



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (BEIJING OFFICE)

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Decision Submission

English Print

Decision ID	DE-0800173
Case ID	CN-0800198
Disputed Domain Name	www.redoffice.com
Case Administrator	lvyan
Submitted By	YUN ZHAO
Participated Panelist	

Date of Decision	30-06-2008
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The Parties Information

Claimant	redoffice .com
Respondent	Li Li

Procedural History

On 21 April 2008, the Complainant submitted a Complaint in the English language to the Beijing Office of the Asian Domain Name Dispute Resolution Center (the ADNDRC) and elected this case to be dealt with by a one-person panel, in accordance with the Uniform Domain Name Dispute Resolution Policy (the Policy) approved by the Internet Corporation for Assigned Names and Numbers (ICANN), the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the ADNDRC Supplemental Rules).

On 22 April 2008, the ADNDRC sent to the complainant by email an acknowledgement of the receipt of the complaint and reviewed the format of the complaint for compliance with the Policy, the Rules and the ADNDRC Supplemental Rules.

On 22 April 2008, the ADNDRC transmitted by email to the Registrar, eNom Inc., a request for registrar verification in connection with the disputed domain name.

On 23 April 2008, the Registrar transmitted by email to the ADNDRC its verification response, confirming that the Respondent is listed as the registrant and providing the contact details.

On 5 May 2008, the ADNDRC transmitted the Complaint to the Respondent.

On 9 May 2008, the ADNDRC notified the Respondent of the commencement of the action. On the same day, the ADNDRC notified the Complainant that the Complaint has been confirmed and transmitted to the Respondent, and notified the Registrar of the commencement of the proceedings.

The Respondent filed a Response with the ADNDRC on 22 May 2008. The ADNDRC transmitted the Response to the Complainant on 29 May 2008.

On 4 June 2008, the ADNDRC informed the Complainant and Respondent that the ADNDRC would appoint a one-person panel to proceed to render the decision. Having received a Declaration of Impartiality and Independence and a Statement of Acceptance, the ADNDRC notified the parties on 13 June 2008 that the Panel in this case had been selected, with Mr ZHAO Yun acting as the sole panelist. The Panel determines that the appointment was made in accordance with Rules 6 and Articles 8 and 9 of the Supplemental Rules.

On 13 June 2008, the Panel received the file from the ADNDRC and should render the Decision within 14 days, i.e., on or before 27 June 2008.

Pursuant to Paragraph 11 (a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the

Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding. The language of the current disputed domain name Registration Agreement is English, thus the Panel determines English as the language of the proceedings.

Factual Background

For Claimant

The Complainant in this case is Beijing Redflag CH2000 Software Co., Ltd. The registration address is Room 308, 3F, Block C, No. 18, West Ring South Road, Beijing Economic & Technological Development Zone, Beijing. The Complainant is the owner of the trademark “redoffice” .

For Respondent

The Respondent, Li Li, is the current registrant of the disputed domain name <redoffice.com> according to the Whois information.

Parties' Contentions

Claimant

(1) Profile of the development and popularity of the Complainant, “redoffice” trademark and office software platform in China

(1.1) The Complainant is the well-known domestic office software system manufacturer and supplier

Founded in December 2000, the Complainant is the first team in China that devotes to the research of OpenOffice.org source code. The Complainant mainly provides Chinese office software for governments at all levels, enterprises and institutions and personal users. Its major product is the cross-platform office software, namely the redoffice office software series.

The redoffice series developed independently by the complainant is the first cross-platform office software at home, with word processing, spreadsheet, file presentation, drawing tools, webpage making, database and other functions. According to the features of government work, redoffice office software also has invested the application interface suitable for system integration, which can be embedded into various e-government systems to meet the diverse needs of the government office.

