

**Asian Domain Name Dispute Resolution Centre
(Beijing Office)
ADMINISTRATIVE PANEL DECISION
Case No. CN-1200584**

Complainant: Shenzhen Marisfrog Fashion Co., Ltd.

Respondent: hao ni hao tan

Domain Name: marisfrog.org

Registrar: GoDaddy.com LLC

1. Procedural History

On 13 July 2012, the Complainant submitted a Complaint in English to the Beijing Office of the Asian Domain Name Dispute Resolution Center (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"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") approved by ICANN, and Asian Domain Name Dispute Resolution Center Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "ADNDRC Supplemental Rules"), and chose to have a sole panel to hear this case.

On 13 July 2012, the ADNDRC Beijing Office confirmed the receipt of the Complaint. On 13 July 2012, the ADNDRC Beijing Office transmitted by email to ICANN and Godaddy.com, Inc. (the Registrar of the disputed domain name) a request for verification of registration information in connection with the domain name in dispute.

On 18 July 2012, Godaddy.com, Inc. transmitted by email to the ADNDRC Beijing Office its verification response confirming that, the domain name in dispute was registered under its domain registrar and the Respondent is listed as the registrant.

The ADNDRC Beijing Office sent by email the Transmittal of Claims attached by the Complaint to the Respondent on 6 August 2012.

On 14 August 2012, the ADNDRC Beijing Office notified the Complainant that the Complaint had been confirmed and forwarded and the proceedings commenced on 14 August 2012. On the same day, the Notifications of Commencement of Proceedings were notified to the Respondent, ICANN and

the Registrar.

On 4 September 2012, having received no response from the Respondent, the ADNDRC Beijing Office notified the parties that the hearing will take place by default. On the same day, after ADNDRC Beijing Office sent the notification of no response received and hearing by default to the Respondent, the ADNDRC Beijing Office received the Response from the Respondent.

On 4 August 2012, the ADNDRC Beijing Office notified the Proposed Panelist Mr. Shaojie Chi to see whether he is available to act as the Panelist in this case and if so, whether he is in a position to act independently and impartially between the parties.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Mr. Shaojie Chi, on 5 September 2012, the ADNDRC Beijing Office informed the Complainant and the Respondent of the appointment of the Panelist and the constitution of the Panel, transferred the case file to the Panel, and asked the Panel to submit a decision on or before September 19, 2012. Considering the specific circumstances, the panel decides to accept the Response.

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 Shenzhen Marisfrog Fashion Co., Ltd., Its address is 2D, Tianxiang Building, Chegongmiao, Futian District, Shenzhen, and its authorized representative is xinhe zhang.

For the Respondent

The Respondent is hao ni hao tan, addressed at fu jian sheng xia men shi ji si ming qu 266655. According to the Whois information, the disputed domain name “marisfrog.org” was registered through the registrar GoDaddy.com, LLC

on 15 december 2011, and the Respondent is the current registrant of the disputed domain name.

3. Parties' Contentions

The Complainant

(1)The Complainant Shenzhen Marisfrog Fashion Co., Ltd. and the "Marisfrog" brand have gained a reputation in the clothing industry.

As the parent company of the Complainant and the owner of the "Marisfrog" trademark, Shenzhen Enqing Investment & Development Co., Ltd. (hereafter referred to as Shenzhen Enqing) established the Complainant Company in November 1999. In 2012, the Complainant's name was changed from Shenzhen Marisfrog Fashion Co., Ltd. to Shenzhen Marisfrog Fashion Stock Co., Ltd. For more than a decade, the Complainant has been specializing in the design, manufacturing, and operation of women fashions under the two brands "Marisfrog" and "Masfersu". By incorporating various fashionable essences from different cultures and accumulating rich experience, the Complainant has gained wide recognition and popularity among consumers. Today, "Marisfrog", the primary brand of the Complainant, has over 300 retail outlets served by 2,100 employees in high-end stores in major large- and medium-sized cities in China. With an annual sales volume over 500,000 pieces of luxury fashions, an annual turnover of nearly RMB 1 billion, and an annual profit of RMB 300 million, the Complainant pays nearly RMB 124 million in taxes each year. "Marisfrog" has grown into one of the most renowned Chinese brands of women's luxury clothing.

The Complainant put enormous efforts to launch various forms of brand promotions, from large-scale annual product launch events under widespread attention and coverage by the media to intensive advertisements on famous fashion magazines. After years of efforts in brand promotion, the "Marisfrog" brand has enjoyed a leading position in the clothing market.

