the domain name being complained is confusingly similar to the trademark “Tea forte” of the Complainant.

In summary, the Disputed Domain Name and the prior trademark “Tea forte” of the Complainant has similarity sufficient to cause confusion.

2. The Respondent does not enjoy any right or legitimate interest relation with the Disputed Domain Name

“myteaforte.com”

(1) The Respondent does not enjoy the exclusive right to use the registered trademark “Tea forte” .

(2) The Complainant has never authorized or permitted the Respondent to use the trademark “Tea forte” , nor transferred this trademark to the Respondent. As far as the Complainant knows, the Respondent has never obtained legitimate authorization or been permitted to use the “Tea forte” trademark via other channels.

(3) The Respondent has never been authorized by the Complainant to register the Disputed Domain Name and there has never been any entrustment or cooperation relation between the Respondent and the Complainant.

Therefore the Respondent does not enjoy any right or legitimate interest relation with the Disputed Domain Name “myteaforte.com” .

3. The owner of the Disputed Domain Name registers and uses this domain name with bad faith and the Respondent registers or transfers the domain name for the purpose of confusing the distinction between the Disputed Domain Name and the trademark of the Complainant and misleading relevant public.

(1) The Respondent used the name “TEAFORTE” for domain name registration, which is same to the company name of the Complainant: Tea Forte Inc. It is obvious that the Respondent had the intention of passing off the Complainant when registering the Disputed Domain Name .

(2) The Respondent used the Complainant’ s trade name and trademark “Tea forte” at a prominent position in the first page of the website directed/linked by the Disputed Domain Name. It is very clear the Respondent intentionally creates the confusion with the Complainant’ s trademark and trade name in order to induce the relevant public to believe this website is the website of the Complainant and to attract relevant public to visit the Respondent’ s website via the Disputed Domain Name to gain commercial interest.

(3) In accordance with the sales telephone indicated in the website directed by the disputed domain name, the Complainant purchased the products sold by the Respondent in its shop (located at 585 Zhong Shan Bei Road. It is clear the product sold by the Respondent is the Complainant’ s brand product. So the Disputed Domain Name is used by the Respondent to illegally distribute the “Tea forte” brand product. It will cause the customers to deem the Respondent as the authorized distributor of the Complainant, or deem the Respondent has certain relation with the Complainant.

(4) The Respondent used the Disputed Domain Name “myteaforte.com” which is similar to the Complainant’ s trademark “Tea forte” , and used large quantity of photos identical with the ones on the website “teaforte.com” of the Complainant on the website directed/linked by the Disputed Domain Name . So it is obvious the Respondent intentionally mislead the relevant public to cause confusion.

Therefore the Respondent registers and uses the Disputed Domain Name for the purpose of making the relevant customers to believe the Respondent has certain relation with the Complainant. Such act has misled relevant public and has obvious malice.

Respondent

1. Our company’ s registering and using the Disputed Domain Name myteaforte.com does not infringe the trademark rights of Complainant.

First, the Disputed Domain Name is not same or similar to the trademark of the Complainant. The trademark of the Complainant is “Tea forte” but the recognizable part of the Disputed Domain Name is “myteaforte” , which is obvious different from the trademark of the Complainant. The trademark of the Complainant and the Disputed Domain Name have different meanings, which makes it impossible to confuse between them. The Complainant did not register the trademark “Tea forte” in China Mainland. And “Tea forte” is not a famous brand in China. Thus, based on the principle that the trademark is only protected in the registered area, the Complainant does not own the rights of the trademark “Tea forte” in China Mainland.

