



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (BEIJING OFFICE)

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Decision Submission

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Decision ID	DE-0900224
Case ID	CN-0800245
Disputed Domain Name	www.特仑苏.com
Case Administrator	Xinmin Cui
Submitted By	Hong Xue
Participated Panelist	
Date of Decision	20-03-2009

The Parties Information

Claimant	Inner Mongolia Meng Niu Dairy (Group) Co. Ltd.
Respondent	Lin Yang

Procedural History

On December 25, 2008, the Complainant submitted its Complaint to the Beijing Office of the Asian Domain Name Dispute Resolution Centre (the “Centre”), in accordance with the Uniform Domain Name Dispute Resolution Policy (the “Policy”) adopted by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on August 26, 1999; the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”); and ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “ADNDRC Supplemental Rules”).

On December 25, 2008, the Centre confirmed receipt of the Complaint. On December 26, 2008, the Centre forwarded a copy of the Complaint to the disputed domain name’s Registrar(Enom, Inc.).

On December 31, 2008, the Centre received the Registrar’s confirmation of registration information of the domain name in dispute.

On January 12, 2009, the Centre transmitted the Complaint to the Respondent.

On February 3, 2009, the Centre notified the Complainant that the Complaint had been confirmed and forwarded, and the Centre notified the Respondent, the Registrar and the ICANN of the commencement of the case proceedings.

On February 25, 2009, the Centre notified the parties that the Respondent had not submitted the Response within the required period and that the case would be decided by default.

On February 27, 2009, the Centre notified the candidate panelist in accordance with the result of the ranking made by the parties.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Ms. Xue Hong on February 28, 2009, the Centre informed the Complainant and the Respondent of the appointment of the Panelist, and transferred the case file to the Panel on March 3, 2009.

The Panel finds that it was properly constituted and appointed in accordance with the Rules and the ADNDRC Supplemental Rules.

The Panel does not receive any further requests from the Complainant or the Respondent regarding other submissions, waivers or extensions of deadlines.

The language of the proceedings is English, as being the language of the Domain Name Registration and Service Agreement, pursuant to Paragraph 11(a) of the Rules, and also in consideration of the fact that there is no express agreement to the contrary by the Parties.

Factual Background

For Claimant

The Complainant is Inner Mongolia Meng Niu Dairy (Group) Co. Ltd., based in the Shengle Economic Development

Zone, Helingeer, Huhhot, China. The Complainant, established in 1999, is a large dairy producer and one of the largest corporations in China. Since 2005, the Complainant has manufactured milk products marked with the characters “特仑苏”. The Complainant has filed to register this trademark with the Chinese trademark authority.

For Respondent

The Respondent is Lin Yang, residing in No. 433 Jiankang Road, Sanmen County, Taizhou City, Zhejiang Province 317100 China. The Respondent registered the disputed domain name on 27 May 2006.

Parties' Contentions

Claimant

(Except a few formality editions, the panel shows the Complaint per se, without removing the repetitive statements and correcting grammatical mistakes.)

“特仑苏” is a unique name of the Complainant's famous goods, which is protected by laws in China. The Complainant, Inner Mongolia Meng Niu Dairy (Group) Co., Ltd. was established in 1999 located at Shengle Economic Development Zone, Helingeer, Hohehot, Inner Mongolia. The Complainant is the largest dairy producer in China with annual production of five million tons and around 30 thousand employees. The total asset of the Complainant is RMB 8 billion Yuan. (Appendix II: overview of the Complainant). In 2006, the Complainant ranked at No. 11 (which was the top in the field of dairy product) in the First List of Top 500 Most Competitive Corporation in China (Appendix III: List of top 500 most competitive corporations in 2006 in China); it ranked at No. 237 among the top 500 largest corporations and groups in China; the Complainant is also listed in the third among Asian dairy producers (just behind two Japanese dairy companies). (Appendix IV: The top 500 of Asian brands in 2006)

