

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

(Beijing Office)

ADMINISTRATIVE PANEL DECISION

Case No. CN-1000375

Complainant: LACOSTE S.A.

Respondent: Eyu Lang

Domain Name: inlacoste.com

Registrar: GoDaddy.com, Inc.

1. Procedural History

On 21 September 2010, the Complainant 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 27 September 2010, the ADNDRC Beijing Office confirmed the receipt of the Complaint and transmitted by email to ICANN and the Registrar of the domain name in dispute, GoDaddy.com, Inc, a request for registration verification of the disputed domain name.

On 28 September 2010, the ADNDRC Beijing Office received the Registrar's confirmation of registration information of the domain name in dispute.

On 21 October 2010, the ADNDRC Beijing Office sent the Transmittal of Complaint to the Respondent.

On 27 October 2010, the ADNDRC Beijing Office notified the Complainant 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.

On 2 December 2010, the ADNDRC Beijing Office sent the Notification of No Response Received and Hearing by Default to the parties.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Ms. Xue Hong, on 16 December 2010, the ADNDRC Beijing Office informed the Complainant and the Respondent of the appointment of the Panelist, transferred the case file to the Panel on 20 December 2010 and asked the panel to forward its decision to the ADNDRC Beijing Office on or before January 3, 2011.

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

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 LACOSTE S.A. was founded in 1933 and named after the well-known tennis player René Lacoste. The Complainant's trademark "LACOSTE" had been registered in France since 1933. The Complainant acquired the trademark registration for the mark "LACOSTE" in China as early as October 30, 1980.

For the Respondent

The Respondent of this case is Eyu Lang with address at Huai Bei town Beijing, 101415 China. According to the record in the Whois database, the Respondent's domain name "inlacoste.com" was registered on 11 March 2009 through GoDaddy.com, Inc.

3. Parties' Contentions

The Complainant

A. The Complainant's registered trademark "LACOSTE" is used as a part

of the disputed domain name “inlacoste.com” by the Respondent and the former part of the domain name is a preposition word “in” without specific meaning in the letter composition “inlacoste”. Besides, most of the consumers would only remember the trademark LACOSTE as a whole, thus, the main part “lacoste” of “inlacoste” would play a very important role in the consumer’s recognition, which would easily make confusion among consumers.

B. The Respondent does not share any right and legitimate interests of the already-registered domain name “inlacoste.com”.

The Respondent does not share any exclusive right on the registered trademark “LACOSTE”, The Complainant has never permitted or entrusted the Respondent to use the registered trademark “LACOSTE”, or transferred the trademark “LACOSTE” to the Respondent. As far as the Complainant knows, the Respondent did not get any authorization or permission to use the registered trademark LACOSTE either. Through investigation, the registrant of the disputed domain name is not an employee of the Complainant LACOSTE S.A., and also did not get any authorization from the Complainant LACOSTE S.A. There is also no entrust or cooperative relation between the Complainant and the Respondent.

To sum up, there are enough evidences to prove that the Respondent should not share any rights or any legitimate interests from the disputed name “inlacoste.com”.

C. The Respondent registered the disputed domain name with malicious intent.

In accordance with Item ii, iii and iv of Provision B of Article 4 under the Policy, which provide specific descriptions on malicious cyber squatting and domain name use situation, the Complainant hold the opinion to believe that the Respondent has obvious malicious intent to register the disputed domain name. Below please find detailed arguments for reference:

4-b-ii. The main purpose of the Respondent to register the disputed

domain name is to prevent the right owner of related corresponding registered trademark/service trademark to exhibit their registered trademarks in form of trademark-associated domain names. As we all know, the registered domain name could only realize its function and value by being linked to some certain websites. The Complainant's registered trademark "LACOSTE" has been widely registered throughout the world. And after long-time business operation and large amount of advertising and publicity, the Complainant's registered trademark has already gained a very high popularity and fondness among world consumers. The Complainant's products could be found in most of the countries. At the same time "LACOSTE" is also the name of the Complainant's company with strong significance, of which the Respondent must be aware. Thus, the Respondent still maliciously cyber squatted the disputed domain name, which is mainly composed of the Complainant's registered trademark "LACOSTE", with prior awareness of the ownership and distinctiveness of registered trademark "LACOSTE".

