

Asian Domain Name Dispute Resolution Center
Beijing Office
Administrative Panel Decision
Case No. CN1000402

Complainant: Weichai Power
Respondent: PrivacyProtect.org
Domain Name: weichaipower.com
Registrar: AUSTRALIAN STYLE PTY LTD

1. Procedural History

On 2 November 2010, the Complainant submitted a Complaint in the English language to the Beijing Office of the Asian Domain Name Dispute Resolution Center (the ADNDRC Beijing Office) and selected this case to be dealt with by a one-person panel, in accordance with the Uniform Domain Name Dispute Resolution Policy (the Policy) approved by the Internet Corporation for Assigned Names and Numbers (ICANN), the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the ADNDRC Supplemental Rules).

On 3 November 2010, the ADNDRC Beijing Office sent to the Complainant by email an acknowledgement of the receipt of the complaint and reviewed the format of the complaint for compliance with the Policy, the Rules and the ADNDRC Beijing Office Supplemental Rules. All correspondence to and from the ADNDRC Beijing Office described herein was in the English language.

On 3 November 2010, the ADNDRC Beijing Office transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On 25 November 2010, the Registrar transmitted by email to the ADNDRC Beijing Office its verification response, confirming that the Respondent is listed as the registrant and providing the contact details.

On 28 December 2010, the ADNDRC Beijing Office transmitted the Complaint to the Respondent.

On 20 January 2011, the ADNDRC Beijing Office notified the Respondent of the commencement of the proceedings. On the same day, the ADNDRC Beijing Office notified the Complainant that the Complaint has been confirmed and transmitted to the Respondent, and notified the ICANN and the Registrar of the commencement of the proceedings.

The Respondent failed to submit a Response within the specified time period. On 14 February 2011, the ADNDRC Beijing Office notified both parties of the Respondent's default and informed the Complainant and Respondent that the ADNDRC Beijing Office would appoint a one-person panel to proceed to render the decision. Having received a Declaration of Impartiality and Independence and a Statement of Acceptance on 14 February 2011, the ADNDRC Beijing Office notified the parties on 15 February 2011 that the Panel in this case had been selected, with Mr ZHAO Yun acting as the sole panelist. The Panel determines that the appointment was made in accordance with Rules 6 and Articles 8 and 9 of the Supplemental Rules.

On 15 February 2011, the Panel received the file from the ADNDRC Beijing Office and should render the Decision within 14 days, i.e., on or before 1 March 2011.

Pursuant to Paragraph 11 (a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding. The language of the current disputed domain name Registration Agreement is English, thus the Panel determines English as the language of the proceedings.

2. Factual Background

For the Complainant

The Complainant in this case is Weichai Power. The registered address is Room 505, Building D, Huapu Garden, South Dongzhimen Street, Dongcheng District, Beijing. The authorized representative in this case is Tang Xueli.

For the Respondent

The Respondent in this case is PrivacyProtect.org. The registered address is Moergestel null, 5066 ZH, NL. The Respondent is the current registrant of the disputed domain name “weichaipower.com” according to the Whois information.

3. Parties' Contentions

Complainant

(1) The Complainant has the prior right for the trademark “WEICHAI”. The No. 1705556 trademark “WEICHAI and Device” was approved to be registered as early as January 28, 2002, in the procedure of approval, the Trademark Office approved the transfer of the trademark in November 2003 and in 2006, this trademark was cognized as well-known trademark. Therefore, the Complainant has the prior right of trademark “WEICHAI and Device”.

(2) The Complainant has the prior right for the trademark “潍柴”. The No. 3175015 trademark “潍柴 and device” was approved to be registered as early as May 21, 2004, in the procedure of approval, the Trademark Office approved the transfer of the trademark in November 2003; the No. 3175016 trademark “潍柴” was approved to be registered as early

as October 28, 2001, also by the trademark Office's approval, the Complainant transferred the trademark in June 2004. The Complainant is the lawful owner of the trademark. Other than these two trademarks, the Complainant owns a number of registered trademarks related to “潍柴” and “潍柴 and Spell”.

- (3) The Complainant has the prior right for the business name “潍柴”. The Complainant was established in December 2002, which was promoted to be established by former Weifang Diesel Engine Factory (Now Weichai Holding Group Co. Ltd), combined with the investor from both abroad and domestic. As the first Chinese corporation listed on the H-shares in Hong Kong and return back to the A-shares in local listed shares, this corporation becomes the biggest automotive supplier in China, with the total value of the net assets of 22 billion and more than 30 thousand employees. The Complainant has the highly reputable business name “潍柴”, which is an important property right of the Complainant.
- (4) The Complainant has the prior civil lawful right for the domain name “weichai”. The Complainant has registered the domain name of “weichai.com.cn” in July 2003. The domain name used by the Complainant is “weichai.com” which is registered as early as 2001; therefore the Complainant has more lawful right of domain name “weichai.com” than the Respondent.
- (5) The part for identification of the disputed domain name “潍柴” is similar with the prior right of the Complainant, and may cause confusion. The disputed domain name, the part “重机” (meaning “power” or “heavy machinery”) is short for “heavy machinery industry”, which is without distinctiveness; while the other part “潍柴” (Weichai) is the main part of distinctiveness, which the Complainant enjoys prior right, and is identical with the business name “潍柴”. Moreover, the part “重机” belongs to the same or

similar industry of the Complainant. Taking note of the use of the combination of “潍柴” and “重机” on the internet may certainly lead to confusion for clients and mislead the public, which also is detrimental to the Complainant’s right on “潍柴”, the business name and the trademark.

