

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

(Beijing Office)

PANEL DECISION

Case No. CN-1200637

Complainant: ZTE Corporation

Respondent: Direct Privacy ID 76319

Domain Name: ztemobile.com

Registrar: DNC HOLDINGS, INC.

Procedural History

On 26 November 2012, the Complainant submitted a Complaint in English to the Beijing Office of the Asian Domain Name Dispute Resolution Center (the ADNDRC Beijing Office) and elected this case to be dealt with by a one-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 26 November 2012,, the ADNDRC Beijing Office sent to the Complainant by email an acknowledgement of the receipt of the Complaint.

On 28 November 2012, the ADNDRC Beijing Office transmitted by email to ICANN and the Registrar a request for registrar verification in connection with the disputed domain name.

On 13 December 2012, the Registrar transmitted by email to the ADNDRC Beijing Office its verification response, confirming that the Respondent is listed as the registrant and providing the contact details.

On 14 December 2012, the ADNDRC Beijing Office notified the Complainant that the Complaint has been confirmed and transmitted to the Respondent and the case officially commenced on 14 December 2012. On the same day, the ADNDRC Beijing Office transmitted the Written Notice of the Complaint to the Respondent, which informed that the Complainant had filed a Complaint against the disputed domain name and the ADNDRC Beijing Office had sent the complaint and its

attachments through email according to the Rules and the Supplemental Rules. On the same day, the ADNDRC Beijing Office notified ICANN and registrar of the commencement of the proceedings.

On 10 January 2013, the ADNDRC Beijing Office sent the Notification of No Response Received and Hearing by Default.

On 11 January 2013, the ADNDRC Beijing Office notified the Proposed Panelist Mr. LIAN Yunze 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. LIAN Yunze, on 22 January 2013, the ADNDRC Beijing Office informed the Complainant and the Respondent of the appointment of the Panelist, and transferred the case file to the Panelist

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 ZTE Corporation with the address at ZTE Plaza, Hi-Tech Road South, Hi-Tech Industrial Park, Nanshan District, Shenzhen, Guangdong Province. The authorized representatives of the Complainant are Lu Yan and Cong Lin.

For the Respondent

The Respondent in this case is Direct Privacy ID 76319 with the address at P.O. Box 6592, Metairie, LA 70009 US. The disputed domain name “ztemobile.com” was registered on 20 April 2005 through the Registrar, DNC HOLDINGS, INC., according to the WHOIS information.

3. Parties' Contentions

The Complainant

The Complainant- ZTE Corporation – was established in 1997 with the registered capital of CNY 3,440,078.02 thousand. The Complainant's products cover five major product fields: wireless, core network, accesses bearer, services and terminal products (including mobile phones). At the present, the Complainant is the largest listed telecoms equipment company in China and the 5th largest mobile phone manufacturer in the world.

The Complainant has provided professional services for the 2004 Athens Olympics and 2008 Beijing Olympic Games. In addition, the Complainant has been devoted in the expansion of international business over the years, participating in exhibitions all year round home and abroad, with a high reputation internationally.

The Complainant used the mark "ZTE中兴" the first time in China in 1997.

Thereafter the Complainant registered the marks "ZTE中兴" and "ZTE" respectively in respect of goods/services in multiple classes. After years of publicity and use, the marks "ZTE中兴" and "ZTE" enjoy a high reputation.

In 2009 the mark "ZTE中兴" was recognized as a well-known trademark.

In 2012, it came to the Complainant's attention that the Respondent registered the disputed domain name, and the Complainant notarized some pages of the website.

Based on the above facts, as well as the relevant provisions of the Rules, the Complainant present the legal grounds for this Complaint as the follows:

(1) The disputed domain name is similar to the marks to which the Complainant enjoys registered trademark right, and such similarity is sufficient to cause confusion.

Just as stated in the above, the Complainant holds registered trademark rights for "ZTE中兴" and "ZTE" in respect of goods/services in multiple classes in China and the United States, and used the mark "ZTE中兴" the

first time in 1997. "中兴" is the trade name of the Complainant, while "ZTE" is the abbreviation for "Zhongxing Telecom Equipment". "ZTE" itself has no meaning as a combination of English letters, but through the Complainant's publicity and use for years, "ZTE" has enjoyed a high reputation, establishing a corresponding relation with the Complainant, especially in respect of the Complainant's major business – mobile telecom field, which is of a closer corresponding relation.

The Respondent combined "ZTE" with "mobile", and applied for registration of the domain name - ztemobile.com, wherein "mobile" is a common word in English with the meaning of cell phone, mobile phone, and doesn't have distinctiveness itself. But when combined with the three English letters "ZTE", it is liable to produce association among the people that the website is misidentified as the website registered and founded by the Complainant – ZTE Corporation, which further causes confusion. Especially when considering that the Complainant mainly uses its marks "ZTE中兴" and "ZTE" on cell phones, mobile phones, etc products, it is more obvious that "ztemobile" - the major part of the Respondent's registered domain name "ztemobile.com" - is liable to mislead the public and cause confusion.

In addition, from the website of the disputed domain name "ztemobile.com", the Complainant finds that among the links on the left of the home page of the website, the first two links are "zte usb modern" and "zte phones", both using "zte" separately, and the third link directly uses "zte" alone as the link name. It fully proves that the Respondent's registration of the disputed domain name is actually to take advantage of the reputation of the Complainant's zte trademarks, to mislead the public and cause confusion.

Click the two links - "zte phones" and "zte", which directly display the link of the Complainant's official website. Therefore the Complainant holds that the disputed domain name and the registered trademarks "ZTE中兴" and "ZTE" constitute similarity sufficient to cause confusion.

(2) The Respondent doesn't enjoy any legal right or interest as to the disputed domain name or the major distinguishing element thereof.

