

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE
(Beijing Office)

ADMINISTRATIVE PANEL DECISION

Case No. CN-110494

Complainant: Mitsubishi Pencil Company, Limited

Respondent: Mitsubishi Pencil Shenzhen Trade Limited Company

Domain Name: zggdszuni.com

Registrar: Onlinenic, Inc.

1. Procedural History

On September 14, 2011, 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 September 16, 2011, the ADNDRC Beijing Office confirmed the receipt of the Complaint and forwarded a request for verification of registration information to ICANN and the registrar of the domain name in dispute, Onlinenic, Inc.

On September 20, 2011, the ADNDRC Beijing Office received the Registrar's confirmation of registration information of the domain name in dispute.

On September 29, 2011, the ADNDRC Beijing Office sent the Transmittal

of Complaint to the Respondent.

On October 10, 2011, 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 November 14, 2011, the ADNDRC Beijing Office sent the Notification of No Response Received and Hearing by Default.

On November 14, 2011, the ADNDRC Beijing Office received a Declaration of Impartiality and Independence and a Statement of Acceptance from Ms. Xue Hong and Mr. Li Yong. On November 16, 2011, the ADNDRC Beijing Office received the same from Mr. Lian Yunze.

On November 16, 2011, the ADNDRC Beijing Office informed the Complainant and the Respondent of the appointment of three Panelists, Mr. Lian Yunze, presiding panelist, Ms. Xue Hong and Mr. Li Yong, co-panelists, and on the same day transferred the case file to the Panelists.

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 is Mitsubishi Pencil Company, Limited. Its address is 5-23-37, Higashiol, Shinagawa-ku, Tokyo, Japan. The authorized representative of the Complainant is Zheng Yue and Fan Liyan from CCPIT Patent and Trademark Law Office.

For the Respondent

According to the record in the Whois database, the Respondent is Mitsubishi Pencil Shenzhen Trade Limited Company. Its address is Xi Town front door Nancheng general merchandise. The disputed domain name “zggdszuni.com” was registered on July 1, 2010 through the registrar, Onlinenic, Inc.

3. Parties’ Contentions

The Complainant

The complainant originated from 眞崎铅笔制造所 at 东京四谷区内藤新宿1番地 in 1887 and 大和铅笔 founded at 横滨神奈川町 in 1918. In 1903, 眞崎铅笔制造所 rolled out its first pencils bearing the Mitsubishi figurative trademark. In 1925, 眞崎铅笔制造所 merged with大和铅笔. In 1927, it began to export its products to countries around the world. In 1952, 大和铅笔 changed its name to Mitsubishi Pencil. The Complainant is the first manufacturer that successfully developed and manufactured ball-point pen or uni-ball pens well known to the consumers. Ever since its rolling out, it has achieved an annual increase every year and has become the most popular ball pens in the world. With a history of more than 100 years, the “uni” brand products are distributed all over the world. In the Chinese market, Mitsubishi Corporation has achieved ever-growing sales of its products. The ball pens and neutral pens are most popular. Ball-point pens, pencils, oil painting brushes, correction tools or fluorescent pens are also popular among consumers. In addition, a variety of “uni” pin pens, micro pen, advertising pens or pencil knife have provided more options and convenience in writing. The search results on Google with the keywords “UNI Stationery” can get you to the website of the Complainant’s products. Therefore, the use of the disputed domain name is sufficient to cause confusion in the public so as to create prejudice to the Complainant’s prior rights.

“zggdsz” in the disputed domain name is the acronym of “中国广东深圳” (zhongguo guangdong shenzhen) in pinyin. Therefore, the identifying

part of the disputed domain name is “uni”. “zggdszuni”, which means “中国广东深圳UNI” or “UNI在中国广东深圳”, is sufficient to cause confusion in the public so as to create prejudice to the rights of the Complainant and the interests of consumers.

No.3056 (2011) notary deed issued by Beijing ChangAn Notary Office demonstrates the use of the disputed domain name in the name of Mitsubishi Pencil Shenzhen Trade Limited Company. On the first page of the website, it is stated that it distributes “assisting tools, stationery and office articles manufactured in Japan, Taiwan, the United States, Germany and South Korea, with such brands as ‘Japan Mitsubishi (UNI) series’, ‘Mitsubish oil painting brush’ or ‘Mutsubish Pencil’.” In the column of “products” on the webpage are many articles or photos introducing the Complainant’s products. This shows that the Respondent engaged in wholesaling or distribution of stationery uses the corporate name of the Complainant as its own corporate name and registers the Complainant’s trademark as its domain name for commercial promotion and distribution of its products, being aware that Mitsubishi Pencil is the owner of the corporate name and the trademark. The Respondent’s act misleads the consumers and constitutes unfair competition and trademark infringement.