Secondly, our company has the legal rights and interests of the Disputed Domain Name. Before receiving the Complaint letter, our company’ s legal representative Pang Yanliang established Zhejiang Hengda Cloth Co., Ltd. (Hengda for short in the below) in year 2000. Hengda developed the pyramidal tea bags and started selling the tea bags under the trademark “Tea forte” in year 2002. Peter Hewitt saw tea bag products manufactured by Hengda during the contract with Hengda. He afterwards used Hengda’ s Tea Forte trademark to established Tea Forte Inc. in USA and started purchasing pyramid filter tea bags from Hengda to sell in US and European markets. Thus the Complainant is not the first to use the trademark of “Tea forte” but Hengda is the first user of trademark “Tea forte” .

Our company was authorized to sell “Tea forte” tea bags since established in Nov., 2004. Also, our company was

authorized to apply for a trademark composed of Chinese Characters “蒂芙特”, “Teaforte” in English and pyramidal images to “Trademark Office State Administration for Industry and Commerce People's Republic of China” under our company name on Dec. 13, 2004. Our company’s using “Tea forte” trademark is in goodwill. The Complainant did not register “Tea forte” trademark until on Jan. 10, 2006. According to the principle that owner is the first user, our company definitely can use “teaforte” as the domain name or part of the domain name of our website. Thus, our company has the legal rights and interests of the Disputed Domain Name and using “myteaforte” as our domain name does not infringe the legal rights of Complainant.

Lastly, our company’s using the Disputed Domain Name is not intentionally bad. We registered and use “myteaforte” domain name to market “Shanghai Teaforte Tea Culture Square” (a tea market) being constructed by us as well as to sell “帝芙特” tea bag products, but NOT to sell, lease or transfer this domain name to the Complainant or its competitors for interests. The domain name related to the Complainant’s trademark “Tea forte” is “teaforte.com”, which was registered and is being used by the Complainant. Thus, our company’s using the Disputed Domain Name does not prevent the complainant from using “teaforte.com” to reflect its trademark mentioned. The Complainant itself does not manufacture the tea bag products. The “Tea forte” pyramidal filter tea bag products were all purchased from Hengda and the tea bags purchased are all for sales in markets outside China. Plus there is no exclusive distribution agreement between Hengda and the Complainant, so our company using our website under “myteaforte.com” domain name to sell pyramidal tea bags manufactured by Hengda does not infringe the normal business of the Complainant. Besides, our company’s website is a website totally in the Chinese language and the visitors of our website are mainly people who want to rent booths in our tea market and buyers of the tea bags being sold by our company. However, the website of the Complainant is a website totally in the English language with its visitors being non-Chinese buyers of the tea bags. The two websites enjoy absolute different public exposures and thus there is no circumstance that our company intentionally creates misunderstandings to lure people into visiting our company’s website.

To sum up, our company’s opinion is that our registering and using myteaforte.com domain name never infringed the trademark rights of Tea Forte Inc. and the Complaint made by Tea Forte Inc. is reasonless.

2. Since there is no economic interest to use this domain name, our company decided to cancel the domain name myteaforte.com to solve the dispute this case involved.

“Uniform Domain Name Dispute Resolution Policy” stipulates that a domain name dispute heard by your center does not stop the domain name owner from pursuing the settlement from the court and when the judgment of the professionals in your center contradicts with that of the court, the judgment of the court will be the final judgment. Considering no matter what the judgment of the professionals is, either our company or Tea Forte Inc. will go to court for solutions. In order to solve this issue soonest and to avoid the big amount of time consumed in starting a law case at court after the judgment of the professionals in your center, our company plans to go to court recently to confirm the legal registration and using myteaforte.com domain name. However, after the discussion of our company management, they think: (1) This domain name does not have real economic interests; (2) It will take too much time and efforts to involve in the procedure of your center or court either way, affecting the normal operation of our company, which at last costs the economic loss; (3) To cancel the Disputed Domain Name and to register a new one does more good than harm to our company. Thus, our company decides to cancel the domain name myteaforte.com immediately.

To sum up the above opinions, we sincerely request that your center can terminate the dispute procedure. We also have the following two requests:

- (1) In case the procedure has to proceed, we request a 3-professional-team to make judgments.
- (2) Since we have been canceling the domain name, received the English requirement notification for the whole procedure on Sep. 4th and it takes time to translate all documents into English, we request your center could postpone the deadline for submitting the files to your center for one week.

