

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

(Beijing Office)

ADMINISTRATIVE PANEL DECISION

Case No. CN 09000321

Complainant: Martell & Co.

Respondent: Suzhou kailihuahui lvhua zhuangshi youxian gongsi

Domain Name: 马爹利.com

Registrar: Web Commerce Communications Limited dba WebNic.cc

1. Procedural History

On 29 December 2009, the Complainants submitted its Complaint to the Beijing Office of the Asian Domain Name Dispute Resolution Centre (the "ADNDRC Beijing Office"), 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 Disputes (the "Rules"), and ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "ADNDRC Supplemental Rules").

On 31 December 2009, the ADNDRC Beijing Office confirmed the receipt of the Complaint and requested the Registrar of the domain name in dispute, Web Commerce Communications Limited dba WebNic.cc, for the registration information at their WHOIS database in respect of the disputed domain name.

On 31 December 2009, the ADNDRC Beijing Office received the Registrar's confirmation of registration information of the domain name in dispute.

On 9 February 2010, the ADNDRC Beijing Office sent the Transmittal of Complaint to the Respondent.

On 21 February 2010, the ADNDRC Beijing Office notified the Complainants that the Complaint had been confirmed and forwarded, and; the ADNDRC Beijing Office notified the Respondent, the Registrar and the ICANN of the commencement of the case proceeding.

The Respondent did not submit the Response by due date. On 15 March 2010, the

ADNDRC Beijing Office notified the Parties that no Response was received within the required period of time and the case shall be heard by default.

On 15 March 2010, the ADNDRC Beijing Office notified the Proposed Panelist Ms. Hong Xue, to see whether she is available to act as the panelist in this case and if so, whether she is in a position to act independently and impartially between the parties. Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Ms. Hong Xue, on 16 March 2010, the Centre informed the Complainant and the Respondent of the appointment of the Panelist, and transferred the case file to the Panel.

The language of the proceeding 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.

2. Factual Background

For the Complainant

The Complainant is Martell & Co. Its address is at PLACE EDOUARD MARTELL, BP 21, 16100 COGNAC, FRANCE. The Complainant's trademark “马爹利” has registered in China since 2002 and Hong Kong Special Administrative Region of China since 1990.

For the Respondent

The Respondent is Suzhou kailihuahui lvhua zhuangshi youxian gongsi with address at suzhou shilu yaxiya shangsha, Suzhou, China. According to the record in the Whois database, the Respondent's domain name “马爹利.com” was registered on 24 July 2006.

3. Parties' Contentions

The Complainant

(a) The disputed domain name is identical to registered trademarks or service marks in which the complainant has rights.

The disputed domain name is completely the same as the trade name and trademark of the complainant. Martell & Co. is a leading and the oldest manufacturer of Cognac, founded by Jean Martell in 1715. From 1868, Martell began developing new export

markets, including the markets in mainland China and Hong Kong.

In the 1970s, Martell positioned itself as a pioneer in the Asian region's cognac market, enabling the company to capture a leading position in markets such as Malaysia, Singapore, Thailand, and Hong Kong. By the 1990s, the group successfully expanded this leadership into the fast-growing mainland China market. Today, Martell products are sold in over 140 countries and regions. After nearly 300 years, Martell remained one of the world's leading cognac brands in the new century.

“马爹利” is the Chinese transliteration of the trade name of the Complainant. The Complainant has been using this name in its business activities, trademark applications and patent applications in Mainland China, Hong Kong and other Chinese-speaking regions.

“马爹利” is also one of the most important trademarks of the Complainant. The Complainant has registered a number of trademarks in Mainland China, Hong Kong, Macau and other Chinese speaking regions since 1990s and the trademark “马爹利” has been used by the Complainant in Chinese speaking regions for over 40 years.

The Complainant has also registered a number of domain names concerning “马爹利” for its business activities, including 马爹利.中国, 马爹利.net, 马爹利.网络, etc.

In view of the above, we can conclude that the disputed domain name is completely the same as the trade name and trademark of the Complainant.

(b) The respondent has no rights or legitimate interests in respect of the domain name;

According to our search, the respondent has not registered any trademark with respect to the word “马爹利”. The Respondent is not running any business that has any connection with “马爹利”, either. Therefore, the Respondent does not have any legitimate rights or interests on the domain name.