Relying on its outstanding practicality and compatibility, superior product cost performance, reliable information security, abundant secondary development function, perfect after-sales service, cross-platform application and other advantages, redoffice office software has taken the leading position in the market. The complainant is the selected enterprise in China’ s software independent innovation list, the first domestic office suite vendor that passed the supreme conformation of China Software Testing Center, and the first domestic office suite vendor that passed the national GB18030A+ certification. In September 2007, the complainant took another the lead and launched the products that fully realized file format national standard UOF.

(1.2) “Redoffice” has been the widely used trademark for years by the complainant

“Redoffice” is the registered trademark that the complainant has used on the redoffice office software platform. For many years, the complainant has been undoubtedly improving the popularity of this office software trademark through constantly expanding the scope and volume of sales, and has been promoting the company to become an internationally renowned enterprise.

On the launching in 2001, Redoffice series office software platform won the bid of China’ s first genuine government software procurement, namely Beijing genuine software procurement; since 2004, comprehensive genuine government software procurement launched, and redoffice series office software platform has occupied the biggest market share among the similar China-made software products.

So far, redoffice series office software platform has been used by hundreds of provincial and municipal governments in Beijing, Guangdong and so on. In Guangdong province, all the three China-made software experimental units led by the Information Industry Ministry adopt the redoffice office software; and in the government procurement, in addition to

Guangzhou city, redoffice also won the bids of Shenzhen, Dongguan, Heyuan, Jiangmen, Yunfu, Zhanjiang and other cities and places; of which, Shenzhen City purchased 15, 000 sets of redoffice software in the way of field authorization. Recommended by the Information Industry Ministry, all the municipal, county and district governments in Gansu Province use redoffice office software.

In sum, through the long-term wide application and propaganda, the complainant, its office software platform and trademark have been of a comparatively high popularity in China mainland. Users of this software in China have been closely related with the complainant and its products. On seeing “redoffice”, the users certainly will have the complainant or things related with the complainant in mind. In the meantime, redoffice office software platform series have won lots of honors and awards at home.

(2) “redoffice” being the main part of the domain name in complaint namely “redoffice.com” is exactly the same as the trademark of the Complainant, therefore, the domain name in complaint will lead to confusion.

The main part of the domain name in complaint namely “redoffice.com” is same as the Complainant’s trademark namely “redoffice”. The Complainant registered the trademark in trademark office in the PRC on 21 May 2002, bearing the trademark number of 1772996, and the trademark was registered under class 9. In 2003, the Complainant registered the trademark under class 41, and in 2004, the trademark was registered under classes 35 and 38. All trademark registration certificates are still valid. As a result, the Complainant shall have the exclusive right in trademark of “redoffice” in the PRC. By comparing the domain name of “redoffice.com” registered by the Defendant and the trademark of “redoffice” being used by the Complainant, the only difference is the suffix of the domain name in complaint – “.com”. Since “.com” is the normal suffix of domain names and it does not have its own distinctiveness, the distinguishable and identifying part will only be the main part of the domain name in complaint – “redoffice”. It is very hard for a general customer to distinguish the domain name in complaint and the Complainant’s trademark. The main part of domain name in complaint and of the Complainant’s trademark is the same – “redoffice”, which will definitely mess up the general public.

Domain name in complaint – “redoffice.com” is the same as the Complainant’s domain name – “redoffice.com.cn”. The main part of the domain name in complaint – “redoffice.com” and of the Complainant’s domain name – “redoffice.com.cn” is exactly the same, which will very likely mislead the general public to perceive that the domain name in complaint is under of the Complainant’s chain of domain names of “redoffice”. Moreover, the date of registration and date of use of the Complainant’s domain name of “redoffice.com.cn” are earlier than those of the domain name in complaint. The main part of domain name in complaint and of the Complainant’s domain name is the same, which will definitely mess up the general public.

