

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

(Beijing Office)

ADMINISTRATIVE PANEL DECISION

Case No. CN-1200532

Complainant: MARKER VOLKL INTERNATIONAL GMBH

Respondent: li linbin

Domain Name: volkloutdoor.com

Registrar: NAME.COM LLC

1. Procedural History

This Complaint is made to Asian Domain Name Dispute Resolution Centre (ADNDRC) Beijing Office on February 23, 2012, pursuant to the Uniform Policy of Domain Name Dispute Resolution (the Policy), approved by the Internet Corporation for Assigned Names and Numbers (ICANN) on October 24, 1999, the Rules for Uniform Policy of Domain Name Dispute Resolution (the Rules), approved by the ICANN on October 30, 2009, and the ADNDRC Supplemental Rules for Uniform Policy of Domain Name Dispute Resolution (the Supplemental Rules).

On February 23, 2012, the ADNDRC Beijing Office requested ICANN and the Registrar by email for the provision of information at the WHOIS database in respect of the disputed domain name, and such registration information was confirmed by the Registrar on February 24, 2012.

On February 27, 2012, the ADNDRC Beijing Office transmitted the Complaint to the Respondent by email.

On March 15, 2012, the ADNDRC Beijing Office notified the Complainant by email that the Complaint was confirmed and forwarded to the Respondent and confirmed with the parties and Registrar by email that the captioned case was formally commenced. The ADNDRC Beijing Office also requested the Respondent to file a Response within the 20 days scheduled time.

The ADNDRC Beijing Office received no Response from the Respondent at scheduled time (April 4, 2012). On April 13, 2012, the ADNDRC Beijing

Office issued the notification of no response received and hearing by default. On April 13, 2012, the ADNDRC Beijing Office issued the notification of proposed panelists. The ADNDRC Beijing Office gave notice to the potential candidates of Panelist Mr. Gao Lulin, Ms. Xue Hong and Mr. Tang Guangliang, requesting them to confirm whether they would accept the appointment as the Panelist for this case, and if so, whether they could maintain impartiality and independence between the parties in this case.

Having received a declaration of impartiality and independence and a statement of acceptance from Mr. Gao Lulin, Ms. Xue Hong and Mr. Tang Guangliang on April 18, 2012, the ADNDRC Beijing Office informed by email the parties that Mr. Gao Lulin would be the presiding panelist, Ms. Xue Hong and Mr. Tang Guangliang would be the co-panelists.

At the same day, the Panel received the file from the ADNDRC Beijing Office and should render the Decision on or before May 2, 2012.

2. Factual Background

For the Complainant

The Complainant is MARKER VOLKL INTERNATIONAL GMBH. Its address is RUESENSTRASSE 6 CH-6341 BAAR, SWITZERLAND. Its authorized representative is Bin ZHANG and Jing ZHAI of CCPIT Patent & Trademark Law Office.

For the Respondent

The Respondent is li linbin with the address at Quanzhou, Fujian, China Quanzhou Qingyang 362200. The Respondent registered the disputed domain name on April 10, 2011 through the registrar, NAME.COM LLC.

3. Parties' Contentions

The Complainant

The Complainant's contentions are as follows:

The Complainant owns the registered trademarks below in class 25 in

China:

(1) The trademark device with registration number 1270977 should be used on goods claimed for registration: SPORTING CLOTHING, SPORTS SHOES, HEADGEAR FOR SPORTS. The duration of registration is from May 7, 1999 to May 6, 2019(renewed).

(2) The trademark device with registration number 909338 should be used on goods claimed for registration: CLOTHING, NAMELY: SKI PANTS, SKI JACKETS, SKI OVERALLS, SKI SUITS, TENNIS PANTS, TENNIS SHIRTS, TENNIS SKIRTS, JOGGING AND TRACK SUITS, SOCKS, HEAD AND WRIST BANDS [CLOTHING], BOOTS, SHOES AND SLIPPERS. The duration of registration is from December 7, 1996 to December 6, 2016(renewed).

(3) The trademark "VÖLKL" with registration number 905463 should be used on goods claimed for registration: CLOTHING, NAMELY: SKI PANTS, SKI JACKETS, SKI OVERALLS, SKI SUITS, TENNIS PANTS, TENNIS SHIRTS, TENNIS SKIRTS, JOGGING AND TRACK SUITS, SOCKS, HEAD AND WRIST BANDS [CLOTHING], BOOTS, SHOES AND SLIPPERS. The duration of registration is from November 28, 1996 to November 27, 2016(renewed).

