

**Asian Domain Name Dispute Resolution Centre
(Beijing Office)
ADMINISTRATIVE PANEL DECISION
Case No. CN 1200602**

**Complainant: OTKRYTOE AKTSIONERNOE OBCHTCHESTVO “NEFTYANAYA”
KOMPANIYA “LUKOIL”**

Respondent: Ding Shangzhou

Domain Name: lukoichina.com

Registrar: 1 Api GmbH

1. Procedural History

On 29 August, 2012, the Complainant submitted a Complaint in English to the Beijing Office of the Asian Domain Name Dispute Resolution Center (the ADNDRC) and elected this case to be dealt with by a three-person panel, in accordance with the Uniform Domain Name Dispute Resolution Policy (the Policy) approved by the Internet Corporation for Assigned Names and Numbers (ICANN), the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the ADNDRC Supplemental Rules). On the same date, the ADNDRC sent to the Complainant by email an acknowledgement of the receipt of the Complaint and reviewed the format of the Complaint for compliance with the Policy, the Rules and the ADNDRC Supplemental Rules.

On 29 August, 2012, the ADNDRC transmitted by email to ICANN and the Registrar, 1 Api GmbH, a request for registrar verification in connection with the disputed domain name.

On 31 August 2012, the Registrar transmitted by email to the ADNDRC its verification response, confirming that the Respondent is listed as the registrant and providing the contact details.

On 28 September 2012, the ADNDRC notified the Complainant that the Complaint has been confirmed and transmitted to the Respondent and the case officially commenced on 28 September 2012. On the same day, the ADNDRC transmitted the Written Notice of the Complaint to the Respondent, which informed that the Complainant had filed a Complaint against the Respondent over the disputed domain name and the ADNDRC had sent the Complaint and its attachments to the Respondent through email according to the Rules and the

Supplemental Rules. On the same day, the ADNDRC notified ICANN and Registrar of the commencement of the proceedings.

On 18 October 2012, the ADNDRC sent the Notification of No Response Received and Hearing by Default.

On 19 October 2012, the ADNDRC Beijing Office notified the Proposed Panelist Mr. ZHAO Yun, Ms. XUE Hong, and Ms. ZHANG ping, to see whether he or she is available to act as the Panelist in this case and if so, whether he or she 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. ZHAO Yun, Ms. XUE Hong, and Ms. ZHANG ping, on 26 October 2012, the ADNDRC informed the Complainant and the Respondent of the appointment of the Panelist, and transferred the case file to the Panelist on 26 October 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 in this case is OTKRYTOE AKTSIONERNOE OBCHTCHESTVO “NEFTYANAYA” KOMPANIYA “LUKOIL”. The registered address is Sretensky Boulvar 11, RU-101000 MOSKVA (RU). The authorized representative in this case is Zhengyue from CCPIT Patent & Trademark Law Office.

For the Respondent

The Respondent in this case is Ding Shangzhou. The address is Fu Zhou Shi Tai Jing Qu, Guang Da Lu Shuang Feng Da Xia 9DYa, Fuzhou, Fujian. The Respondent is the current registrant of the disputed domain name “lukoiichina.com” according to the Whois information.

3. Parties' Contentions

The Complainant

The Complainant, founded in 1993, is the largest independent oil corporation in Russia and one of the largest petrochemical and gas corporations in the world. It is also one of the top 500 enterprises in the world. It is mainly engaged in exploration, development, production and distribution of oil, natural gas and petrochemicals. The Complainant holds a significant status in the energy sector in Russia, occupying 18% of the oil output and 18% of processed oil in Russia. The Complainant maintains a strong refining capacity within and outside Russia. In Russia, the Complainant owns 4 large refineries and two small ones while its refineries were set up in Ukraine, Bulgaria and Romania. The Complainant is the owner of 20 subsidiaries, 10 oil distribution corporations and one other enterprise. The Complainant is a dealer of refinery equipment and an operator of refineries with an extensive retailing network in many countries and regions. By 2004, its distribution network covers 24 countries, including Russia, the state in the Independent Union (including Azerbaijan, Belarus, Georgia, Moldova and Ukraine), the European countries (including Bulgaria, Hungary, Finland, Estonia, Latvia, Lithuania, Poland, Salvia, Romania, Macedonia, Cyprus and Turkey) and the United States. Altogether, it owns 200 gas warehouse and 5793 gas stations.

As the largest independent oil corporation in Russia, the Complainant has a bright future of cooperation with China in the sector of energy. As early as in November 2004, the Complainant exported oil to China. In early 2005, the Complainant's subsidiary by the name of Luk International Trading and Supplying Corporation Limited set up its office in Beijing, China to oversee purchasing, distribution, transportation, logistics and storage of oil, finished oil, natural gas and petrochemicals. The Complainant conducted visits and negotiations with Sinopec on cooperation.

