

# ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

(Beijing Office)

## ADMINISTRATIVE PANEL DECISION

Case No. CN-1200528

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**Complainant:** Trendy International Investment Limited (赫基国际投资有限公司)

**Respondent:** pri

**Domain Name:** eochirly.com

**Registrar:** GoDaddy.com, Inc.

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### 1. Procedural History

On 18 January 2012, 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 28 January 2012, the ADNDRC Beijing Office confirmed the receipt of the Complaint and forwarded a copy of the Complaint to ICANN and the Registrar of the domain name in dispute, GoDaddy.com Inc.

On 31 January 2012, the ADNDRC Beijing Office received the Registrar's confirmation of registration information of the domain name in dispute.

On 10 February 2012, the ADNDRC Beijing Office sent the Transmittal of Complaint to the Respondent.

On 15 February 2012, 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 ICANN of the commencement of the case proceeding.

On 7 March 2012, 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 8 March 2012, the ADNDRC Beijing Office informed the Complainant and the Respondent of the appointment of the Panelist, and transferred the case file to the Panelist on 12 March 2012.

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 TRENDY INTERNATIONAL INVESTMENT LIMITED. Its address is UNIT C 17/F SILVERCORP INT' L TOWER 713 NATHAN ROAD KL HK. Its authorized representatives are LianYunze and Liu Yuping from HYLANDS LAW FIRM. The Complainant that is primarily in the business of fashion design, production and sales has registered the trademark "OCHIRLY" in China since 2000.

### ***For the Respondent***

According to the record in the Whois database, the Respondent is pri and the disputed domain name "eochirly.com" was registered on 30 June 2010.

### **3. Parties' Contentions**

#### ***The Complainant***

##### (1) Background of the Complainant and its "OCHIRLY" brand

The Complainant TRENDY INTERNATIONAL INVESTMENT LIMITED is a large international investment company, under which there are still Guangzhou TRENDIANO CO., LTD and Guangzhou Ding Shang Co., Ltd. The main business of the Complainant and its subsidiaries is fashion design, production and sales. The "OCHIRLY" which has experienced a sharply growth was first introduced to Chinese market in 1999 by the Guangzhou Ding Shang Co., Ltd. After doing business in China for ten years, the Complainant has established hundreds of "OCHIRLY" stores and self-counters in major cities, such as Beijing, Shanghai, Guangzhou, Shenzhen, Dalian, Chengdu, Chongqing, Hangzhou, Wuhan, Xi'an, Changsha and so on. The sales of the "OCHIRLY" are among the bests and the brand fells swoop become the leader in women's fashion.

(2) The mark "ochirly" has been widely used by the Complainant as trademark in Chinese Mainland, and it is of great fame in China

The Complainant's trademark "OCHIRLY" under No.1405051 was first registered with the China Trademark Office on June 7 2000, in class 25. The Complainant has registered "OCHIRLY" trademarks in class 25, class 26, class 24, class14, class3, class35. All of the trademark registrations mentioned above are in the term of validity, and were approved for registration before the registration date of the disputed domain name.

Hereunder is a list of the registration information of some trademarks registered in mainland China.

The registrant: 赫基国际投资有限公司 (TRENDY INTERNATIONAL INVESTMENT LIMITED )

Trademark	Registration Date	class	Registration NO
<b>OCHIRLY</b>	2004-09-07	3	3396327
<b>OCHIRLY</b>	2004-08-21	14	3396325
<b>OCHIRLY</b>	2004-06-07	24	3396323
<b>OCHIRLY</b>	2004-11-14	25	3396321
<b>OCHIRLY</b>	2004-10-14	26	3396319
<b>OCHIRLY</b>	2004-07-14	35	3397212
<b>OCHIRLY</b>	2000-06-07	25	1405051

The Complainant and the “OCHIRLY” brand won the unanimous endorsement of the consumers with its quality products and service and received many honors from communities. At the same time the Complainant always concerned about public welfare and gets a good social assessment. In order to expand the reputation and influence of “OCHIRLY” brand, the Complainant has done a lot of OCHIRLY brand advertising, and has got a good result. The Complainant and the OCHIRLY brand enjoy a good fame in China with its quality products and good publicity.

The Complainant is the owner of the trademark “OCHIRLY” and has been using “OCHIRLY” as trademark in business field for over 10 years. Owing to excellent management and extensive promotion, products and services, the “OCHIRLY” brand is in the front rank around the globe, especially in mainland China.

Moreover, in 2007, the Complainant’s trademark “ **OCHIRLY** ” (Registration NO.: 3396321) was recognized as well-known trademark in Guangzhou city, and in Guangdong province in 2008.

(3) The Complainant has prior trademark rights to "OCHIRLY" trademark; the disputed domain name is confusingly similar to the Complainant’s trademark

It is well-known that “OCHIRLY” is a worldwide famous trademark which is owned by Complainant. The validity and fame of its trademarks are

beyond dispute.

As described in the above, the Complainant has lots of registered trademarks in Chinese Mainland. All of them are valid, including the earliest one: “**OCHIRLY**” (NO.1405051) which was registered in 2000. The registration dates of all of them were far earlier than the registration date of the disputed domain name, i.e. June 30, 2010. Therefore, the Complainant has prior trademark rights to “OCHIRLY”.

