

Asian Domain Name Dispute Resolution Center
Beijing Office
Administrative Panel Decision
Case No. CN-1300646

Complainant 1: DART INDUSTRIES INC.

Complainant 2: Tupperware (China) Co., Ltd. (特百惠(中国)有限公司)

Respondent: jiebo Lu (卢杰波)

Domain Name: tebaihui.cc

Registrar: 1 API GMBH

1、 Procedural History

On 14 December 2012, the Complainants 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 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 25 December 2012, the ADNDRC sent to the complainants 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. All correspondence to and from the ADNDRC described herein was in English.

On 25 December 2012, the ADNDRC transmitted by email to the Registrar, 1 API GMBH, a request for registrar verification in connection with the disputed domain name.

On 26 December 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 January 2013, the ADNDRC notified the Complainant that the Complaint has been confirmed and transmitted to the Respondent and the case officially commenced. 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 disputed domain name and the ADNDRC had sent the Complaint and its attachments 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.

The Respondent failed to submit a Response within the specified time period. On 27 February 2013, the ADNDRC notified both parties of the Respondent's default.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Mr. ZHAO Yun, the ADNDRC notified the parties on 7 March 2013 that the Panel in this case had been selected. The Panel determines that the appointment was made in accordance with Rules 6 and Articles 8 and 9 of the Supplemental Rules.

On 7 March 2013, the Panel received the file from the ADNDRC and should render the Decision within 14 days, i.e., on or before 21 March 2013.

Pursuant to Paragraph 11 (a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding. The language of the current disputed domain name Registration Agreement is English, thus the Panel determines English as the language of the proceedings.

2、 Factual Background

For the Complainants

Complainant 1 in this case is DART INDUSTRIES INC. The registered address is 14901 S. Orange Blossom Trail, Orlando, Florida, 32837, United States. Complainant 2 in this case is Tupperware (China) Co., Ltd. (特百惠(中国)有限公司). The registered address is No. 2519 Xin Gang Dong Road, Guangzhou, P.R. of China. The authorized representative in this case is Poppy Huang (黄全来).

For the Respondent

The Respondent in this case is Jiebo Lu (卢杰波). The registered address is Yongkang City, Zhejiang Province.

The disputed domain name “tebaihui.cc” was registered on August 30, 2011 through the registrar 1 API GMBH.

3、 Parties' Contentions

Complainant

(1) Complainant's Background

Complainant 1, established under the laws of the state of Delaware and located at 14901 A. Orange Blossom Trail, Orlando, Florida, 32837, United States, is a subsidiary of Tupperware Brands Corporation and owner of the TUPPERWARE trademark worldwide.

TUPPERWARE brand products have been sold for more than 60 years.

Tupperware's roots date back to the 1930's when Earl S. Tupper founded the Tupper Plastics Company, a predecessor to Tupperware Brands Corporation. The Tupper Plastics Company started selling TUPPERWARE brand plastic food storage products in the late 1940's. In 1946, Mr. Tupper introduced the legendary air tight lid. After a decade of success in the United States, Tupperware expanded into Europe in the early 1960's. Tupperware's operations have continued to expand and grow rapidly. Today TUPPERWARE brand products are sold in nearly 100 countries worldwide.

TUPPERWARE brand products are widely known and are winning countless awards all over the world, including but not limited to that awarded by Guinness, Fortune, HFN, Global Finance, Good Housekeeping, and Forbes.com.

(2) Respondent's disputed domain name is confusingly similar to Complainants' prior trademark and trade name "特百惠 (Tupperware in Chinese/Te Bai Hui)", which is highly prominent and well known, and is entirely identical to Complainant 2's English trade name "tebaihui". Thus UDRP Article 4(a)(i) is satisfied.

① Complainant 1 registered three "特百惠 (Tupperware in Chinese/Te Bai Hui)" marks in China, under Reg. Nos. 157510, 1170559 and 6974718 respectively, in as early as 1982. All these three "特百惠 (Tupperware in Chinese/Te Bai Hui)" marks have been duly renewed and are within validation period. In addition, they far predate the disputed domain name's registration date, which is 30 August 2011. Thus Complainants enjoy prior trademark rights in "特百惠 (Tupperware in Chinese/Te Bai Hui)", under PRC Trademark Law.