To sum up, the respondent, who does not enjoy any legitimate rights and interests in “uni”, tries to obtain unfair profits through the use of the domain name in bad faith. Its act shall be prohibited at law. The disputed domain name shall be transferred to the complainant.

The Respondent

The Respondent was duly notified by the ADNDRC Beijing Office of the Complaint 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 Complaint by the Complainant.

4. Findings

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at paragraph 4(a), that the Complainant must prove that each of the following three elements are present in order for the Complainant to prevail:

- i. Respondent's domain name must be 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. Respondent's domain name has been registered and is being used in bad faith.

Based on the above stipulations under the Policy, what the Panel needs to do is to find out whether each and all of the above-mentioned elements are present. If all the three elements are present, the Panel will make a decision in favor of the Complainant in accordance with the fact-finding and the relevant stipulations under the Policy, the Rules and the ADNDRC Supplemental Rules. If the three elements are not present, the Complaint by the Complainant shall be rejected.

The Respondent failed to submit the Response of any argument 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.

According to the evidence filed by the Complainant, the Panel notes that the trademark “uni” has been registered (Registration Number 272957) by the Complainant in class 16 in respect of fountain pens, ball pens, pencils, moving pencils, crayon, writing brushes, and parts thereof in China on December 20, 1986. After renewal, it is still in the term of validity. The Complainant therefore enjoys the exclusive trademark right to “uni” therein.

The disputed domain name is “zggdszuni.com”. Apart from the generic top-level domain suffix “.com”, the disputed domain name consists of “zggdszuni”. Comparing the trademark “uni” with the domain name “zggdszuni” from the points of the sight, pronunciation and meaning, the Panel sees the following differences:

1. Sight

“zggdszuni” has nine letters and “uni” has only three letters. The number of letters between the two words has much difference. “zggdszuni” is a long word and “uni” is a short word.

As “uni” is at the end of the word “zggdsz”, it is not the dominant part of the word, which makes the two words have much difference from their sights.

“zggdsz” is a acronym, which could not be easily recognized from its sight. “uni” is a commonly used English word, which could be easily recognized from its sight.

From the point of their sights, “zggdszuni” and “uni” have much difference.

2. Pronunciation

As “zggdszuni” is an irregular word, it could not be pronounced. While “uni” could be easily pronounced. From the point of their pronunciations, “zggdszuni” and “uni” have much difference.

3. Meaning

“zggdszuni” has no meaning. “uni” has meaning, which means “single”

in English. From the point of their meanings, “zggdszuni” and “uni” have much difference.

The Complainant alleges that “zggdsz” is the acronym of “ZhongGong GuangDong ShenZhen” (中国广东深圳) in pinyin. But this meaning could not be seen from its sight and pronunciation. It is just a acronym.

Based on the above differences in sight, pronunciation and meaning, the Panel cannot believe that the disputed domain name, as a whole, is confusingly similar to the Complainant’s registered trademark “uni.” Accordingly, the Complainant has failed to prove that the first element is present under paragraph 4(a) of the Policy.

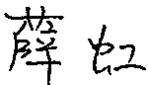
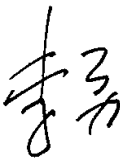
Under Paragraph 4(a) of the Policy, the Complainant must prove that the three elements are all present when he claims for the transfer of the disputed domain name. If he could not prove it, the Panel could not support his claim for the transfer. As the Complainant fails to prove the first element is present, it is not necessary for the Panel to make further comments on the other two elements, “Rights or legitimate interests” and “Bad faith”.

In view of the above reasons, the Panel can not make a decision in favor of the Complainant.

5. Decision

In light of all the foregoing findings and comments, the Panel decides to reject the Complaint made by the Complainant under paragraph 4(a) of ICANN Uniform Domain Name Dispute Resolution Policy.

Presiding Panelist: 

Co-panelists:  

Dated: 29 November 2011