

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

(Beijing Office)

ADMINISTRATIVE PANEL DECISION

Case No. CN-1000410

Complainant: Alcatel Lucent

Respondent: liguangfu

Domain Name: alcatelnetworks.com

Registrar: WEB COMMERCE COMMUNICATIONS LIMITED DBA
WEBNIC. CC

1、 Procedural History

on December 21, 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 December 23, 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, WEB COMMERCE COMMUNICATIONS LIMITED DBA WEBNIC. CC, a request for registration verification of the Disputed Domain Name.

On December 23 2010, the ADNDRC Beijing Office received the Registrar's confirmation of registration information of the domain name in dispute.

On January 4, 2011, the ADNDRC Beijing Office transmitted the

Complaint to the Respondent by email.

On January 11, 2011, the ADNDRC Beijing Office notified the Complainant by email that the Complaint was reviewed and forwarded to the Respondent and confirmed with the parties, ICANN and Registrar by email that the captioned case was formally commenced. The ADNDRC Beijing Office also requested the Respondent to file a Response within 20 calendar days scheduled time.

The Respondent failed to submit a Response within the specified time period. On February 22, 2011, the ADNDRC Beijing Office sent the Notification of No Response Received and Hearing by Default to the parties.

On March 23, 2011, the ADNDRC Beijing Office gave notice to the potential candidate of the Panelist Mr. Gao Lulin, requesting him to confirm whether he would accept the appointment as a Panelist for this case, and if so, whether he could maintain impartiality and independence between the parties in this case.

On March 23, 2011, the ADNDRC Beijing Office received a declaration of impartiality and independence and a statement of acceptance from Mr. Gao Lulin.

On March 28, 2011, the ADNDRC Beijing Office informed by email the Parties that Mr. Gao Lulin would be the sole Panelist of this case and transferred the files of this case to the Panel formally on the same day. The Panel should render the Decision within 14 days, i.e. on or before April 11, 2011.

2、Factual Background

For the Complainant

The Complainant of this case is Alcatel Lucent. Its address is 3 AVENUE OCTAVE GRÉARD, F-75007 PARIS, FRANCE. Its authorized representative is Ms. Yuanyue LIU and Ms. ZHANG Ai.

For the Respondent

The Respondent of this case is liguangfu with the address at jinan east qianfoshan east road 23 jinan, Shandong, CN 250014.

The Respondent registered the Disputed Domain Name on May 19, 2007.

3、Parties' Contentions

The Complainant

The Complainant's contentions are as follows:

"ALCATEL" is the Complainant's registered trademark and trade name, and it has been extensively used in China as well as the world. Through long-term use, the Complainant's "ALCATEL" has acquired high fame in communication equipment field and is well-known to the relevant public in China. "liguangfu" has no legitimate right to the Disputed Domain Name.

The distinctive part "alcatel" of the Disputed Domain Name is identical with the Complainant's "ALCATEL". As the Complainant's trademark / trade name "ALCATEL" is well known in China, the Respondent should have known the existence of the Complainant's "ALCATEL". Under such circumstance, the Respondent has obvious bad faith in registering and using the Disputed Domain Name. The Respondent damages the Complainant's legitimate right. Therefore, the Complainant hereby lists "liguangfu" as the Respondent in the Complaint.

Early in 1988, the Complainant registered "ALCATEL" under Reg. No. 333386 covering the goods of "electric wires and cables for communication", etc. in Class 9 in China. Besides, "ALCATEL" has been registered on goods and services in several classes such as Classes 37, 38, 41 and 42.

The distinctive part "alcatel" of the Dispute Domain Name "alcatelnetworks.com" is identical to the Complainant's prior trademark/trade name "ALCATEL". The Respondent does not have any right to "alcatelnetworks.com" and the Respondent has bad faith in registering the Dispute Domain Name.

According to the Policy, the Rules and the ADNDRC Supplemental Rules, the Complaint requests the panel to have the Disputed Domain Name transferred to the Complainant.

(1) The Disputed Domain Name is identical with the trademark/trade name to which the Complainant has legitimate right.

(1.1) Brief introduction to the Complainant

The Complainant, “Alcatel Lucent”, was formerly the giant company in the field of telecommunication equipment in France, i.e., “ALCATEL”. ALCATEL was founded in the year of 1898, which was the world-leading supplier in telecommunication infrastructure. In the year of 2006, ALCATEL and Lucent Technologies (a US company) merged into the new company, namely, the Complainant, “Alcatel Lucent”. The Complainant has around 80, 000 employees in the world. Being the world’s top telecommunication equipments suppliers, the Complainant’s business covers more than 130 countries all over the world including China, with the annual income of 18.6 billion Euros.

(1.2) The Complainant in China

The Complainant Alcatel Lucent (formerly “ALCATEL”) is the most senior partner, who first entered into China market and has established long-term cooperation with China in telecommunication industry.