Because of the Complainant's unremitting efforts in brand operation and promotion, the "Marisfrog" brand has become renowned and influential in the clothing industry and won a series of awards. These awards include: In 2010, Marisfrog trademark was recognized as Guangdong Province's Famous

Trademark for its women's clothing; In 2007, Marisfrog was awarded Publicly-Recognized Top 10 Trademarks for Women Clothing of the Year; In 2008, Marisfrog was awarded Shenzhen Regional Women's Clothing Trademark by the Shenzhen Regional Women's Clothing Trademark Promotion Committee; In 2010, women's clothing under Marisfrog was recognized as Guangdong Province's famous- Trademark high-quality products; In June 2010, Marisfrog was awarded Guangdong Famous High-Quality Trademark; In 2011, Marisfrog was honored as Most Influential Chinese Trademark of year 2010. In 2011, Marisfrog was granted Most Popular Clothing Brand by the Shenzhen Futian Economic Promotion Bureau.

In addition, the Complainant, which operates the "Marisfrog" trademark, also received a number of honors and awards. For example, in 2011, with its profit margin ranking No.1, total profits No.5, and product revenues No.88, the Complainant was awarded 2010 Top 100 Enterprises of China Clothing Industry by the China National Garment Association (CNGA); the Complainant was awarded Top 100 Taxpayers for five consecutive years from 2006 to 2010 by the Shenzhen Futian District Government; In 2010, the Complainant received the third prize for paying over RMB100 million in taxes from the Shenzhen Futian District Government.

(2) As the parent company of the Complainant, Shenzhen Enqing independently created and thus has undisputable priority over the "Marisfrog" trademark. Shenzhen Enqing grants the Complainant the exclusive license to use the "Marisfrog" trademark and authorizes the Complainant to discretionally safeguard the trademark rights.

① Shenzhen Enqing independently created and thus has priority over the "Marisfrog" trademark.

As early as Oct. 28, 2002, Shenzhen Enqing applied for the "Marisfrog" trademark which covered swimwear, baby suits, waterproofs, clothing, shoes, socks and stockings, scarves, ties, hats, and gloves (clothing). Thereafter Shenzhen Enqing registered the "Marisfrog" trademark in a wide range of goods and services(3, 8, 9, 11, 14, 16, 18, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45). These categories cover almost all categories of goods and services provided by the law. Moreover, these trademarks are all in their protecting period.

Shenzhen Enqing also applied for and registered the "Marisfrolg" trademark in other countries and regions, including the United States, Canada, the European Union, Japan, Hong Kong, Taiwan, Macao, Singapore, New Zealand, Italy, and India, with clothing covered by the specified application range of each of these said trademarks. Therefore, Shenzhen Enqing is entitled of the trademark undisputable.

To promote the "Marisfrolg" brand, Shenzhen Enqing established the Complainant in 1999, granted the Complainant the exclusive license to use the "Marisfrolg" trademark and, in Article 6 of the relevant Contract, authorized the Complainant to discretionally safeguard the trademark rights.

②As early as 2004, the Complainant launched its primary website for business operation with the domain name "marisfrolg.com".

As early as Dec. 8, 2004, the Complainant launched the website "www.marisfrolg.com" and has been promoting the Marisfrolg brand on the website. Therefore, as the earliest registrant, Shenzhen Enqing possesses undisputable priority over the "Marisfrolg" trademark.

③The disputed domain name is completely the same as the trademark which is exclusively possessed by the Complainant.

The parent company has granted the Complainant the exclusive license to use Trademark No.3349192 and Trademark No.5333743, and authorized the Complainant to discretionally safeguard the trademark rights in the Exclusive-License Contract mentioned above. The center word of the disputed domain name "marisfrolg.org" is identical with the "Marisfrolg" trademark which is exclusively possessed by the Complainant.

(3)The Respondent possesses no legitimate rights to the disputed domain name.

As described earlier, the Marisfrolg trademark was independently created and registered by the Complainant's parent company in 2002. In addition, this trademark has been registered in a majority of goods and services categories in China and also been registered in many other countries and regions. The Complainant's parent company possesses priority over the "Marisfrolg" trademark.

The Respondent, as a natural person in Fujian Province of China, does not has

any connection with the Complainant or with the owner of the "Marisfrolg" trademark. Whereas the Complainant's parent company has granted the Complainant the exclusive license to use the "Marisfrolg" trademark, any individual or enterprise except the Complainant has no right to use the trademark. In addition, the Respondent has never been authorized in any form to use the trademark. The Respondent registered the disputed domain name on December 15, 2011, which was many years after the parent company of the Complainant registered the trademark and the Complainant launched its official website.

(4) The current holder of the disputed domain name registers and uses the domain name for obviously malicious purposes.

Whereas the "Marisfrolg" brand and trademark have high recognition and great influence in the clothing (particularly women's clothing) industry, the Respondent had already known the value of this trademark before registering this domain name.