In 2005, the Complainant manufactured milk products bearing the mark “特仑苏”. They are very popular among consumers due to high quality since the milk products were launched into markets. So far the milk products have been sold widely in the mainland of China and exported to other countries and regions, such as America, Canada, and Singapore, Mongolia, Southeast Asia and Chinese Hong Kong and Macau. By now, the mark has been recognized as unique name of the Complainant's well-known goods by inner Mongolia Provincial AIC, Hohehot Municipal AIC and its Shengle Economic Development Zone branch (Appendix V: copy of confirmations from AICs). Therefore, the mark “特仑苏” is a unique name of the Complainant's famous goods and should be protected by laws in China.

The Complainant enjoys prior right to use of the word “特仑苏”. “特仑苏” is firstly used on high-quality milk products manufactured by the Complainant as a trademark and promoted widely. Therefore, the Complainant enjoys the prior right to use the word “特仑苏” (Appendix VI: copy of photo of “特仑苏” milk packaging).

The Complainant has applied for registration of the trademark “特仑苏”. The Complainant filed an application for registration of the trademark “特仑苏” in respect goods designated as milk, yogurt and so on in class 29 when the milk products bearing the brand “特仑苏” were launched into the market in June, 2005. Later, the Complainant applied for registration of the same trademark in classes 3, 5, 18, 25, 28, 30, 31, 32, 33, 43 and 44 (Appendix VII, Acceptance Notices of Trademark Registration Application issued by China Trademark Office and printout from data of China Trademark Office).

The Complainant owns various domain names of “特仑苏”. The Complainant registered a series of domain names and internet keywords relating to “特仑苏”, such as “特仑苏.公司” and “特仑苏” (Appendix VIII, search results of domain names and internet keywords related to “特仑苏”).

The milk products bearing the trademark “特仑苏” of the Complainant have high reputation in dairy industry, which can be called as well-known goods. As the biggest producer of dairy products in China, the Complainant has 22 producing bases in 15 provinces and cities with annual output of 4.78 million tons. The Complainant also developed over 200 kinds of products which are classified as liquid milk, ice cream and other dairy products. The Complainant's products are not only popular among consumers in the mainland of China, but also exported to other countries and regions, such as America, Canada, Singapore, Mongolia, Southeast Asia and Chinese Hong Kong and Macau. From its beginning to the end of 2007, the sales income of the Complainant's main business has been up to RMB 21.3181 billion Yuan and the Complainant is the first dairy producer with annual business income over RMB 20 billion Yuan in China. (Appendix IX, news report about the income of Meng Niu Group). Comparing with RMB 16.2464 billion Yuan in 2006 and RMB 10.825 billion Yuan in 2005, there are income increases of 31.2% and 96.8% respectively. According to the survey of AC Nielsen (a U.S. marketing research firm) in December of 2007, the Complainant accounted for 40.7% in the market of liquid milk (excluding milk beverage and yogurt) in China, and it was largely increased when compared with 36.2% in 2006 and 28.6% in 2005. According to the conservative statistics, the sales volume of UHT milk list at No. 1 in the world, the sales volumes of both liquid milk and ice cream list at No. 1 in China. In addition, the Complainant's dairy products are exported to more countries and regions than any others as well as in the biggest quantity in China.

Through the short period of nine years, the Complainant made itself to be a miracle. According to the development strategy, the Complainant put more a hundred million RMB into its scientific research and set up the first milk biology technology plant in China. On the basis of this, the Complainant produced best quality pure milk and developed “Meng

Niu OMP Milk” bearing the brand “特仑苏”. In July 2007, the Complainant cooperated with Cambridge University of UK and CAS (Chinese Academy of Sciences) to establish successfully the first international academe. With the advanced equipments and intelligent instruments, the Complainant’s technology on producing milk was further improved.