The Complainant owns the registered trademarks below in class 28 in China:

(1) The trademark device with registration number 1315688 should be used on goods claimed for registration: SPORTING ARTICLES, SKIS, SNOWBOARDS, SKI POLES, SKI BINDINGS, SKI-BOOT GAITERS, RACKETS, RACKET STRINGS, CASES FOR BALL AND RACKETS, BAGS FOR BALL AND RACKETS, BALLS FOR SPORTS USE. The duration of registration is from September 21, 1999 to September 20, 2019(renewed).

(2) The trademark device with registration number 909688 should be used on goods claimed for registration: SPORTING ARTICLES FOR SKI SPORT, NAMELY: SKIS [DOWNHILL AND CROSS COUNTRY], SKI POLES, SKI BAGS, SKI SACKS, BINDING PROTECTORS OR COVERS, AND SKI-BOOT GAITERS; SPORTING ARTICLES FOR TENNIS, SQUASH & BADMINTON, NAMELY: TENNIS RACKETS, SQUASH & BADMINTON

RACKETS, RACKET STRINGS, GRIP BANDS, SWING BLOCKERS FOR THE STRINGS, TENNIS, SQUASH & BADMINTON CASES, TENNIS COVERS, SQUASH & BADMINTON RACKET COVERS, THERMOBAGS, TENNIS BAGS, SQUASH & BADMINTON BAGS, TENNIS BALLS, SQUASH BALLS, BADMINTON SHUTTLES, COVERINGS FOR SKIS (SOLE-). The duration of registration is from December 7, 1996 to December 6, 2016(renewed).

(3) The trademark "VÖLKL" with registration number 909690 should be used on goods claimed for registration: SPORTING ARTICLES FOR SKI SPORT, NAMELY SKIS (DOWNHILL AND CROSS COUNTRY), SKI POLES, SKI BAGS, SKI SACKS, BINDING PROTECTORS OR COVERS, AND SKI-BOOT GAITERS; SPORTING ARTICLES FOR TENNIS, SQUASH & BADMINTON, NAMELY TENNIS RACKETS, SQUASH & BADMINTON RACKETS, RACKET STRINGS, GRIP BANDS, SWING BLOCKERS FOR THE STRINGS, TENNIS, SQUASH & BADMINTON CASES, TENNIS COVERS, SQUASH & BADMINTON RACKET COVERS, THERMOBAGS, TENNIS BAGS, SQUASH & BADMINTON BAGS, TENNIS BALLS, SQUASH BALLS, BADMINTON SHUTTLES, COVERINGS FOR SKIS (SOLE-). The duration of registration is from December 7, 1996 to December 6, 2016(renewed).

The Complainant owns the registered trademarks with international registration number G872604 in the listed classes that have been extended in China:

(1) The trademark "VOLKL" in class 18 should be used on goods claimed for registration: BAGS AND RUCKSACKS (AS FAR AS INCLUDED IN THIS CLASS). The duration of registration is from November 29, 2005 to November 29, 2015.

(2) The trademark "VOLKL" in class 25 should be used on goods claimed for registration: CLOTHING; FOOTWEAR; HEADGEAR. The duration of registration is from November 29, 2005 to November 29, 2015.

(3) The trademark "VOLKL" in class 28 should be used on goods claimed for registration: SPORTING ARTICLES & APPARATUSES; PARTS THEREOF AND ACCESSORIES FOR SPORTING ARTICLES & APPARATUSES [ALL

GOODS AS FAR AS INCLUDED IN THIS CLASSES]. The duration of registration is from November 29, 2005 to November 29, 2015.

The Complainant owns the registered trademarks with international registration number G688648 in the listed classes that have been extended in China:

(1) The trademark device in class 18 should be used on goods claimed for registration: CASES, COVER AND BAGS FOR SPORTING ARTICLES. The duration of registration is from January 28, 2008 to January 28, 2018.

(2) The trademark device in class 25 should be used on goods claimed for registration: SPORTS CLOTHING, SPORTS SHOES, HEADGEAR FOR SPORTS. The duration of registration is from January 28, 2008 to January 28, 2018.

(3) The trademark device in class 28 should be used on goods claimed for registration: SPORTS EQUIPMENT AND SPORTING ARTICLES, FOR EXAMPLE EQUIPMENT AND ARTICLES FOR SKIING, SNOWBOARDING, TENNIS, SQUASH, BADMINTON, ICE HOCKEY & GOLF [INCLUDED IN THIS CLASS]. The duration of registration is from January 28, 2008 to January 28, 2018.