On the website under the disputed domain name "marisfrolg.org", the Respondent uses "Marisfrolg women's clothing", "Marisfrolg's official website" and other icons that are identical with the trade name and the key words used on the official website of the Complainant, and meanwhile, "marisfrolg.org" uses promotional pictures and description text presented on the Complainant's official website. The Respondent also sells clothing of the Complainant on the website "www.marisfrolg.org" without any form of authorization from the Complainant. In addition, the Respondent links the disputed domain name to his/her other online shops on "www.taobao.com", where the Respondent sells clothing under the Marisfrolg brand without any authorization of the Complainant. (Note: Till the date the complainant file the complaint, website linked by the disputed domain name can not open. But the name of the website is still marisfrolg women's clothing, official website of marisfrolg, marisfrolg women's clothing purchasing agent.)

These facts adequately show that the Respondent already knows very well of the Complainant and the "Marisfrolg" brand, and has engaged in illegal business operations for commercial profits. The registration of the disputed domain name is an integral part of the Respondent's malicious activities.

In addition, after registering the disputed domain name, for multiple times the

Respondent has attempted to contact with the Complainant through a third-party agency by phone, seducing the Complainant to purchase the disputed domain name at an exorbitant price.

All the behavior of the Respondent reveals that he registered the disputed domain name for illegal commercial profits: on the one hand, the Respondent use the trade name, icons and pictures that is in exclusive possession of the Complainant in the purpose of enticing consumers to visit the website under the disputed domain name and other related links; on the other hand, the Respondent attempts to sell the disputed domain name to the Complainant for illegal profits. Obviously, the Respondent registered the disputed domain name in the intention to prevent the Complainant from registering it.

Based on the preceding facts, we can conclude that the Respondent has registered and used the disputed domain name for obviously malicious purposes.

Based on all the preceding grounds, the Complainant hereby submits the dispute to the arbitration of the distinguished expert panel: the Complainant requests that the disputed domain name "marisfrolg.org" shall be recalled and transferred to the Complainant.

For the Respondent

The Respondent submitted a Response in Chinese on September 4, 2012, in which he made no more defense against the Complainant's submission other than the objection to the allegation by the Complainant that the Respondent authorized a third party to contact the Complainant offering to sell the disputed domain name to the latter.

4. Findings

It is significant for the parties to understand the legal nature of the current proceeding which is totally different from that of arbitration or litigation. Though the proceeding is known as administrative proceeding, it is really NOT the proceeding by a government agency. The jurisdiction by the Panel over the current dispute on the domain name registered by the Respondent comes from the authorization by the organization for the administration of domain name registration and maintenance. Anyone intends to register a domain name needs to sign a registration agreement with the administrative authority which makes

no substantive examination on the registration application, but stipulates in the registration agreement that whenever a claim against the registration is submitted, the registrant is obliged to be a procedural party which has rights to make arguments against the claim, but subject to an award made by a Panel constituted in conformity with the stipulated procedural rules. As it is, the current proceeding is a part of the whole proceeding for the registration and maintenance of domain names. As such, the fundamental feature of the Panel's making a judgment on the entitlement to the disputed domain name is to decide which party should be the rightful holder of the disputed domain name, so as to be in conformity with the basic requirements set forth under the Policy and to help keep the good operative order for the running of the internet, and to be beneficiary to the protection of common interests of the web-users.

One of the prerequisites for the Respondent to register the disputed domain name through the Registrar is to accept the Policy as the binding regulations for the registration. As mentioned, the Policy applies to this dispute as the substantive criteria for making the judgment of whether the Complainant's request is to be sustained or rejected. As stipulated in the Paragraph 4(a) of the Policy, when claiming back a domain name registered by the Respondent, the Complainant must prove each and all of the following:

- (i) That the domain name of the Respondent 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 used in bad faith.

Based itself upon the stipulations under the Policy, what the Panel needs to do is to find out whether each AND all of the three basic facts can be attested by the Complainant. If the answer is yes, the Panel makes an award in the Complainant's favor in accordance with the relevant stipulations under the Policy, the Rules and the ADNDRC Supplemental Rules. If not, the claim by the Complainant shall be rejected.

Identity or Confusing Similarity

Pursuant to Paragraph 4(a) (i) of the Policy, the Complainant must prove that the domain name at issue is identical OR confusingly similar to a trademark or

service mark to which it has rights. As stipulated in the Policy, the Complainant needs to prove either the IDENTITY or the CONFUSING SIMILARITY. To meet the requirement, the Complainant submits the copy of trademark certificate to prove that it is entitled to the trademark “Marisfrolg” which was registered much earlier than the disputed domain name and is currently valid. Taking the relevant exhibit by the Complainant, the Panel holds the fact.

