

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

(Beijing Office)

ADMINISTRATIVE PANEL DECISION

Case No. CN-20100351

Complainant: Guo Yong Ping

Respondent: Bush

Domain Name: 999wg.net

Registrar: GODADDY.COM, INC.

1. Procedural History

On May 10, 2010, the Complainant submitted a Complaint in English version to the Beijing Office of the Asian Domain Name Dispute Resolution Center (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"), the Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "Rules") approved by ICANN, and Asian Domain Name Dispute Resolution Center Supplemental Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "ADNDRC Supplemental Rules").

On May 14, 2010, the ADNDRC Beijing Office confirmed the receipt of the Complaint and transmitted by email to ICANN and GoDaddy.com Inc. (the Registrar of the domain name) a request for registrar verification in connection with the domain name in dispute. On May 15, 2010, GoDaddy.com Inc. transmitted by email to the ADNDRC Beijing Office its verification response confirming that, the domain name in dispute was registered under its domain registrar, and the Respondent is listed as the registrant.

The ADNDRC Beijing Office sent by email the Transmittal of Claims attached by the Complaint to the Respondent on May 26, 2010.

On June 7, 2010, the ADNDRC Beijing Office notified the Complainant that the Complaint had been confirmed and forwarded and the proceedings would

commence on June 7, 2010. On the same day, the Notifications of Commencement of proceedings were notified to the Respondent, ICANN and the Registrar. Till June 27, 2010, the last day of the fixed period of Response, no submission came from the Respondent. The ADNDRC Beijing Office noticed the Parties that, as there's no response from the Respondent, The ADNDRC Beijing Office would appointed the Panelist shortly, and the case would be decided by default.

Upon receiving the declaration of impartiality and independency and the statement of acceptance from the candidate Panelist, the ADNDRC Beijing Office appointed Chi Shaojie as the sole panelist in this matter on July 6, 2010. Then ADNDRC Beijing Office transferred all the case materials to the panel, and asked the panel to submit a decision on or before July 20, 2010.

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 there being no agreement by the disputing parties to the contrary.

2. Factual Background

The Complainant

The Complainant is Guo Yong Ping represented by its authorized agent Tianli Zhang residing at Sunny Plaza, Fl. 11/E, North Bldg. No 10 Xiao Ying Rd., Chaoyang, Beijing 100101, China.

The Respondent

The Respondent is Bush with the address at California Los Angeles, 97100 American Samoa.

3. Parties' Contentions

For the Complainant

The Complainant contends that:

It registered the domain name "999wg.net" on Oct. 18, 2003, and has kept it

being renewed afterwards, thus the name being valid until Oct. 19, 2013. On Dec. 2, 2009, to protect his domain names, the Complainant successfully transferred the domain name “999wg.net” together with the other domain names from the registrar in China to the registrar in USA (name.com), and was the recorded registrant of the disputed name before it was hijacked on March 10, 2010. As a result, the registrar for the domain name was changed from Name.com to GoDaddy.com, and the contact information in record was changed to that of the Respondent’s. Totally, 6 domain names were transferred without the Complainant’s acknowledge and authorization, while 2 other domain names registered by the Complainant with Name.com were also in a risk of being transferred with authorization. The Complainant retained a lawyer to send warning letters to Name.com LLC and GoGdday.com, and got back 7 names. The one in dispute has not been transferred to the Complainant. Since the disputed domain name is identical or confusingly similar to the company name by which the Complainant runs advertising because the domain name encompasses the key part of the company name “999” which the Complainant has the exclusive right to use, the Respondent has no rights or legitimate interests in respect of the disputed domain name, the Respondent’s obtaining of the name without authorization by the Complainant constitutes bad faith, the Complainant requests the Panel to order the transfer of the disputed domain name to the Complainant.