Either from the Respondent's name, address, contact information or any other information, the Complainant doesn't find the Respondent has any relation with the core part of the domain name - ztemobile. In addition, the combination of three English letters - Zte - does not have any meaning, and hence enjoys a strong distinctiveness; it is unreasonable for the

Respondent to think of combining "zte" with "mobile" for registration of a domain name. Moreover, there is no agency, trademark licensing or any commercial contact between the Respondent and the Complainant. Therefore the Respondent doesn't enjoy any legal right or interest as to the disputed domain name or the major distinguishing element thereof.

(3) The registration or use of the disputed domain name by the holder is of bad faith.

Firstly, the Respondent registered the Complainant's well-known trademark as a domain name out of commercial purposes. According to the web pages of the disputed domain name - ztemobile.com, it can be found that many links of the Respondent's website contain the content of "淘宝特卖ZTE特卖" (Taobao Special Sale for ZTE). Click on the link, one can enter into Taobao page, where all the information relates to the sale of mobile phones under the brand "ZTE" or "中兴". The content shows that the domain name was/is registered and used entirely out of commercial purposes. While the Complainant's trademark "ZTE中兴" has, after years of publicity and use, already became well-known for a long time, and, ultimately, was recognized as a well-known trademark in 2009. The Respondent's malice is obvious in registration of the Complainant's well-known trademark as a domain name out of commercial purposes.

Secondly, the Respondent deliberately causes confusion with the Complainant's website and misleads the Internet users to access its website or other online sites. Upon observing the notarized website page of ztemobile.com, it can be found that the Respondent's website contains the link of "ZTE Corporation - 中兴通讯股份有限公司" and various links relating to mobile phone under "中兴" and "ZTE", including "淘宝特卖Zte特卖" (Taobao Special Sale of Zte), "ZTE USA的官网" (ZTE USA official website), "中兴 天猫购物节" (ZTE Lynx shopping festival), "ZTE Wikipedia", "Zte手机" (Zte mobile phone), etc various information. Clicking on the link of "ZTE Corporation - 中兴通讯股份有限公司", one can enter the official website registered and founded by the Complainant. The content shows that the Respondent intends to, through the link to the Complainant's official website, make the Internet users wrongly believe that the website of the disputed domain name was founded by the Complainant or that there is some association between the two sites, which further misleads the Internet users to access its website or other online sites, and hence its malice is abundantly clear.

In summary, the Respondent preemptively registered the domain name - ztemobile.com, which is confusingly similar to the Complainant's registered marks "ZTE中兴" and "ZTE", while itself doesn't enjoy any legal right or interest as to the domain name. Therefore the Complainant requests that the Panelist rule that the 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

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."

The Policy, 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 Supplemental 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.

Identity or Confusing Similarity

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 provided by the Complainant and the information revealed in the databases of China Trademark Office and United States Patent and Trademark Office, the Panel notices that the Complainant has many registrations for “ZTE 中兴” and “ZTE” in classes 1~45 in China and the United States. Most of the aforesaid registrations were registered later than the disputed domain name, except for the Chinese trademark No. 1469865 for “ZTE 中兴” that was registered in class 9 on 7 November 2000 and the US trademarks No. 2,791,770 for “ZTE 中兴” and No. 2,820,142 for “ZTE” that were both registered in class 9 and respectively on 9 December 2003 and 2 March 2004. The three marks mentioned above designate such goods as “Stored program controlled telephone switching apparatus; modems; optical communication equipments; electro-dynamic apparatus for the remote control of railway points; transmitters of electronic signals; transmitters [telecommunication]; radiotelephony sets; telephone apparatus; video telephones” and were all registered earlier than the disputed domain name, i.e. 20 April 2005. The Complainant therefore enjoys the exclusive trademark right to “ZTE 中兴” and “ZTE”.

The disputed domain name is “ztemobile.com”. Apart from the generic top-level domain suffix “.com”, the major part of the disputed domain name is “ztemobile”, which could be easily regarded as “zte” plus “mobile”. “Mobile” is a generic English word and has no distinctiveness itself. Like many UDRP cases, the addition of a generic term does not necessarily distinguish a domain name from a trademark. Furthermore, the generic term “mobile” refers to the Complainant’s major business and may easily lead consumers into associating the disputed domain name with the Complainant. The Panel therefore finds that the disputed domain name is

confusingly similar to the Complainant's registered trademark "ZTE". Accordingly, the Complainant has proven that the first element is present under 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 agency, trademark licensing or any commercial contact between the Complainant and the Respondent. 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 apply here. To the contrary, the lack of a response leads the Panel to draw a negative inference.

Therefore, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name. Accordingly, the Complainant has proven the second element required by paragraph 4(a) 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:

- (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 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 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 was established in 1997 and used its trademark “ZTE 中兴” the first time in China in 1997. After years of development, the Complainant has become one of the leading enterprises in the field of mobile phone and telecommunication. The Complainant's trademark, after extensive and long term use, has been widely known.

The Notarial Deed for the website that the disputed domain name directs to reveals a number of links that sell products branded “ZTE” or “ZTE 中兴”, which could easily cause confusion among consumers that the products sold on the said website are provided by or related with the Complainant.

Therefore, the Panel believes that the Respondent, by using the disputed domain name, has intentionally attempted to attract, for commercial gain, internet users to its 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 the website or location or of a product or service on the website or location.

In view of the above, the Panel holds that the disputed domain name should be considered as having been registered and used in bad faith under the Policy, paragraph 4(b). Therefore, the Complainant has proven the third element required by paragraph 4(a) 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 “ztemobile.com” be transferred to the Complainant, ZTE Corporation.

The Sole Panelist:



Dated: February 5, 2013