Findings

In the Response, the Respondent alleged its intention of canceling the Disputed Domain Name and requested the Panel to terminate the dispute procedure. The Panel considers that, Paragraph 17 of ICANN Rules stipulates the circumstances to terminate the administrative proceeding. However, the grounds that Respondent claimed does not constitute such reason for which the administrative proceeding becomes unnecessary or impossible to continue, thus the Panel determines to continue the administrative proceeding.

According to Paragraph 4a of the Policy which is applicable hereto, the Complainant has the burden of proving that:

- 1) that the domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- 2) that the Respondent has no rights or legitimate interests in respect of the domain name; and
- 3) that the domain name has been registered and is being used in bad faith.

Identical / Confusingly Similar

Pursuant to Paragraph 4(a) (i) of the Policy, the Complainant must prove that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has right to. In order to meet this requirement, the Complainant provided exhibits certifying its entitlement to the registered trademark “Tea forte” in several countries and areas. As demonstrated by the Complainant’s exhibits, the Complainant’s trademark was registered in Hong Kong, USA and European Union before the Respondent had obtained the Disputed Domain Name (12 February 2007). For instance, the Complainant registered the trademark “Tea forte” (Trade Mark No.300714483) in Hong Kong on 5 September 2006 with the designated goods of “Tea; Tea bags; Tea for infusions”. Thus, the Panel is of the view that the Complainant enjoys the prior trademark right to “Tea forte”. As such, what the Panel needs to do is to make a conclusion on the identity or confusing similarity between the Complainant’s registered trademark “Tea forte” and the Disputed Domain Name “myteaforte.com”.

When making a judgment on the issue of identity or confusing similarity, the Panel often compares the identifying part of the Disputed Domain Name with the trademark. It is observable that the identifying part of the Disputed Domain Name is “myteaforte”, which is normally identified as adding an English word “my” before the trademark of the Complainant by ordinary consumers who are supposed to understand English to a certain extent. Comparing “teaforte” with the trademark “Tea forte” of the Complainant, the Panel finds they are identical except for the space between “tea” and “forte” and initial capital letter “T”, which shall not distinguish the Disputed Domain Name from Complainant’s trademark. Moreover, when combining “teaforte” with “my”, a very common word in English, the combination “myteaforte” may mean “my teaforte product”. Based on this logical deduction, the general public may easily believe the Disputed Domain Name is used or authorized to use by the Complainant or the Respondent has certain relations with the Complainant. Therefore, the Panel finds that the Disputed Domain Name is confusingly similar to the trademark “Tea forte” of the Complainant, and the Complainant has satisfied the first condition under Paragraph 4(a) of the Policy.

Rights and Legitimate Interests

The Panel makes the decision based on the evidence provided by both parties and in case that any party fails to meet its burden of proof, such party shall undertake the risk of the possible unfavorable result against it. The Complainant claims that they have never authorized or permitted the Respondent to use the trademark “Tea forte”, nor transferred this trademark to the Respondent. As far as they know, the Respondent has never obtained legitimate authorization or been permitted to use the “Tea forte” trademark via other channels. The Panel holds that the Complainant has already provided the preliminary evidence and fulfilled the burden of proof required by the second condition under Paragraph 4 (a) of the Policy, thus the burden of proof regarding “rights or legitimate interests” is generally on the party making the defense in the dispute resolution of a domain name, the Respondent.

The Respondent contends that it is not the Complainant, but Hengda, a company established by the Respondent’s legal representative in year 2000, who is the first one using the trademark “Tea forte”, and the Respondent has been authorized to sell “Tea forte” tea bags since its establishment in November 2004. Notwithstanding the foregoing, the Panel notes that the Respondent has not provided any evidence on how and when Hengda used such trademark, or any evidence on the legitimate authorization and relationship between the Respondent and Hengda. Therefore, the Panel cannot draw a conclusion that the Respondent has any legitimate right based on any authorization from Hengda, who is only claimed by Respondent to be the first one to use the trademark.