In the disputed domain name "lukoiichina.com", ".com" is the suffix while "china" is a general term and major identifying part in the disputed domain name is "lukoi", which is identical with the Complainant's prior trademark and trade name "lukoil" with the only difference in the final latter. "lukoi" is confusingly similar with "lukoil" in letter construction and pronunciation. The only difference in the final letter is insufficient to eliminate the confusing

similarity between the two. “lukoiichina” in the disputed domain name, with the only difference in “i” among all the 11 letters of the whole domain name, is easily mistaken as “lukoilchina”, which demonstrates the intention of the Respondent to cause confusion with lukoil. When the website identified by the disputed domain name is full of misleading comments, the use of the disputed domain name is sufficient to cause confusion in the public so as to infringe upon the Complainant’s prior rights. The search results of “LUKOIL” in Google are either “LUKOIL” or news on the business development of the Complainant and many of its official websites. This shows that the disputed domain name is confusingly similar to the Complainant’s trademark and trade name. The disputed domain name is very much likely to be regarded as “LUKOILCHINA” or the Complainant’s official website in China so as to create prejudice to the Complainant’s prior interests and rights and those of consumers.

The notary issued by Beijing Chang An Notary Office shows that the disputed domain name is used in the name of the brand-new official website of Luk in China. The website is full of “LUKOIL” and “Russian Lukoil” (the Complainant is often simply called as “Russian Lukoil” on the media in China) and the “LUKOIL” in the website is extremely similar to the Complainant’s trademark and trade name “LUKOIL” in font, device, colors and packing. It also claims that it is a wholly-owned subsidiary under Lukoil International (China) Corporation Limited, engaged in operations and brand development in China and manufacturing and distribution of lubricants in China. Therefore, the use of the disputed domain name is extremely likely to cause confusion. As the complainant has confirmed, “LUKOIL” lubricant is a major part of its business, but the website is not the Complainant’s official website and the Complainant has never set up such a corporation as Lukoil International (China) Corporation Limited in China. The use of the disputed domain name constitutes unfair competition so as to mislead consumers.

At the same time, a search on the website of the Ministry of Industrial Information reveals nonexistence of “Jing ICP, No. 07101573” on the bottom of the website identified by the disputed domain. At the same time, the domain name of “lukoiichina.com” under “Copyright 2008 lukoilchina.com” is owned by the Complainant’s subsidiary. In fact, the Respondent registered and started to use the domain name on 23 July 2009. The Complainant acquired the domain

name through adjudication on 14 February 2011 and the domain name was transferred to the Complainant's subsidiary for handling. On 28 April 2011, the Respondent once again registered and used the infringing disputed domain name with almost the same contents as those on its previous preemptive website. It is an act of "use of a domain name to attract Internet users for unjustified commercial interests and cause confusion as to the sources of goods or services and association between the Respondent and the Complainant and its sponsors", therefore, it is "a registration and use of the disputed domain name in bad faith".

From the contents on the website, we cannot conclude that the Respondent has directly used the disputed domain name, but can deduct in accordance with general commercial principles that the Respondent maintains some commercial relationship with the actual user of the disputed domain name or the Respondent acquires unjustified interests in such use. When the actual user of the disputed domain name conducts unfair competition and infringement, the Respondent's permission for others to use the disputed domain name for commercial profits and exploitation of other's commercial reputation to attract Internet users constitutes infringement.

To sum up, the Respondent does not enjoy any legitimate rights or interests in "lukooi" and used the domain name for unfair profits in bad faith. Such an act shall be prohibited at law.

In accordance with Paragraph 4(b)(i) of the Policy, the Complainant requests the Panel to issue a decision to transfer the disputed domain name to the Complainant.

The Respondent

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

4. Findings

Identity or Confusing Similarity

Paragraph 15(a) of the Rules instructs the Panel as to the Principles the Panel is to use in determining the dispute: "A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that the Complainant should prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred: 1) the domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and 2) the Respondent has no rights or legitimate interests in respect of the domain name; and 3) the domain name has been registered and is being used in bad faith.

The Complainant in this case is a Russian oil company. The evidence submitted by the Complainant shows that the Complainant successfully registered in China the trademark “LUKOIL” as early as of 12 May 1997. The international registration number is 678644; the protection period lasts till 12 May 2017. “LUKOIL” has also been registered as a trademark for different categories of goods in China. All these trademarks are still within the trademark protection period; more importantly, the registration dates of these trademarks are much earlier than that of the disputed domain name (i.e. 29 April 2011). The Panel has no problem in finding that the Complainant enjoys the prior trademark right over “LUKOIL”.