- In 1984, the Complainant established the first joint venture in China, “Alcatel Shanghai Bell Co., Ltd.” (Now it changed its name to ALCATEL-LUCENT SHANGHAI BELL CO., LTD.)
- In 1993, the Complainant established “ALCATEL (CHINA) INVESTING CO., LTD.”, aiming at coordinating and supporting the Complainant’s business in China;
- In the beginning of 2000, the Complainant moved its headquarter of Asia Pacific to Shanghai, becoming the first internationalized telecommunication company which established the Asia Pacific headquarter in China;
- In 2004, the Complainant and TCL jointly established TAMP Company to develop new mobile phone services;

- In 2005, the Complainant integrated its main business entities (including most joint ventures) in China with Alcatel Shanghai Bell Co., Ltd, and established the first joint stock enterprises in telecommunication industry, which introduced foreign investors in China-ALCATEL-LUCENT SHANGHAI BELL CO., LTD.

Through year's development, "ALCATEL" has now become a brand, which enjoys high fame and reputation in telecommunication equipment industry in China.

(1.3) The Complainant has legitimate right to "ALCATEL"

(1.3.1) The Complainant owns trade name right to "ALCATEL"

Before the above-mentioned merger in 2006, the Complainant had been conducting business under the trade name of "ALCATEL" for many years. And all the subsidiary companies established by the Complainant in China are all with the trade name "ALCATEL". Thus, the Complainant owns trade name right to "ALCATEL"

(1.3.2) The Complainant owns trademark right to "ALCATEL"

On December 20, 1998, the Complainant has registered the trademark "ALCATEL" under Reg. No. 333386 in Class 9 covering the goods "electric wire and cable for communication". Besides, the Complainant has also registered "ALCATEL" trademark in Classes 37, 38, 41 and 42.

(1.4) The Disputed Domain Name is identical with the trade name and trademark "ALCATEL" of the Complainant.

In the Disputed Domain Name "alcatelnetworks.com", "networks" is the common term in the domain name and ".com" is the suffix of the domain name, neither of them is the distinctive part of the Disputed Domain Name. Therefore, the only distinctive part of the Disputed Domain Name is "alcatel". So, the distinctive part of the Disputed Domain Name is identical with the Complainant's prior trade name and trademark "ALCATEL".

(2) The Respondent (the holder of the Disputed Domain Name) does not have legitimate right to the Disputed Domain Name.

As stated above, “ALCATEL” is the trade name used by the Complainant for more than 100 years, and it is also the trademark used and registered in China for several decades. Through long-term and extensive use, the Complainant’s trademark and trade name “ALCATEL” has obtained high reputation in the field of communication equipment in China and thus has been solely associated to the Complainant. Under the circumstance, it is impossible for the Respondent to have legitimate right to the distinctive part of the Disputed Domain Name “alcatelnetworks.com”.

(3) The Respondent (the holder of the Disputed Domain Name) has bad faith in registering and using the Disputed Domain Name.

The following facts can prove that the Respondent has bad faith in registering and using the Disputed Domain Name:

(3.1) The Complainant’s trademark and trade name “ALCATEL” is strongly distinctive and has high reputation

As stated above, the Complainant’s trademark/trade name “ALCATEL” was created by the Complainant and has obtained high reputation in China as well as all over the world. Under the circumstance, the Respondent should have known the existence of the Complainant’s trademark/trade name “ALCATEL”. The Respondent has obvious bad faith in registering the Disputed Domain Name “alcatelnetworks.com”.

(3.2) The commercial use of the Disputed Domain Name by the Respondent proves the bad faith of the Respondent.

The Respondent registered the Disputed Domain Name “alcatelnetworks.com” and has been using it on a website named “Alcatel-Lucent Network Technologies”. Obviously, the website “Alcatel-Lucent Network Technologies” is very likely to be considered as the Complainant’s website. In the meanwhile, the Respondent has uploaded a lot of news and information about the Complainant, which makes it more likely for the visitors to consider the Respondent’s website as the website of Complainant. Besides, the name and logo of the Respondent’s website are in purple which is an imitation of the color of the Complainant’s official website and thus makes the confusion more possible.

On the Respondent's website, the Respondent has set many advertising for others' goods and services, such as communication equipment (including optical exchange equipment, industrial exchange equipment, group telephone exchange equipment, wireless monitoring devices, optical fiber receiving and transforming equipment) as well as the daily commodities (including clothes, shoes, headgear, SIEMENS electric appliance, Google keywords advertising, education recruiting advertising, English teaching advertising, advertising for estate brokers).

Obviously, the Respondent's purpose of registering and using the Disputed Domain Name is to take "free ride" of the Complainant's well-known trademark and trade name "ALCATEL". By misleading the Internet users to think that the Respondent's website has certain association to the Complainant, the Respondent intentionally attract the Internet users to visit their website and thus to gain improper interest. The Respondent has obvious bad faith in registering and using the Disputed Domain Name "alcatelnetworks.com".

According to Article 4(b)(iv) of UDRP "by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site 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 web site or location or of a product or service on your web site or location", the Respondent has bad faith in registering and using the Disputed Domain Name.