The Complainant owns the registered trademarks with international registration number G1057220 in the listed classes that have been extended in China:

(1) The trademark "XX" in class 9 should be used on goods claimed for registration: HELMETS FOR ATHLETES, SPECTACLES FOR ATHLETES. The duration of registration is from August 24, 2010 to August 24, 2020.

(2) The trademark "XX" in class 41 should be used on goods claimed for registration: ARRAGING OF SPORTS COMPETITIONS, INCLUDING AS COORDINATORS & SPONSORS, PROVIDING SPORTS CAMP FACILITIES. The duration of registration is from August 24, 2010 to August 24, 2020.

In 1880, Georg Völkl founded the company whose first products were

coaches in Straubing and named it after his own name “Volkl”. In 1923, Franz Völkl began producing the first Völkl Skis in his carriage factory that thereupon changed its main business activities into the production of skis. The skiing equipments of the said company have been made in Germany and been recognized for their unparalleled quality. Nowadays, MARKER VOLKL INTERNATIONAL GMBH has been the world's largest manufacturer of ski bindings and has ranked third in the world in producing skiing articles. In the Chinese market, the sales of series products of MARKER VOLKL INTERNATIONAL GMBH have raised increasingly, for instance, outdoor products like tennis rackets and skis have been well accepted by customers. MARKER VOLKL INTERNATIONAL GMBH sponsored the Chinese Alpine Ski Team and the Chinese People's Liberation Army August First Alpine Ski Team, and has sponsored the Chinese Freestyle Ski Team since 2000. Therefore, the disputed domain name can be sufficient to result in public confusion and, thereby, to damage the existing rights of the Complainant obtained by priority.

In the disputed domain name “volkloutdoor.com”, “.com” serves as the suffix of the domain name; “volkl” is the registered trademark of MARKER VOLKL INTERNATIONAL GMBH and part of the said company's English name; “outdoor” means “户外” in English, but all the products produced by the Complainant belong to the category of outdoor gears. Therefore, the Respondent did cause public confusion and, thereby, damage the existing rights of the Complainant obtained by priority and the interest of customers.

Attachment 6 of the Complaint is the Beijing Zhongxin Notary No. 24748[2011] authenticated by Beijing Zhongxin Notary Office which certifies that the disputed domain name has been put into service; all the introduction information in brand history of the Respondent on the disputed website is copied from the founding and reforming history of the Complainant; the “Volkl” trademark and its device are posted at obvious spots on the left-up corner of every webpage of the said website; the picture of a foreign couple dressing in ski suits and holding skis is the same as what the Complainant has put in its catalogue; all the background pictures on the disputed website are the same as those on the website of the Complainant; the brand news like “VOLKL Opens Its First Shop Front in Quanzhou”,

“VOLKL, International Brand Meets Locals”, “VOLKL-Burke(transliterated) Bought Rackets in Shanghai: Chinese Tennis Needs Sufficient Reserves” and so on are the ones related to the trademarks and trade names owned by the Complainant. Consequently, the Respondent, engaging in the sales and marketing of outdoor sports products, has knowingly used the trademark “VOLKL” and its device owned by the Complainant as its own brand names, which damages the legal rights of the enterprise code and trademarks owned by the Complainant obtained by priority; the Respondent has registered the said trademark owned by the Complainant with lawful rights and interests obtained by priority as its own website (the “disputed domain name”); the Respondent has feigned itself to be the agent authorized by the Complainant and been engaged in the advertisements and sales through the said website; the said acts of Respondent have misled the customers and constituted the trademark infringement and unfair competition.

Stated thus, the Respondent does not enjoy the lawful rights and interests of “volkl”; but has sought unjust benefit through the said domain name, which is obviously malicious and should be prohibited by law.

The Complainant requests the disputed domain name “volkloutdoor.com” be transferred to the Complainant.

The Respondent

The Respondent did not make any response at scheduled time.

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 the 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 support the Complaint in accordance with the facts and relevant stipulations under the Policy, the Rules and the Supplemental Rules; if not, 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 on. The Panel notes that the Complainant mainly proves the rights on the trademark "VÖLKL" to claim the disputed domain name is identical or confusingly similar to the above trademarks. So the Panel has to first analyze and decide if the Complainant owns prior trademark rights on aforesaid marks.

According to the registration certificates, approval certificates of renewal, modification certificates and approval certificates of assignment of trademarks in China provided by the Complainant, the Complainant has obtained registrations upon "VÖLKL" trademarks with Reg. No. 905463 in Class 25 on November 28, 1996 and Reg. No. 909690 in Class 28 on December 7, 1996.