(c) The disputed domain name has been registered and is being used in bad faith.

First, Martell is a world famous cognac and also enjoys great reputation in China. Its transliteration “Martell in Chinese” has become a well-known symbol of high-end cognac in China through extensive use, advertisements, media reports, etc. Another evidence of famousness of Martell in Chinese is that the trademarks Martell and Martell in Chinese have been used by third parties for counterfeit cognac. In view of

the famousness of Martell in Chinese, the Respondent knows or should know the domain name Martell (in Chinese).com is the complainant's exclusive property.

Second, Martell in Chinese is not a normal phrase in Chinese language. It is unreasonable for the Respondent to register this domain name without bad faith in taking advantage from Martell's famousness.

Third, the content of the website linked to the domain name does not have any connection with Martell or Martell in Chinese. Obviously, the Respondent was trying to take advantage on the Complainant's famousness in order to divert Martell's customers to its own website for more clicks and promote its own business, though the Respondent well understood that “马爹利” is the registered trademark of the Complainant.

Fourth, the disputed domain name has been registered by the Respondent to prevent the Complainant from using the disputed domain name for business purpose. This has seriously damage the interest and image of Martell.

Therefore, the Respondent has absolutely registered and used the disputed domain name in bad faith.

The Complainant requests the panel find that the disputed domain name “马爹利.com” be transferred to complainant.

The Respondent

The Respondent did not submit the Response.

4. Findings

As stipulated in the Paragraph 4(a) of the Policy, when claiming dispute to a domain name registered by another, the Complainant must prove each of the following:

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

Based on relevant stipulations under the Policy, the Rules and ADNDRC

Supplemental Rules, to make the Claim to be supported by the Panel, the Complainant needs to satisfy each of the afore-said prerequisites.

Identical or Confusing Similarity

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 Complainant, Martell & Co., presents a number of trademark registration certificates issued by the trademark authorities of China, Hong Kong Special Administrative Region of China and other countries and regions and proves that 马爹利 is the registered trademark that the Complainant has the exclusive right.

The domain name in dispute is “马爹利.com”. The Panel notes that, apart from the gTLD suffix “.com”, the disputed domain name consists of “马爹利”, which is identical to the Complainant’s registered trademark. Therefore, the Panel finds the Complainant have proven paragraph 4(a) (i) of the Policy.

Rights or Legitimate Interests of the Respondent

The Complainant asserts that the Respondent has 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 may have 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 can be taken to demonstrate a respondent’s rights or legitimate interests in a domain name. However, there is no evidence before the Panel that any of the situations described in paragraph 4(c) of the Policy apply here. To the contrary, the lack of a Response leads the Panel to draw a negative inference.

Therefore, and also in light of the Panel’s findings below, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name and the Complainant have proven paragraph 4(a) (ii) of the Policy.

Bad Faith

The Complainant contends that the Respondent registered and is using the disputed domain name in bad faith. The Respondent, on the other hand, did not present any rebuttals.

A piece of non-contended evidence shows that the disputed domain name, “马爹利.com”, is being used for a commercial website for “苏州开丽花卉绿化装饰有限公司”, which seems corresponding to the name of the Respondent, “Suzhou kailihuahui lvhua zhuangshi youxian gongsi”, in the domain name registration record. Although the commercial contents on the disputed domain name’s website are irrelevant to the Complainant or its trademark “马爹利”, the panel finds that the use of the disputed domain name is highly likely to cause the initial confusion among the Internet users who were attracted to the Respondent’s website by the Complainant’s mark “马爹利”, which is not a generic term but a well-known mark in the market. Respondent’s registration and use of a domain name that is identical to the Complainant’s well-known mark for the Respondent’s commercial purpose constitute the evidence of the Respondent’s bad faith provided in the paragraph 4 (b) (iv) of the Policy. The Complainant have 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.

5. Decision

The Complainant has established each of the three requirements set forth in the Policy paragraph 4(a) – the disputed domain name is confusingly similar to the Complainant’s “马爹利” trademark, the Respondent does not have any rights or legitimate interests in the disputed domain name, and the Respondent registered and is using the disputed domain name in bad faith. In accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel therefore directs that the disputed domain name “马爹利.com” should be transferred to the Complainant.

Panelist: 薛虹

Dated: 30 March 2010