

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE
(Beijing Office)
ADMINISTRATIVE PANEL DECISION
Case No. CN 0900355

Complainant: Perfetti Van Melle Benelux B.V. and PERFETTI VAN MELLE S.P.A.
Respondent: Yan Wei
Domain Name: fruttella.biz
Registrar: DIRECTI INTERNET SOLUTIONS PVT. LTD. D/B/A
PUBLICDOMAINREGISTRY.COM

1.Procedural History

On April 12, 2010, the Complainant submitted a Complaint 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 April 12, 2010, the ADNDRC Beijing Office confirmed the receipt of the Complaint and transmitted by email to ICANN and DIRECTI INTERNET SOLUTIONS PVT. LTD. D/B/A PUBLICDOMAINREGISTRY.COM (the Registrar of the domain name) a request for registrar verification in connection with the domain name in dispute. On April 13, 2010, DIRECTI INTERNET SOLUTIONS PVT. LTD. D/B/A PUBLICDOMAINREGISTRY.COM 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 agreed that the Complainant submit hard copy of the attachments of the Complaint as the Complainant made such

application.

The ADNDRC Beijing Office sent by email the Transmittal of Claims attached by the Complaint to the Respondent on June 21, 2010.

On June 30, 2010, the ADNDRC Beijing Office notified the Complainant that the Complaint had been confirmed and forwarded and the proceedings would commence on June 30, 2010. On the same day, the Notifications of Commencement of proceedings were notified to the Respondent, ICANN and the Registrar.

Till July 20, 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 Mathew Murphy as the sole panelist in this matter on August 2, 2010. Then ADNDRC Beijing Office transferred all the case materials to the panel, and asked the panel to submit a decision on or before August 16, 2010.

2. Factual Background

The Complainant

The Complainant 1 is Perfetti Van Melle Benelux B.V. with the address at ZOETE INVAL 20, 4815 HK,BREDA,THE NETHER LANDS. The Complainant 2 is PERFETTI VAN MELLE S.P.A. with the address at VIA XXV APRILE 7, 20020 LAINATE(MI), ITALY. The authorized agent of the Complainants is Duan Zhiyong and Zhuang Yan.

The Respondent

The Respondent is Yan Wei with the address at F0605013, No.800, Dongchuan Road, Shanhai, China.

3. Parties' Contentions

For the Complainant

The Complainant 2, which was founded in 2001, is currently the third-largest candy maker in the world. It has been in business in China for more than 10 years, and is famous in mainland China. It set up a subsidiary in Shanghai in 1994, and invested a manufacturing enterprise in Shenzhen. The Complaint 1 is invested solely by a subsidiary of the Complainant 2. The Complainant is the registered owner of the trademark FRUITTELLA and the trademark is used in various kinds of candy - the Complainant has provided evidence to show that it has registered the mark in class 30 in almost 120 countries and districts throughout the world including China, the UK, Italy, Austria, Switzerland, Germany, Spain, France, Australia, Benelux, Thailand, the USA, the UN, etc. The Complaint claims that its FRUITTELLA brand products have been widely sold in China – 35 VAT invoices which were issued to the buyers by the Shanghai subsidiary of the Complainant over the years from 2001-2007, The sales statistical table of the complainant's FRUITTELLA brand candy in china from 2002-May 2007 and the evidence as to the Shanghai subsidiary's expense on advertising have been provided by the Complainant. The Complainant claims that its FRUITTELLA trademark, therefore, has attained the status of a famous mark through decades of use and consumer recognition. None of these claims have been refuted by the Respondent.

The Complainant discovered that the Respondent registered the fruittella.biz domain name. The Complainant asserts that the disputed domain name is identical with the complainant's trademark will lead to a confusion, and that the respondent does not have any legitimate rights or interests on the domain name which has been registered and used in bad faith.

The Complainant requests the Panel to issue a decision that the Disputed Domain Name shall be transferred to the 1st Complainant i.e.Perfetti Van Melle Benelux B.V..

The Respondent

The Respondent did not respond to the Complaint.

4. Findings

Under paragraph 4 (a) of the Policy, the Panel should be satisfied that:

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

Identity or Confusing Similarity

The Panel finds that Complainant has established that it is the owner of the trademark FRUITTELLA. The validity and fame of this trademark are beyond dispute. The Respondent's domain name is identical to the Complainant's. Internet users may easily understand the domain name to refer to the Complainant's FRUITTELLA products, which enjoy a high reputation on the market in China. Accordingly, the domain name is identical to the trademark FRUITTELLA owned by the Complainant.

Rights or Legitimate Interests of the Respondent

There is no evidence that the Respondent had any right or legitimate interest whatsoever in respect of the trademark FRUITTELLA, or that there was any association between the trademark FRUITTELLA and its activities, before registering the domain name. Given that the Respondent has not provided any evidence to support a right or legitimate interest in the domain name, the Panel finds that the Respondent has no rights or legitimate interests in respect of the domain name.

Bad Faith

The trademark FRUITTELLA is well-known enough that it is presumable that the Respondent knew about its existence when registering the domain name. No argument has been submitted by the defaulting

Respondent in order to counter these findings. The Panel concludes that the domain name has been registered in bad faith.

As far as use of the domain name in bad faith is concerned, the Panel concludes that the Respondent's holding of the domain name in this particular case satisfies the requirement of paragraph 4(a)(iii) of the Policy in that the domain name "is being used in bad faith" by the Respondent (see *Telstra Corporation Limited vs. Nuclear Marshmallows*, WIPO case number D2000-0003; *Comerica Inc vs. Horoshiy, Inc* WIPO case number D2004-0615; *Air Austral vs. WWW Enterprise, Inc* WIPO case number D2004-0765) - the Complainant's trademark has a strong reputation and is widely known, as evidenced by its substantial use in various countries throughout the world, and the Respondent has provided no evidence of any actual or contemplated good faith use by it of the domain name.

5. Decision

Pursuant to Paragraph 4(a) of the Policy and Article 15 of the Rules, this Panel orders that the domain name "fruittella.biz" be transferred to the 1st Complainant Perfetti Van Melle Benelux B.V..

Matthew Murphy

Sole Panelist

Dated: August 16, 2010