② Early in December 1995, Tupperware Brands Corporation established its Chinese subsidiary, Complainant 2, which is known as "Tupperware China Co., Ltd." Or "Tebaihui China Co., Ltd." in China. Headquartered in Guangzhou, Tupperware China has set up offices in Beijing, Shanghai, Chengdu, Wuhan, Changchun, Xinjiang and Xi'an, and has opened thousands of franchised stores in more than 300 cities around the country. The incorporation date of Tupperware China, as well as that of all of its offices and franchised stores, predates the registration date of the disputed domain name. thus Complainants enjoy prior trade name rights in respect of "特百惠 (Tupperware in Chinese/Te Bai Hui)" and "Tebaihui", under Paragraph 6, Article 8 of the Paris Convention.

③ Complainants' "特百惠 (Tupperware in Chinese/Te Bai Hui)" mark is highly prominent and well known. "特百惠 (Tupperware in Chinese/Te Bai Hui)" is not a dictionary word, but the Chinese transliteration of Complainant 1's globally well-known mark "Tupperware". It is highly prominent and closely connected with Tupperware Brands Corporation. In addition, Complainants' "特百惠 (Tupperware in Chinese/Te Bai Hui)" mark, by virtue of extensive use and effective promotion in China, has become very famous and has actually become a well-known trademark in China. "特百惠 (Tupperware in Chinese/Te Bai Hui)" series products were widely advertised and promoted on numerous

newspapers including but not limited Bayu City Newspaper, New North Newspaper, Chongqing Morning Newspaper, and magazines like Movie Story, City Life, City Housewife, Good Housekeeper, Partner of Health and The World's Managers. Besides, to promote “特百惠 (Tupperware in Chinese/Te Bai Hui)” series products, Complainant 2 introduces the member monthly brochure “特百惠生活” (Tupperware Life), which not only provides the most updated information on “特百惠 (Tupperware in Chinese/Te Bai Hui)” products and the members' communication platform, but also provides the public with the opportunity to know more about “特百惠 (Tupperware in Chinese/Te Bai Hui)” brand and products. In addition to the efforts to provide perfected products and services, Complainants have devoted itself into social commonweal activities, including the contribution to the victims of Wenchuan earthquake in 2008, donations for Haiti and Yushu earthquakes in 2010, subscription to Shilin, Yunnan in 2006, and the salvation to school girls in difficulties since 2005. It is noted that the dates of all the above evidences are earlier than the registration date of the disputed domain name, and that original copies of the evidence are available for verification at anytime. To sum up, Complainants' mark “特百惠 (Tupperware in Chinese/Te Bai Hui)” is highly prominent, and by virtue of extensive use and effective promotion in China, became famous and actually a well-known trademark in China before the registration date of the disputed domain name.

(3) Respondent has no rights or legitimate interests in respect of the disputed domain name, thus UDRP Article 4(a)(ii) is satisfied.

① Respondent has no trademark or trade name rights in respect of the disputed domain name, neither does Respondent have any authorization to register or use any rights relevant to the disputed domain name. Respondent has not applied for nor registered any “tebaihui” or “特百惠 (Tupperware in Chinese/Te Bai Hui)” trademark, or for any other Chinese characters corresponding to “tebaihui”. Respondent has neither applied for nor registered any trade name comprised of “tebaihui” or “特百惠 (Tupperware in Chinese/Te Bai Hui)”. Also Respondent has never had any authorization to register or use any rights relevant to the disputed domain name, including as a trademark, trade name or domain name.