“特仑苏” means “milk of top quality” in Mongolian and the milk bearing the brand “特仑苏” developed by the Complainant belong to the top liquid milk among all milk products. Since 2005, the “特仑苏” milk has been gaining favor of consumers for its excellent quality. In 27th International Dairy Federation (IDF) of October 2006, after an comprehensive and strict comparison by experts, the “特仑苏” milk of the Complainant kept ahead other opponents in respect of producing technology, brand familiarity and quality and eventually obtained the blue ribbon of IDF – Marketing Awards 2006 in the Category of “New Product Development”, which is awarded to new technology and products with greatest contribution to the world dairy industry. In the other word, this award represents the newest technology and the highest level in the field of dairy. In the past one hundred years, the winners were from those traditional dairy countries, such as Europe, America and Australia. Therefore, the award the Complainant got is indeed a breakthrough for both China and Asia. (Appendix X: copy of the certificate of IDF marketing awards and related news reports)

According to report made by Beijing Li Xin Accountants Affairs Office, during the period of past three years (from January 1, 2005 through February 29, 2008), the total sales volume of the “特仑苏” series milks was 233,978.21 tons, the sales income including tax was 2,447.6299 million RMB and the net sales income was 2,138.6279 million RMB. All of the facts show that the “特仑苏” series milks exceed similar milk products bearing other brands in both sales volume and income.

Since 2005, the Complainant put lots of peoples and money to make its brand and products popular. The expense on promotion was 1.106 billion RMB in 2005, 1.105 billion RMB in 2006 and 1.535 billion RMB in 2007. The Complainant has spent 205.6593 million RMB on advertisement as well as 22.3357 million RMB on sales promotion for its “特仑苏” series milks from January 1, 2005 to February 29, 2008. (Appendix XI: report from BEIJING Li Xin Accountant’ agency Inner Mongolia branch; Appendix XII: Reports on advertisement of the “特仑苏” series milks by Market Research Organization)

Besides promoting products by traditional media, the Complainant also sponsored many significant promotion activities through cooperating with national and local television stations. At the same time, the Complainant has also organized series activities relating to the topics of love, health and nutrition by cooperating with Disney, NBA and Starbuck. The products and brand of the Complainant have owned high reputation in markets and consumers as well as experts by viable business strategy and long-term promotion. The products of the Complainant are awarded honorable titles of “well-known brand of China”, “well-known trademark in China” and “the favorite Product of consumers” due to their high quality. What’s more, the Complainant’s dairy products including liquid milks are the Designated Athlete Product of General Administration of Sport and the Designed Dairy Product of Chinese Cosmonaut. Since January of 2007, the Complainant becomes formal partner and the only dairy supplier of NBA in China as well as the only designated milk supplier for Starbuck chain cafes in China. To sum up, these facts sufficiently prove the well-known status of the Complainant’s brand and products. (Appendix XIII: Copy of reports on the promotion activities of the Complainant.)

As the products and the brand “特仑苏” of the Complainant become popular, some other companies try to register and use the word “特仑苏” as their trade name, whose purpose is to earn illegal profits and make consumers confuse between the Complainant and them. In view of this, local AIC imposed penalty on those companies to protect the Complainant’s legal right for the word “特仑苏” (Appendix XIII: Notice of correcting the firm of Hulunbuir Telunsu (deluxe) Co., Ltd. issued by Hulunbuir AIC). To be concluded, the Complainant’s series milks including the liquid milks bearing the brand “特仑苏” enjoy good reputation and high popularity in China.

The main part of the disputed domain name “特仑苏.com” is identical with the unique name of the Complainant’s famous goods, thus it is likely to cause confusion between them among consumers.

The Complained Party does not enjoy any legitimate rights or interests for the registered domain name “特仑苏.com”. The Complained Party does not enjoy the exclusive trademark right for “特仑苏”; The Complainant has never authorized or licensed the Complained Party to use the brand “特仑苏”, and never transferred the brand “特仑苏” to the Complained Party. As far as the Complainant knows, the Complained Party has never obtained authorization or license of the brand “特仑苏” from any channel; Upon investigation, the registrant of the disputed domain name is neither employee of the Complainant, nor person who the Complainant authorized to register the disputed domain name. And, there is not any entrustment or cooperation relationship between the Complainant and the Complained Party. Upon investigation, the Complained Party has never used actually the disputed domain name.