(6) The Respondent doesn’t enjoy the lawful right for the domain name or the main part of the domain name. According to the statement and evidence above, the Complainant is the lawful owner of “潍柴”. “潍柴” has great reputation in diesel engine, generator, however, the name of the Respondent doesn’t have any direct relevance with the part for identification of the disputed domain name; also “潍柴” is neither the trademark nor business name of the Respondent; again the Complainant doesn’t transfer the symbol “潍柴” to the Respondent either by licensing or authorization.

(7) The Respondent shows mala fide in the registration and use of the disputed domain name. The Respondent copied the reputable trademark and business name “潍柴”, along with its behavior of combining “潍柴” and a common name for industry “重机” to be the disputed domain name, increasing the possibility of misleading connection between the Respondent and the Complainant, misleading the public. By taking advantage of the reputation of the Complainant, the Respondent may seek illegal profits.

In accordance with Paragraph 4(b)(i) of the Policy, the Complainant requests the Panel to issue a decision to transfer the disputed domain name to the Complainant.

Respondent

The Respondent failed to submit a Response within the specified time period.

4. Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: “A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.”

Paragraph 4 (a) of the Policy requires that the Complainant should prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- 1) the domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- 2) the Respondent has no rights or legitimate interests in respect of the domain name; and
- 3) the domain name has been registered and is being used in bad faith.

Identity/Confusing Similarity

The evidence shows that the trade mark “WEICHAI” has been registered in mainland China as early as 2002, much earlier than the registration date of the disputed domain name (i.e. June 2010). The trademark was later transferred to the Complainant in 2004. The Panel has no problem in finding that the Complainant enjoys the prior rights in the trademark “WEICHAI”.

The disputed domain name is “weichaipower.com”. As the suffix “.com” only indicates that the domain name is registered under this gTLD and is not distinctive, the main part of the disputed domain name consists of two separate sub-parts (“weichai” and “power”). The first separate sub-part is the same as the Complainant’s trademark. The second separate sub-part is

a simple/common English word, the Panel finds that the addition of a simple/common English word, such as the addition of a prep word “power”, to a trademark does not alter the underlying mark to which it is added. Therefore, the main part of the disputed domain name “weichaipower.com” is confusingly similar to the Complainant’s trademark “WEICHAI”.

The Panel therefore holds that the Complaint fulfills the condition provided in Paragraph 4 (a)(i) of the Policy.

Rights and Legitimate Interests

The Complainant contends that the Respondent does not have rights to or legitimate interests in the disputed domain name. The Complainant’s assertion is sufficient to establish a *prima facie* case under Policy 4 (a)(ii), thereby shifting the burden to the Respondent to present evidence of its rights or legitimate interests.

The Respondent has failed to show that the Respondent has any rights or legitimate interests in respect of the disputed domain name. The act of registering the disputed domain name and the Respondent’s like/dislike do not automatically endow any legal rights or interests with the Respondent.

The Panel therefore finds that the Complaint fulfills the condition provided in Paragraph 4(a)(ii) of the Policy.

Bad Faith

Under Paragraph 4 (b) of the Policy, the following are relevant examples a Panel may take as evidence of registration and use in bad faith:

(i) Circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the Complainant

who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

- (ii) You have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) You have registered the domain name primarily for the purpose disrupting the business of a competitor; or
- (iv) By using the domain name, you have intentionally attempted to attract, for commercial gain, internet users to your website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.

Evidence shows that the Complainant's trademark "WEICHAI" has achieved a strong reputation of the brand name through extensive use, promotion, advertisement. The Complainant has achieved great success in the business and won many awards. As such, the public has come to recognize and associate the Complainant's trademark as originating from the Complainant and no other. The Complainant's trademark, recognized as a "Well-known Mark" in China in 2006, has been well known by Chinese consumers. The trademark "WEICHAI" is not an English word and is not commonly used in any other fields. The above fact serves to prove that the Respondent is aware of the existence of the Complainant and its trademark. This above assumption can be further verified by the fact that the disputed domain name contains the word "power", which is exactly the line of business of the Complainant. The action of registering the disputed domain name *per se* has constituted bad faith.

Accordingly, the Panel finds that the Complaint satisfies the condition provided in Paragraph 4 (a) (iii) of the Policy.

5. Decision

Having established all three elements required under the ICANN Policy, the Panel concludes that relief should be granted. Accordingly, it is ordered that the “weichaipower.com” domain name should be TRANSFERRED to the Complainant Weichai Power.

Sole Panelist: 

DATED: 1 March 2011