The disputed domain name ends with “.com”, this suffix only indicates that the domain name is registered under this gTLD and “.com” is not distinctive. Thus, the Panel only needs to examine the main part of the disputed domain name “lukoiichina”. This main part consists of two sub-parts “lukoi” and “china”. The second sub-part “china” is an ordinary English word indicating a country and thus is not distinctive. The first sub-part “lukoi” differs from the Complainant’s trademark “LUKOIL” only in the last letter. One may easily get confused since “lukoi” and “lukoil” are extremely similar in both the appearance and pronunciation and more importantly, this one-letter difference exists in the 11-letter main part of the disputed domain name.

The addition of the name of a place (such as the name of a country) to a trademark does not alter the underlying trademark to which it is added. In this case, the combination of two sub-parts cannot effectively differentiate the main part of the disputed domain name from the Complainant’s trademark; on the contrary, such a combination strengthens the links between the disputed domain name and the Complainant, misleading the consumers to believe that this domain name is to show the Complainant’s existence in China. It is further noted

that “LUKOIL” is not a common word and specifically designed to represent the Complainant’s products and services. As such, the disputed domain name will be easily mistaken to be owned by the Complainant or at least have some connections with the Complainant. Therefore, the disputed domain name is confusingly similar to the Complainant’s trademark “LUKOIL”.

Accordingly, the Panel holds that the Complaint fulfills the condition provided in Paragraph 4(a)(i) of the Policy.

Rights or Legitimate Interests of the Respondent

The Complainant contends that the Respondent does not have rights to or legitimate interests in the disputed domain name. The Complainant has never authorized the Respondent to use the trademark or the disputed domain name. The Complainant’s assertion is sufficient to establish a prima facie case under Policy 4(a)(ii), thereby shifting the burden to the Respondent to present evidence of its rights or legitimate interests.

The Respondent has failed to show that the Respondent has any rights or legitimate interests in respect of the disputed domain name. No evidence has shown that the Respondent is using or plans to use the domain name for a bona fide offering of goods or services. The Respondent is not commonly known by the domain name. The evidence submitted by the Complainant further shows that the Respondent is not making a legitimate noncommercial or fair use 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.

The Panel therefore finds that the Complaint fulfills the condition provided in Paragraph 4(a)(ii) of the Policy.

Bad Faith

Under Paragraph 4(b) of the Policy, the following are relevant examples a Panel may take as evidence of registration and use in bad faith:

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

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

You have registered the domain name primarily for the purpose disrupting the business of a competitor; or

By using the domain name, you have intentionally attempted to attract, for commercial gain, internet users to your website 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 website or location or of a product or service on your website or location.

The Complainant is the largest oil company in Russia with network covering more than 24 countries. The Complainant entered Chinese market in 2004 and since then played an important role in the energy industry in China. The Complainant's activities in China have been very well covered by the media. The Complainant registered the trademark "LUKOIL" in China as early as 1997 and has been using this trademark for its goods since then. The evidence submitted by the Complainant shows that the same Respondent registered another domain name "lukoilchina.com" and was ordered by another panel in 2011 to transfer "lukoilchina.com" to the Complainant. Furthermore, the website of the disputed domain name contains such terms as "Russian Lukoil" and "lubricant" (which is a major product of the Complainant). All these facts serve to prove that the Respondent is well aware of the existence of the Complainant and its trademark. The act of registering the disputed domain name per se has constituted bad faith. Actually, it is impossible to conceive of any plausible active use of the disputed domain name by the Respondent that would not be illegitimate.

The evidence shows that the website of the disputed domain name has been designed to manufacture and distribute the same product (lubricants) as that of the Complainant in China and that the "LUKOIL" in the website is extremely similar to the Complainant's trademark "LUKOIL" in font and color, etc. In fact, the Complainant has never authorized the Respondent to use the trademark or sell the products. Such an act constitutes the typical act of registration and use of

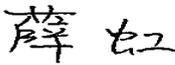
domain name in bad faith as envisaged in Paragraph 4(b) of the Policy, namely, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the website or other on-line location, by creating a likelihood of confusion with the Complainant's trademark as to source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

Accordingly, the Panel finds that the Complaint satisfies the condition provided in Paragraph 4(a)(iii) of the Policy.

5. Decision

For all the foregoing reasons, in accordance with Paragraph 4(i) of the Policy and 15 of the Rules, the Panel orders that the domain name "lukoiichina.com" be transferred to the Complainant OTKRYTOE AKTSIONERNOE OBCHTCHESTVO "NEFTYANAYA" KOMPANIYA "LUKOIL"

Presiding panelist: 

Co-panelist: 

Co-panelist: 

Dated: 9 November 2012