To sum up, the Complained Party does not enjoy any legitimate rights or interests for the registered domain name “特仑苏.com”.

The Complained Party has registered the disputed domain name in bad faith. As a well-known brand owned by the Complainant, “特仑苏” has become familiar to the customers, and been loved by them through long-term operation, numerous advertisements and wide promotions. In particular, Mengniu Dairy Group won the “IDF marketing awards 2006” for the milk bearing the brand “特仑苏”, which enhances Chinese leading position in global dairy production field and attracts consumers’ attention. In large and middle cities in China, the milk bearing the brand “特仑苏” sells very well and became best choice for both consumers who drink it themselves and use it as a gift. 特仑苏, as the unique name of the Complainant’s famous goods, has given consumers deep impression. When seeing the word “特仑苏”, consumers are easy to have a natural relation between the Complainant’s milk products and the brand “特仑苏”.

The Complained Party located at Zhejiang Province, one of the most prosperous provinces in China, shall know the existence of the Complainant's milk products bearing the brand “特仑苏”. Upon investigation, the registrant of the disputed domain name is neither employee of the Complainant, nor person who the Complainant authorized to register the disputed domain name. And, there is not any entrustment or cooperation relationship between the Complainant and the Complained Party. Therefore, the registration of the disputed domain name doesn't have any lawful preconditions and reasons.

Moreover, the most important point is that the Complained Party has never actually used it after registering the disputed domain name. As a result, the Complainant considers that the purpose of the Complained Party in registering the disputed domain name is to prevent the Complainant from using the disputed domain name in the Internet, which seriously affects normal business operation of the Complainant. So, the Complained Party's act is obviously conducted in bad faith.

Moreover, the Complainant considers that, the Complained Party does not enjoy any legitimate rights on the disputed domain name. Except the said purpose, the Complained Party's another purpose in registering the disputed domain name is to gain unlawful benefits by utilizing the high reputation of the Complainant's well-known brand and the misidentification of the consumer. For the Complainant's clients and other consumer who know the Complainant's brand, the word “特仑苏” in the disputed domain name will easy to mislead them into believing that the disputed domain name has a certain connection with the Complainant's well-known brand “特仑苏”. As a result, The Complained Party's activity disobeys the honesty and credit principle, and is obviously vicious.

The above facts show that the Complained Party registered the disputed domain name in obvious bad faith. Thus, the act of the Complained Party has fallen into the condition of bad faith provided in Section ii) of Item b of Article 4 of “Uniform Policy for Domain Name Dispute Resolution”, namely, “The disputed domain name holder registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the said mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct”.

The Complainant requests that the domain name be transferred from Respondent to Complainant.

Respondent

The Respondent did not submit a response.

Findings

Identical / Confusingly Similar

Pursuant to Paragraph 4(a)(i) of the Policy, a complainant must prove that the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

The domain name in dispute is <特仑苏.com>. Apart from the gTLD suffix “.com” that has no differentiating function, the domain name registered by the Respondent is “特仑苏”.

The Complainant claimed that it had, inter alia, the right of a unique name of famous products for, the prior right to use of and the high reputation of the mark “特仑苏”. Since the Policy requires that a complainant enjoy a trademark or service mark right, the panel shall only consider whether the Complainant proved that right in “特仑苏”.

Although the Complainant applied for registration of the mark “特仑苏” with the Chinese trademark authority, the mark is yet to be registered. Under the Chinese Trademark Law, only an owner of a registered trademark enjoys exclusive right to use the mark. The Complainant that is merely an applicant of registration does not enjoy the right of the registered trademark in “特仑苏”.