Meanwhile, the Respondent also alleges that they were authorized to apply for a trademark composed of Chinese Characters “蒂芙特”, “Teaforte” in English and pyramidal images on Dec. 13, 2004. However, there is no evidence from the Respondent that relates to the alleged prior trademark right, or the authorization relationship between the Respondent and Hengda, and thus the Panel does not see any chance for the Respondent to prove any of such rights or legitimate interests regarding the Disputed Domain Name.

In view of the foregoing, the Panel considers that, 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. However, there is not any evidence from the Respondent on their contention that they have legitimate right. Accordingly, based on the evidence provided by both parties, the Panel cannot come to the conclusion that the Respondent has any legitimate right or interest in respect of the Disputed Domain Name and nothing so far could lead the Panel to conclude otherwise.

Based on the above reasoning, the Panel concludes that the Respondent has not fulfilled the burden of proof regarding “rights or legitimate interests”, and thus the Complainant has satisfied the second condition under Paragraph 4(a) of the Policy.

Bad Faith

In accordance with Paragraph 4 (b) of UDRP, it sets out four non-exclusive criteria which shall be evidence of the registration and use of a domain name in bad faith:

(i) the 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 trade mark or service mark or to a competitor of that Complainant for valuable consideration in excess of the Respondent's 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 trade mark 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 its 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 its web site or location or of a product or service on its web site or location.

First of all, as demonstrated in the Response of Respondent, both the Complainant and Respondent are in the same industry and the Respondent is clearly aware of the Complainant and its website. Meanwhile, given the inherent distinctiveness of the Complainant's trademark "Tea forte", it cannot be a mere co-incidence that the Respondent has chosen the Disputed Domain Name, which is confusingly similar to the prior trademark of the Complainant, as its domain name.

Furthermore, the Panel notes that the Complainant provides a series of exhibits to support its allegation that the Respondent registered and used the Disputed Domain Name in bad faith. Comparing what is demonstrated on the Respondent's website using the Disputed Domain Name with what is on the Complainant's website, one can easily see the Respondent used large quantity of photos identical with the ones on the Complainant's website on the website linked by the Disputed Domain Name. Since Respondent does not deny the evidence submitted by the Complainant, the Panel decides to accept such evidence. And the Panel holds that by using Disputed Domain Name for a website, the Respondent intentionally creates the confusion with the Complainant's trademark and website in order to induce the relevant public to believe this website is the website of the Complainant and to attract relevant public to visit the Respondent's website via the Disputed Domain Name. Even where Internet users realize when they view the Respondent's website that it is not connected with the Complainant, the Respondent may still profit from their initial confusion.

In addition, according to the Complainant's allegation and Appendix 10 they provided, the Complainant ever purchased the product sold by the Respondent in its shop and it is demonstrated that the product sold by the Respondent is the Complainant's brand product. Again, considering the Respondent did not oppose the above facts, it can be presumed that the Respondent is well aware of the Complainant and intentionally cause confusion to the public that the Respondent is the authorized distributor of the Complainant, or has certain relation with the Complainant.

Based on the above analysis, all these behaviors of the Respondent have led the Panel to believe that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 its web site or location or of a product or service on its web site or location. Thus, Paragraph 4(a) (iv) is satisfied.

In light of all of the above circumstances, the Panel concludes that the Complainant has satisfied the third condition under Paragraph 4(a) of the Policy.

Status

www.myteaforte.com

Domain Name Transfer

Decision

For all the forgoing reasons, the Panel has decided that the Complainant has proved sufficiently the three elements of Paragraph 4(a) of UDRP. Accordingly, the Panel directs that the Disputed Domain Name be transferred to the Complainant.

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