“redoffice” for trademark, software products and domain name has been used continuously and massively by the Complainant for a long period, which has been closely merged and associated with the Complainant and its products. “redoffice” bears very strong distinctiveness, and its right to use and its corresponding intangible asset e.g. market reputation should be vested in the Complainant. Given the particularly long-term use of “redoffice” by the Complainant, customers will firstly associate the Complainant and its related products when they are coming across “redoffice” rather than the other meanings. The Defendant registered the domain name in complaint was not a kind of coincidence, but a willful piracy.

(3) The Defendant does not have legal rights in the domain name in complaint and its main part “redoffice”

As alleged above, “redoffice” is not only the main trademark of the Complainant but also the name for the Complainant’s main product of office platform, and in fact the name has been substantially used by the Complainant. By referring to the name of the Defendant “Whois Privacy Protection Service, Inc.”, there is no prominent relationship with “redoffice”. There has been no business in whatsoever manner between the Defendant and the Complainant. Furthermore, the domain name of “redoffice.com” in dispute has not been in popular use during the period from its registration in 2004 to 11 April 2008. Moreover, the Complainant has made enquiries about all trademarks bearing “redoffice” on the website of “Trademark Office, State Administration for Industry and Commerce, the People’s Republic of China” (<http://sbj.saic.gov.cn>), and got the result that there is no legal entity or individual other than the Complainant has registered the trademark of “redoffice” in the PRC. The Complainant has not at any time and in any manner authorized or licensed the Defendant to use “redoffice” and its related rights whatsoever.

Therefore, it is undoubtedly that the Defendant does not have any legal right in the main part of the domain name in complaint – “redoffice”.

(4) The Defendant “Whois Privacy Protection Service, Inc.” registered and used the domain name in complaint is malicious.

(4.1) The domain name registration carried out by the Defendant has demonstrated that the purpose of registration of the domain name in complaint is to prevent the owner of “redoffice” trademark and service mark from using the

corresponding domain name to reflect the aforesaid trademark and service mark.

As alleged and by reference to the result of search on www.google.cn set out in the notarization certificate, the Defendant does not have any legal right in priority. The Defendant should have been fully aware of the reputation of the Complainant and its products and trademark of “redoffice”, and of the condition that the Defendant itself does not have any rights thereof, registration of the domain name in complaint – “redoffice.com” has demonstrated that the purpose of such registration is to prevent the Complainant being the owner of “redoffice” trademark and service mark from using corresponding domain name to reflect its ownership of the trademark. Moreover, the Defendant has not used the domain name in complaint and not established a webpage for popular browsing prior to 11 April 2008. Given the close relationships between Complainant’s software products and trademark, the general public will mistakenly browse the domain name in complaint – “redoffice.com” for finding information of the Complainant, and the Defendant’s webpage will definitely be perceived by the public as the webpage of the Complainant. Disability in browsing of the Defendant’s webpage will hinder the normal operations of the Complainant’s domain name “redoffice.com.cn”, which in turn affects the Complainant’s on-line promotions and businesses by means of “redoffice” domain name and obstructs the relationships between the customers and the Complainant. Therefore, the malice of the Defendant is very obvious.

(4.2) Notwithstanding the Defendant uses the domain name in complaint – “redoffice.com” for ascertaining what will the contents of the website be. In fact, “redoffice” has become a well-known brand name of office software platform in the PRC resulting from the Complainant’s continuous promotions and operations over the past years, which has undoubtedly concealed substantial intangible assets, and such intangible assets should belong to the developer and operator of the brand name of “redoffice” i.e. the Complainant. Any willful actions to be carried out by a corporation or individual by using the intangible assets for making profit illegally or endangering the Complainant’s normal businesses including improper act of rush-on registration of the brand name, should be estopped and restrained.

In accordance with Paragraph 4(b)(i) of the Policy, the Complainant requests the Panel to issue a decision to transfer the Disputed Domain Name to the Complainant.

Respondent

First, the Defendant stated in the Complaint “Whois Privacy Protection Service” is not correct. The Whois recorded attached in the Complaint showing the registrant is not true. Secondly, it is misleading that the signature of the Complaint shows April 4, 2008, but the screenshot with notarization provided is dated April 18, 2008.