4-b-iii. The main purpose of the Respondent to register the disputed domain name is to sabotage the normal business operation of their competitors. According to our preliminary investigation, the Respondent linked the disputed domain name to a website which is specialized in distributing suspected counterfeit shoes products right after their registration of the disputed domain name. Since the Complainant has never entrusted this website, the person in charge of the website or the domain name owner to distribute Lacoste shoes products, the Lacoste shoes products sold on the website are probably counterfeit. Besides, large size of Lacoste advertising photos and slogans can be easily observed on the website, which is also distributing suspected counterfeit Lacoste shoes products to overseas consumers in considerable low price with large amount. All the above mentioned deeds clearly show the malicious intent of the Respondent to publicize their suspected counterfeit Lacoste shoes products by cyber squatting the disputed domain name. Since the Respondent is a natural person and has no relation to the Complainant or the registered trademark "LACOSTE", the Respondent's intent to register the disputed domain name should be

doubted. The Complainant believes that the purpose of the Respondent to register the disputed domain name lies on fishing illegal interests and maliciously sabotaging the Complainant to enjoy its legitimate right of their registered trademark on the internet in domain name forms. The Respondent's purposely sabotaging deeds against the Complainant's common business clearly indicate their malicious intent.

4-b-iv. By means of using domain name and based on business interests, the Respondent purposely makes confusions on the origins, sponsors, subsidiaries or the securers of the products distributed or the service provided on the linked website between the Complainant and the Respondent to reach the goal of luring more website users to visit the Respondent's website or other linked websites. The Complainant holds the opinion that the Respondent does not share any legitimate right of the disputed domain name. The Respondent's purpose to register the disputed domain name is to make use of the popularity of <LACOSTE> and the consumers' confusion to gain illegal benefits. As to most of consumers, the main part "inlacoste" of the Respondent's domain name could be easily associated with the Complainant's registered trademark "LACOSTE". And furthermore, the public would confuse the disputed domain name for having connection with the Complainant and the Complainant's Lacoste series products. Besides, the suspected counterfeit Lacoste products sold on the linked website would not only mislead the public, but also make the Respondent hook for more illegal interests.

All the above facts clearly indicate that the Respondent's registration of the disputed domain name is not an occasional case but with malicious intent and beforehand plan. And this kind of circumstances should be considered as malicious registration situation according to the Policy, i.e. "The main purpose of the Respondent to registered the disputed domain name is to prevent the right owner of related corresponding registered trademark and service trademark to exhibit their registered trademarks in form of corresponding trademark-associated domain names", "the main purpose of the Respondent to registered the disputed domain name is to sabotage the normal business operation of their competitor" and "By

means of using domain name and based on business interests, the Respondent purposely makes confusions on the origins, sponsors, subsidiaries or the securers of the products distributed or the service provided on the linked website between the Complainant and the Respondent to reach the goal of luring more website users to visit the Respondent's website or other linked websites".

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

The Respondent

The Respondent did not submit the Response.

4. Findings

Identical or Confusing Similarity

Pursuant to the Policy, paragraph 4(a)(i), 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. In line with such requirement, a Complainant must prove its trademark rights and the similarity between the disputed domain name and its trademark.

The Panel finds that before the registration of the disputed domain name the Complainant's trademark "LACOSTE" had been registered and used on shoes, apparels and many other products in a number of countries.

The disputed domain name is "inlacoste.com". Apart from the generic top-level domain suffix ".com", the disputed domain name consists of "inlacoste", which combines the Complainant's trademark "LACOSTE" with a prefix "in." Given that the disputed domain name contains the Complainant's trademark "LACOSTE" in its entirety, addition of a prefix having no substantive meaning but reinstating the connection with "LACOSTE" does not preclude a finding of confusing similarity to the Complainant's trademark.

The Panel therefore finds that the disputed domain name "inlacoste.com"

is confusingly similar to the Complainant's registered trademark "LACOSTE". Accordingly, the Complainant has proven the first element required by paragraph 4(a) 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 "inlacoste.com". Accordingly, the Complainant has proven the second element required by paragraph 4(a) of the Policy.

Bad Faith

The Complainant contends that the Respondent registered and is using the disputed domain name in bad faith. The Respondent did not respond.

Through examining the evidence submitted, the Panel notes that the website at the dispute domain name "inlacoste.com" prominently shows the mark "LACOSTE" and sells a variety of types of shoes. The Complainant, however, states clearly that it has never granted the Respondent any license or other authorization to sell "LACOSTE" products.

The Panel therefore finds that the Respondent's use of a disputed domain name that is confusingly similar to the Complainant's mark to attract consumers to a website that is using the sign almost identical to Complainant's trademark "LACOSTE" without authorization to

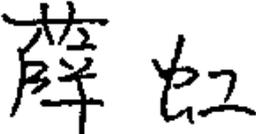
commercialize shoes that are suspect counterfeit “LACOSTE” products is highly likely to cause confusion with the Complainant’s mark as to the source, sponsorship, affiliation or endorsement of Respondent’s website or of the products on Respondent’s website.

The Panel finds that this is adequate to conclude that the Respondent has registered and is using the disputed domain name in bad faith under the Policy, paragraph 4(b)(iv).

Therefore, the Complainant has successfully proven the third element required by paragraph 4(a) of the Policy.

5. Decision

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the domain name “inlacoste.com” be transferred to the Complainant LACOSTE S.A..

Panelist: 

Dated: 3 January 2011