However, the Complainant provided sufficient and succinct evidence to prove that its mark “特仑苏” was being substantively and consistently used and promoted on its milk products in the market of China and other countries, which made the mark highly reputably among relevant consumers. The administrative decisions that the Complainant's mark “特仑苏” constituted a unique name of famous milk products are authoritative proof of the distinctiveness and reputation of the mark.

The Policy, under certain conditions, may accept a complainant's assertion of unregistered trademark rights, even when the complainant is based in a civil law jurisdiction. The complainant, nonetheless, must show that the name has become a distinctive identifier associated with the complainant or its goods and services.

The Panel finds that the Complainant successfully asserted its right in the unregistered mark “特仑苏”. Given that the disputed domain name is identical to the mark in which the Complainant has the right, the Complaint has proven paragraph 4(a)(i) of the Policy.

Rights and Legitimate Interests

The Complainant asserted that the Respondent had no rights or legitimate interests in the disputed domain name and, as stated above, the Respondent did not provide any information to the Panel asserting any right or legitimate interest it had in the disputed domain name.

It is apparent from the Complaint that there is no connection between the Respondent and the Complainant or its business. Paragraph 4(c) of the Policy lists a number of circumstances which, if proven to exist by the Respondent, can be taken to demonstrate a Respondent's rights or legitimate interests in the domain name. However, there is no evidence whatsoever before the Panel that any of the situations described in paragraph 4(c) of the Policy applies in the case of the Respondent. The lack of a Response constrains the Panel to draw the inference otherwise, and any resulting prejudice to Respondent is a result of its own failure to comply with the Rules.

Therefore, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name. Accordingly, the Complaint has proven paragraph 4(a)(ii) of the Policy.

Bad Faith

The evidence provided by the Complainant sufficiently proves that the massive use and promotion of the mark “特仑苏” made it a daily presence to the consumers of dairy products, particularly in the Chinese market. It is difficult for the Respondent to deny any knowledge of the Complainant's mark or products that are so reputedly available in the location where he/she resides. Although the Respondent has not put the disputed domain name in actual use since its registration, the Panel finds that the Respondent's passive holding of the disputed domain name constitutes evidence of bad faith. Passive holding is held sufficient under Policy 4(a)(iii) only if a mark enjoys strong reputation, and the respondent fails to respond, fails to provide evidence of good-faith use, or other conduct or circumstances cast doubt that the domain name is "used" in good faith (See *Sinteplast S.A. v. Pablo Pablo, d/b/a P.S.*, WIPO Case No. D2000-0815 [the panel determined that the fact that Respondent registered domain name identical to well-known mark of which he had knowledge, did not show any good faith registration and good faith use, committed unfair competition, and was in default, constituted bad faith use]; See also *Banco do Brasil S.A. v. Sync Technology*, WIPO Case No. D2000-0727 [the panel determined that the fact that Respondent slavishly copied Complainant's internationally known mark, deprived Complainant from legitimately reflecting its mark in a corresponding domain name, defaulted in the proceeding, and that the inactivity of the website might cause the public to believe that Complainant is not present on web, constitutes bad faith use.])

In the present case, the Complainant's trademark has a strong reputation in China and other countries and the Respondent fails to provide any evidence whatsoever of any actual or contemplated good faith use by it of the domain name. Taking into account all of the above circumstances, it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law (See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003).

The Panel therefore determines that the Respondent acted in bad faith in registering and holding the disputed domain name. The Complainant has thus established the third and final element stipulated in paragraph 4(a)(iii) of the Policy, which is necessary for a finding that the Respondent has engaged in abusive domain name registration.

Status

www.特仑苏.com

Domain Name Transfer

Decision

The Complainant has established each of the three requirements set forth in the Policy paragraph 4(a). In accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel therefore decides that the registration of the disputed domain name <特仑苏.com> be transferred from the Respondent to the Complainant.

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