The disputed domain name is “marisfrolg.org” and its identifying part is “marisfrolg”, obviously identical to the registered trademark “Marisfrolg” over which the Complainant has right. Thus the Panel has nothing to say but the Complainant meets the first requirement set forth under Paragraph 4(a)(i) of the Policy.

Rights or Legitimate Interests of the Respondent

Pursuant to Paragraph 4(a)(ii), the second requirement for the Complainant to meet in terms of the request for the transfer of the disputed domain name is to prove that the Respondent does not have rights to or legitimate interests in the domain name at issue. Reading the expression of the stipulation, it seems to be the Complainant who shall take the burden of proof to establish the fact that the Respondent does NOT have rights or legitimate interests in connection to the disputed domain name. Since the Complainant claims that it is entitled to the disputed domain name and the Respondent has nothing to do with it except registered and used it in bad faith, it can hardly submit any evidence to prove something it does not think existing. Probably for this reason, the Panel pays more attention to whatever the Respondent argues with regard to the rights or legitimate interests in respect to the disputed domain name. The Policy gives the chance to the Respondent to make argument on this issue by stipulating several could-be circumstances in the relevant article of the Policy. Unfortunately, the Respondent made no argument to say that it does have certain right or legitimate interest in regard to the domain name at issue. Under the circumstances, how could the Panel hold that it is the Respondent who is entitled to the disputed domain name?

On the other side, the Complainant submitted exhibits to certify that the parent company of it innovated and created the distinctive mark “Marisfrolg” which meaning can hardly be identified by common folks except those who are familiar with the Complainant, and granted the Complainant an exclusive license

to use the mark in its business activities. The mark “Marisfrolg” has been extensively advertised and used without the least involvement by the Respondent. Furthermore, the Panel pays attention to the name used by the registrant of the disputed domain name, which does not appear to be a usual name by either legal entity or natural person in China. The logical thinking is that if the Respondent does have certain right or legitimate interest in the disputed domain name, why it used anonymous title instead of his or her authentic name in registration.

Based upon the above thinking, the Panel has sufficient reason to ascertain that the Respondent has no right or legitimate interest in respect of the disputed domain name and further holds that the Complainant meets the second requirement set forth under Paragraph 4(a)(ii).

Bad Faith

The Complainant has yet to establish the fact of bad faith on the part of the Respondent as set forth in the Paragraph 4(a)(iii) of the Policy. The Complainant alleges that he was approached by someone who might be authorized by the Respondent for the sale at high price of the disputed domain name. The Respondent rejects the allegation. Since the Complainant submits no evidence to prove the alleged fact, the Panel can hardly hold what the Complainant charged. Besides, the Complainant claims that the disputed domain name was used badly by someone on the website, but failed to submit relevant exhibit to prove what is alleged. Thus, the Panel is not in a position to hold the fact alleged by the Complainant.

Nevertheless, under the Paragraph 4(b) of the Policy, the following circumstances, in particular, shall be considered evidence of the registration and use of a domain name in bad faith: “..... (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;” As indicated, the Respondent registered the disputed domain name in an anonymous name which may disclose to some extent the bad faith of the Respondent’s to make the registration. Besides, it is obvious that if the disputed domain name is still being held by the Respondent, the Complainant can hardly reflect its registered trademark in a corresponding domain name. What is more, while making defense against the

charge by the Complainant, the Respondent said nothing relating to that it did register the disputed domain name in good faith or for any reasonable excuse. The conduct by the Respondent to register the disputed domain name is in conformity with that described in the foregoing quoted regulations.

Furthermore, the logical thinking of the Panel is, when a party registers a domain name which is NOT created by the party with its distinctive feature known in the real world, but identical or confusingly similar to a mark or logo or sign to which the other party is entitled with high market value, the intention of the registration is clear, namely taking illegal advantages by causing confusion to the consumers. On the other hand, if the registrant is NOT intentionally to take a ride of other's reputation, it should create a distinctive domain name to make web-users easily tell the name from others. Furthermore, if someone registers a domain name in bad faith, it is hard for him to make use of the registered subject matter in good-faith, otherwise the ill-intention of the registrant would not be realized. The conduct of "register only" is sort of passive form of ill-use that is underlying the stipulation under item (ii) of Paragraph 4(b) of the Policy. This fundamental logic further supports the holding of bad-faith fact in the foregoing paragraph. In view of this, the Panel holds that the Complainant meets the requirement set forth under Paragraph 4(a)(iii) of the Policy.

Based upon all the above findings, the Panel comes to the final conclusion that the Complaint fulfills each AND all of the conditions provided in Paragraph 4(a)(i)(ii) (iii) 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 disputed domain name "marisfrolg.org" be transferred to the Complainant Shenzhen Marisfrolg Fashion Co., Ltd.

Panelist:



Dated: 19 September 2012