The majority part of the disputed domain name “eochirly” consists of two separate sub-parts, “e” and “ochirly”. The first sub-part “e” is a single letter, and is not distinctive enough to differentiate the disputed domain name from the Complainant’s registered trademarks. The second sub-part of the disputed domain name is identical with the Complainant’s trademark registration for “ochirly”, except for the lowercase letters that has nearly no effect on distinguishing the disputed domain name from the Complainant’s prior trademark. As for “.com”, it only indicates that the domain name is registered under the gTLD and is also non-distinctive. Thus, the only distinctive and identifying part of the disputed domain name is “ochirly”.

Therefore, the Complainant have proven paragraph4 (a) (i) of the policy.

(4)The Respondent does not have any legitimate rights or interests on the domain name

The Respondent has no legitimate rights on the trademark. The Complainant has conducted searches in the on-line database of the China Trademark Office for trademark registrations in the name of the Respondent “pri”. But no registration information has been revealed.

The Complainant owns the trademark exclusively, and the Complainant never authorized, permitted the Respondent to register or use the disputed domain name, or to use the trade name or trademark for any purposes. The Complainant has never acquiesced the Respondent to register or use the disputed domain name in any way.

For these reasons, the Complainant considers that, under the "policy" 4 (a) (ii), the Respondent has no rights or legitimate interests for the disputed domain name.

(5) The domain name has been registered and used in bad faith

The trademark has been used in the global market by the Complainant. And the trademark enjoys a great reputation in the location that the disputed domain name registered in, so the Respondent has known or should have known the Complainant's trademarks when he registered the domain name. For the trademark is a non-inherent English word and was created by the Complainant, it is impossible for the Respondent to create the same word for a domain name registration. Therefore, registration of the disputed domain name which is confusingly similar to the Complainant's registered trademark "OCHIRLY" has shown the Respondent's bad faith to some extent.

The disputed domain name has not been directed to any websites, which falls under the circumstances in Paragraph 4(b)(ii), i.e. the Respondent has 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, which demonstrates the bad faith.

What's more, besides the disputed domain name, the Respondent filed another domain name "e-ochirly.com" on 1 July 2010 which had been directed the website [www.e-ochirly.com](http://www.e-ochirly.com) advertised as "ochirly official website" and distributing counterfeiting OCHIRLY clothing. The Complainant has filed a complaint with Asian Domain Name Dispute Resolution Center (Beijing Office) to retrieve the domain name and obtained the CN-1100433 favorable decision on 7 June 2011. In the valid decision, the Respondent's bad faith in registering the domain name "e-ochirly.com" has been confirmed.

For the above reasons, the Complainant considers that According to "policy" section 4 (a) (iii), the Respondent has registered and used the disputed domain name in bad faith.

The Complainant requests the disputed domain name “eochirly.com” be transferred from the Respondent to the Complainant.

### ***The Respondent***

The Respondent did not submit the Response.

## **4. Findings**

### ***Identity 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 notes that the Complainant’s trademark “OCHIRLY” has been registered in China since 7 June 2000. The Complainant’s legitimate trademark right is protected under the Chinese law.

The disputed domain name is “eochirly.com”. Apart from the generic top-level domain suffix “.com”, the major part of the disputed domain name is “eochirly”, which consists of “e” and “orchirly”. Since the addition of a non-distinguishable letter “e” to “orchirly” cannot make the disputed domain name, as a whole, distinct from the Complainant’s registered trademark “OCHIRLY”, the Panel finds that the disputed domain name “eochirly.com” is confusingly similar to the Complainant’s registered trademark “OCHIRLY”. 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 applies 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 "eochirly.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 used the disputed domain name in bad faith. The Respondent did not respond.

Through examining the evidences submitted, the Panel notes the fact that the Complainant acquired the Chinese trademark registration over the "OCHIRLY" since 2000 while the disputed domain name was not registered until 2010. Given that "OCHIRLY" is fanciful marks invented by the Complainant strictly to be used as a trademark, the Panel holds that the Respondent's selection and registration of the disputed domain name that is merely one letter different from "OCHIRLY" mark are more likely to be intentional rather than coincident.

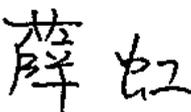
Although the disputed domain name has not been resolved to any website on the Internet, the Panel holds that the Respondent is unlikely to make any legitimate use out of the disputed domain name that is being passively held. "OCHIRLY" is so inherently distinctive that there is not any other meaning than the Complainant's trademark and has acquired considerable reputation and recognition in the fashion market through

registration and use in China for more than a decade. The Respondent's passive holding of the disputed domain name that is confusingly similar to the Complainant's reputable trademark poses a serious threat to the legitimate interests of the Complainant, and therefore constitutes the evidence of bad faith of the Respondent.

The Panel rules that this is adequate to conclude that the Respondent has bad faith under the Policy, paragraph 4(b). 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 "eochirly.com" be transferred to the Complainant TRENDY INTERNATIONAL INVESTMENT LIMITED.

Sole Panelist: 

Dated: 26 March, 2012