The designated goods of the trademark "VÖLKL" in Class 25 (Reg. No. 905463) are "clothing, namely: ski pants, ski overalls, ski suits, tennis shirts, tennis skirts, shoes and slippers, etc." The designated goods of the trademark "VÖLKL" in Class 28 (Reg. No. 909690) are "sporting articles for ski sport, namely skis (downhill and cross country), ski poles, ski bags, ski sacks, binding protectors or covers, and ski-boot gaiters, etc."

All of the above trademarks are in validity period, and the registration dates are much earlier than the registration date of the disputed domain name (April 10, 2011). Thus, the Panel is of the view that the Complainant enjoys prior trademark rights upon "VÖLKL".

As such, what the Panel needs to do is to make a conclusion on the identity

or confusing similarity between the Complainant's registered trademarks and the disputed domain name.

The identifying part "volkloutdoor" of the disputed domain name consists of "volkl" and "outdoor". The part "volkl" is nearly identical with the Complainant's trademarks "VÖLKL". The other part "outdoor" is a descriptive English word, which is of less distinctiveness and can be taken as the description of something of, used in, done in or existing in the open air. "outdoor" also indicates exactly the field the Complainant does business in. Therefore, the word "outdoor" used together with "volkl" will easily make the relevant public associate the disputed domain name with the Complainant and believe that the website is created by the Complainant, or is related to the Complainant in a certain way and thus may cause confusion.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks, 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 does not enjoy the rights and legitimate interests of "volkl". The Panel finds that the Complainant has already fulfilled the burden of proof required by the second element under Paragraph 4(a) of the Policy. Thus the burden of proof regarding "rights or legitimate interests" is generally on the Respondent in the dispute resolution of a domain name.

The Respondent didn't make response in prescribed time limit and has failed to show that it has any rights or legitimate interests in respect of the disputed domain name and the act of registering the disputed domain name does not automatically award any rights or legitimate interests to the Respondent. Therefore, the Panel can not come to the conclusion that the Respondent has rights or legitimate interests in respect of the disputed domain name.

Accordingly, the Panel finds that 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.

Based on Attachment 5 "Part of the Catalogue of the Complainant" and Attachment 6 "Beijing Zhongxin Notarial Deed No. 24748 [2011]" provided by the Complainant, the Panel notes the following:

(1) "❖ **VOIKI** " and "❖" are prominently shown on the website of the disputed domain name (hereinafter referred to as "the website"), which are also the registered trademarks owned by the Complainant.

(2) On the homepage of the website, the picture of a foreign couple dressing in ski suits and holding skis is the same as that in the catalogue of the

Complainant. Many wording of the brand history on the website are nearly identical with the contents in the catalogue of the Complainant, for example, “1985 年 The P Series” on the website and “1985-THE P SERIES” in the catalogue, “2000 年 The Sportswear” on the website and “2000-THE SPORTSWEAR” in the catalogue, etc.

(3) The corporate name shown on the website is “VOLKL (Fujian) Outdoor Goods Co., Ltd.” In addition, the brand news like “VOLKL Opens Its First Shop Front in Quanzhou” is also displayed on the website.

(4) The products listed on the website include T-shirt, jacket, ski overalls, outdoor running shoes, mountaineering bags, sports bottles, etc. The screenshot of the video on the homepage of the website shows the words “VOLKL OUTDOOR”.

Obviously, the Respondent copied and used the trademarks, pictures and introduction words of the Complainant. Besides, the products the Respondent provides on the website are mainly for outdoor use and overlap the core business of the Complainant. The Respondent did not give any reasonable and compelling explanation or raise any legal grounds for such use.

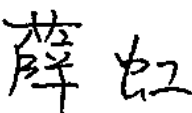
Based on the above, it is hard for the Panel to draw a conclusion that the Respondent registered and used the disputed domain name in good faith, especially under the situation that “VOLKL” comes from the name of the Complainant’s founder Georg Völkl, and enjoys some fame in China and around the world. The Respondent’s registration and use of the disputed domain name is the exact circumstance of the Paragraph 4(b)(iv) of the Policy, which is, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to the website of the disputed domain name, by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement of the website of the disputed domain name or of the products on the website of the disputed domain name.


To conclude, the Panel holds that the Complainant has satisfied the third condition under Paragraph 4(a) of the policy, and the Respondent registered and used the disputed domain name in bad faith.

5. Decision

For all the forgoing reasons, the Panel has decided that the Complainant has proved sufficiently all 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 "volkloutdoor.com" shall be transferred to the Complainant MARKER VOLKL INTERNATIONAL GMBH.

The Preside Panelist: 

The Co-panelist: 

The Co-Panelist: 

Dated: May 2, 2012