The Respondent

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

4、Panel's Findings

As stipulated in the Paragraph 4(a) of the Policy, when claiming a domain name registered by Respondent, the Complainant must prove each of the followings:

(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 is being used in bad faith.

Based on the relevant stipulations under the Policy, the Rules and ADNDRC Supplemental Rules, the Panel needs to determine whether the Complainant satisfies each of the afore-said prerequisites. If the answer is yes, the Panel will make a final decision in accordance with the facts and relevant stipulations under the Policy, the Rules and the ADNDRC Supplemental Rules; otherwise, the Complainant's claims shall be rejected.

Identity or Confusing Similarity

Pursuant to Paragraph 4(a)(i) of the Policy, the Complainant must prove that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has right to. In order to meet this requirement, the Complainant provided evidence certifying its entitlement to the registered trademark "ALCATEL" (Reg. No. 333386) in China, which was registered in 1988, and remains valid after renewal. Just as demonstrated by the Complainant's exhibits, the Complainant's trademark was registered well before the registration date of the Disputed Domain Name (May 19, 2007) in terms of "electric wire and cable for communication; etc.". Thus, the Panel is of the view that the Complainant enjoys the prior trademark right to "ALCATEL".

The Panel notices that, the identifying part of the Disputed Domain Name consists of two words: "alcatel" and "networks". It is apparent that "alcatel" is the same as the Complainant's registered trademark "ALCATEL", except for the lowercase/capital letters that nearly has no influence on distinguishing different domain names. While "networks" is a general and common expression, It is not distinctive enough to differentiate the Disputed Domain Name from the Complainant's registered trademark. As for the suffix ".com", it only indicates that the domain name is

registered under this gTLD. Thus, “alcatel” shall be considered as the most distinctive part of the Disputed Domain Name.

Therefore, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant’s registered trademark “ALCATEL”, and the Complainant has satisfied the first condition under Paragraph 4(a) of the Policy.

Rights or Legitimate Interests of the Respondent

The Panel makes the decision based on the evidence provided by both parties and in case that either party fails to meet its burden of proof, such party shall undertake the risk of the possible unfavorable result against it. The Complainant claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Panel finds that the Complainant has already fulfilled the burden of proof required by the second condition under Paragraph 4(a) of the Policy, thus the burden of proof regarding “rights or legitimate interests of the Respondent” is generally reversed to the party making the defense in the dispute resolution of a domain name, the Respondent.

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 does not automatically endow any legal rights or interests with the Respondent.

In view of the foregoing, the Panel comes to the conclusion that the Respondent has no rights or any legitimate interests in respect of the Disputed Domain Name. Accordingly, the Complainant has satisfied the second condition under Paragraph 4(a) of the Policy.

Bad Faith

The Complainant also needs to establish the Respondent’s bad faith as set forth in the Paragraph 4(a)(iii) of the Policy. Under Paragraph 4(b) of the Policy, the following circumstances in particular shall be considered as evidence of the registration and use of a domain name 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 of 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 web site 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 web site or location or of a product or service on your web site or location.

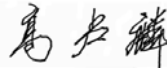
Evidence shows that the Complainant's "ALCATEL" trademark/trade name has achieved relatively high reputation among the public in China and around the world through extensive use, promotion, and advertisement. The Complainant has achieved great success in the business. As such, the public has come to recognize and associate the Complainant's "ALCATEL" trademark/trade name as originating from the Complainant and no other. The above fact serves to prove that the Respondent should have been aware of the existence of the Complainant and its trademark/trade name.

The evidence submitted by the Complainant further shows the following: (1) the Respondent is using the Disputed Domain Name to established a web site named "Alcatel-Lucent Network Technologies", which totally contains the Complainant's trade name "Alcatel Lucent" and the trademark "ALCATEL"; (2) the Respondent has uploaded a lot of news and information about the Complainant, and the descriptions like "Alcatel", "Alcatel-Lucent", "Alcatel Lucent in Chinese", etc. have been appeared many times in the website; and (3) the Respondent has set many advertising for other's goods and services.

These findings, together with the findings above mentioned indicate, on the one hand, the Respondent has neither rights nor legitimate interests in the Disputed Domain Name, on the other hand, the Respondent has known or even been much familiar with the Complainant as well as its trademark "ALCATEL". The use of the Disputed Domain Name by the Respondent is obviously for commercial gain, and by such use, the Respondent has intentionally attempted to attract the Internet users to its web site, which is likely to cause confusion in respect of the source, sponsorship, affiliation, or endorsement between the website of the Respondent and the Complainant. This is exactly the circumstance as set out in 4(b)(iv). Thus, the Panel comes to conclusion that the registration and use of the Disputed Domain Name by the Respondent is in bad faith. The Complainant has satisfied the third element under Paragraph 4(a) of the Policy.

5. Decision

For all the forgoing reasons, the Panel has decided that the Complainant has proved sufficiently the three elements of Paragraph 4(a) of the Policy. Accordingly, the Panel supports the Complainant's request and decides that the Disputed Domain Name "alcatelnetworks.com" should be transferred to the Complainant Alcatel Lucent.

Panelist: 

Dated: April 11, 2011