The Respondent has got the domain name from the previous owner in mid-March 2008. Right after domain acquisition, the Respondent set up a Under Construction page, and shortly, the Respondent developed the whole website, and the Respondent has marked it is a non-profit and individual website, and has no connection with any other parties.

The website is a free website to provide information to white collars mainly in Hong Kong. The Respondent provides assistance to white collars in mental disease/suffering through an internal and password protected forum, and wants to broadcast the Olympics Spirit all over the world. Right after the earthquake in Sichuan, the Respondent focused on the aids to the victims in the earthquake, and the slogan is Red China, Red Heart, Red Office.

The Respondent never heard of Red Office Software, and has done a trademark search in Hong Kong, there is no trademark yet. If Red Office is open source software (openoffice.org), the right domain extension shall be .org, .org.cn. The only trademark holder in China with small items can only mean everyone can apply for the trademark in other fields.

Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: “A Panel shall 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.”

Paragraph 4 (a) of the Policy requires that the Complainant should prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- 1) 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) the Respondent has no rights or legitimate interests in respect of the domain name; and
- 3) the domain name has been registered and is being used in bad faith.

Identical / Confusingly Similar

The evidence submitted by the Complainant shows that the Complainant owns the trademarks “redoffice”. As the suffix “.com” only indicates that the domain name is registered under this gTLD and is not distinctive, the Panel has

no problem in finding that the disputed domain name <redoffice.com> is identical with the Complainant' s trademark "redoffice" .

The Panel therefore holds that the Complaint fulfills the condition provided in Paragraph 4 (a)(i) of the Policy

Rights and Legitimate Interests

The Complainant contends that the Respondent does not have rights to or legitimate interests in the disputed domain name. The Complainant' s assertion is sufficient to establish a prima facie case under Policy 4 (a)(ii), thereby shifting the burden to the Respondent to present evidence of its rights or legitimate interests.

The Respondent has failed to show that the Respondent has any rights or legitimate interests in respect of the disputed domain name. The act of registering the disputed domain name and the Respondent' s like/dislike do not automatically endow any legal rights or interests with the Respondent.

The Panel therefore finds that the Complaint fulfills the condition provided in Paragraph 4(a)(ii) of the Policy.

Bad Faith

Under Paragraph 4 (b) of the Policy, the following are relevant examples a Panel may take as evidence of registration and use 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 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.

Evidence shows that the Complainant' s trademark "redoffice" has achieved a strong reputation through use and the worldwide significance of the brand name. As such, the public has come to recognize and associate the Complainant' s trademarks as originating from the Complainant and no other. This entitles the Panel to infer that the Respondent should be aware of the existence of the Complainant and its trademarks. The above circumstance has further led to the assumption that the Respondent registered the disputed domain name to hinder the Complainant from registering it. The action of registering the disputed domain name per se has constituted bad faith.

The Respondent claims to purchase the disputed domain name in March 2008; however, no evidence has been submitted to prove the above purchase. The evidence submitted by the Complainant shows that the disputed domain name, since its registration in 2004, has not been used at least until April 2008. That leads the panel to infer that the website for non-profit purpose was developed only after the dispute was brought the ADNDRC. Prior Panels have already discussed the passive holding of a domain name and found that this can constitute bad faith use (WIPO Case No. D2000-0003).

In conclusion, the Panel finds that the Respondent has registered and used the domain name in bad faith. Accordingly, the Panel finds that the Complaint satisfies the condition provided in Paragraph 4 (a) (iii) of the Policy.

Status

www.redoffice.com

Domain Name Transfer

Decision

Having established all three elements required under the ICANN Policy, the Panel concludes that relief should be granted. Accordingly, it is ordered that the <redoffice.com> domain name should be TRANSFERRED from the Respondent to the Complainant.

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