For the Respondent

The Respondent was duly notified by the ADNDRC Beijing Office of the Claim lodged by the Complainant and asked to submit the Response in accordance with the relevant stipulations under the Policy, the Rules and the ADNDRC Supplementary Rules, but failed to give any sort of defense in any form against the Claim by the Complainant.

4. Findings

One of the Pre-requisites for the Respondent to register the disputed domain name through the Registrar is to accept the Policy as the binding regulations. As mentioned, the Policy applies to this dispute as the substantive criteria for the

Panel to make a judgment. As stipulated in the Paragraph 4(a) of the Policy, when claiming back a domain name registered by the Respondent, the Complainant must prove each of the following:

- (i) That the domain name of the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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 is being used in bad faith.

Based upon itself on the stipulations under the Policy, what the Panel needs to do is to find out whether each and all of the above-mentioned facts can be proved. If the answer is yes, the Panel makes final award in accordance with the fact-finding and the relevant stipulations under the Policy, the Rules and the ADNDRC Supplemental Rules. If not, the claims by the Complainant shall be rejected.

The Respondent failed to submit the Response or defense of any sort to argue against what the Complainant claimed and to show his intention to retain the disputed domain names as required by the Policy, the Rules and the ADNDRC Supplementary Rules. As stipulated in Paragraph 5(e) in the Rules, “If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint”. In view of the situation, the Panel cannot but make the decision based primarily upon the contentions and the accompanying exhibits by the Complainant, except otherwise there is an exhibit proving to the contrary.

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. To meet the requirement, the Complainant needs as a prerequisite to submit evidence to prove it has such kind of trademark or service mark to be used to make comparison with the disputed domain name,

so that the Panel may decide the identity or similarity between the two compared. Unfortunately, the Complainant does not claim to have such a mark, but instead alleges that the disputed domain name “is identical or confusingly similar to the company name through which the Complainant runs advertising business because the Domain Name encompasses the key part of the company name ‘999’ which the Complainant has the exclusive right to use.” Obviously, what the Complainant alleges to be “identical or confusingly similar to” comes out of the comparison of the disputed domain name and the trade name in which the Complainant claims to have an exclusive right. As it is, whatever the Panel thinks on the identity or confusingly similarity between the disputed domain name and the trade name cited by the Complainant, the fact-finding can hardly be used for the application of Para. 4(a)(i) of the Policy, which requires the satisfactory condition of identity or confusingly similarity between the disputed domain name and a TRADEMARK or SERVICE MARK in which the Complainant has rights. Whether the Complainant may get any sort of remedy in relation to the disputed domain name based upon the cited trade name is NOT in the scope of comments by the Panel in this proceeding.

Since Paragraph 4(a)(i) of the Policy stipulates that the Complainant has to prove the satisfaction of three conditions simultaneously when claiming the transfer of the disputed domain name, failure by the Complainant to prove anyone of the three makes the Panel in a position hardly to sustain the Complainant’s claim of transfer, thus it is not necessary for the Panel to make further comments on the other two issues of “Rights or legitimate interests” and “Bad faith”.

It is worth being mentioned that what the Complainant alleges in its Complaint as the excuse for the claimed transfer of the disputed domain name draws special attention by the Panel, i.e. the disputed domain name was transferred, without the Complainant’s acknowledgement and authorization, to the Respondent. Legally speaking, the legal nexus in relation to the dispute out of what the Complainant claims is different from that under the current dispute, namely the dispute relates to different object. Whether the accused act alleged by the Complainant constitutes a tort, misappropriation, infringement or whatever, it is out of the jurisdiction by the Panel in accordance with the substantive

stipulations under the Policy. Anyway, the Complainant may resort to appropriate remedy with a competent dispute resolution body, e.g. a court.

In view of the above reasoning, the Panel can hardly make a decision in the Complainant's favor..

5. Decision

In light of all the foregoing findings and comments, the Panel decides to reject the claim by the Complainant.

Sole Panelist:



Dated: July 20, 2010