② There is not such circumstance as specified in UDRP Article 4(c) in the current case, thus Respondent cannot claim any rights or legitimate interests in respect of the disputed domain name. Respondent's registration and use of the disputed domain name is illegal and constitutes trademark infringement under PRC laws. Thus, Respondent cannot claim that he is “using the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services”, as specified in UDRP Article 4(c)(i); or “have been commonly known by the domain name through fair use”, as specified in UDRP Article 4(c)(ii). Further, Respondent is for commercial purposes using the disputed domain name for promotion and sale of its so-called “特百惠 (Tupperware in Chinese/Te Bai Hui)” products, with the apparent intention of misleading the consuming public for illegal commercial profits. This is obviously contrary to the circumstances as specified in UDRP Article 4(c)(iii).

③ Respondent shall bear the burden of proof. The burden of proof shall shift to Respondent once Complainant makes a prima facie evidence showing that Respondent lacks rights or legitimate interests.

(4) Respondent has registered and is using the disputed domain name in bad faith, which satisfies UDRP Article 4(a)(iii).

① Respondent's registration and use of the disputed domain name meets UDRP Article 4(b)(iv), i.e., "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."

Firstly, Respondent was aware of Complainants' well-known trademark "特百惠 (Tupperware in Chinese/Te Bai Hui)" but registered the Chinese Pin Yin of this trademark as a domain name on purpose and in bad faith. As stated above, Complainants' "特百惠 (Tupperware in Chinese/Te Bai Hui)" mark, by virtue of extensive use and effective promotion in China, has become very famous and actually become a well-known trademark in China. Whilst Respondent, naming the corresponding website as "Tupperware Chinese Website", is selling the so-called "特百惠 (Tupperware in Chinese/Te Bai Hui)" products thereon. Respondent also sells "特百惠 (Tupperware in Chinese/Te Bai Hui)" products on his Taobao store at www.57gouwu.taobao.com, even arranges the group-buying for "特百惠 (Tupperware in Chinese/Te Bai Hui)" products. On 18 January 2012, Complainant 1, through an attorney, sent a cease and desist letter to Respondent, demanding him immediately cease the sale of "特百惠 (Tupperware in Chinese/Te Bai Hui)" products on www.tebaihui.cc and www.57gouwu.taobao.com. Judging from the fame of "特百惠 (Tupperware in Chinese/Te Bai Hui)" mark and Respondent's above said activities, apparently Respondent was well aware of the Complainants' "特百惠 (Tupperware in Chinese/Te Bai Hui)" mark and its fame. With knowledge of Complainants' famous trademark of "特百惠 (Tupperware in Chinese/Te Bai Hui)", Respondent's registration and use of the challenged domain name shall be deemed as being in bad faith.

Further, Respondent's registration and use of the disputed domain name shall constitute opportunistic bad faith. "特百惠 (Tupperware in Chinese/Te Bai Hui)" is not a dictionary word and has no significance independent from Complainants' business. In view of the close relationship between the "特百惠 (Tupperware in Chinese/Te Bai Hui)" mark and Complainants, the registration and use of the disputed domain name by any entities unrelated to Complainants shall constitute opportunistic bad faith.

What is more important is that, Respondent is purposely enticing internet users to visit his website. Objectively, the registration and use of the disputed domain

name by Respondent will very likely lead to public confusion as to a relationship between Complainants' and Respondent's website and his products. Respondent's intention to entice internet users is fully demonstrated by the website key words set forth by Respondent include “特百惠水杯 (Tupperware cups)”, “特百惠水杯网购 (Tupperware cups online purchase)”, “特百惠水杯官网 (Tupperware cups official website)”, “特百惠中国官网 (Tupperware Chinese official website)”, “特百惠随心杯 (Tupperware flasks)” and etc. Apparently, the purpose of setting forth such website key words is to lure internet users who are interested in Tupperware products to this website. Furthermore, due to the similarity and association between “tebaihui” and “特百惠 (Tupperware in Chinese/Te Bai Hui)”, internet users are very likely to login onto Respondent's website, under the misconception that it is Complainants' official website. After reviewing the information related to “Tupperware” products and services on this website, internet users will be further convinced that the “Tupperware” products sold on Respondent's website are sources from, or sponsored by, or affiliated with Complainants.

② Respondent's registration and use of the disputed domain name meets UDRP Article 4(b)(iii), i.e. “has registered the domain name primarily for the purpose of disrupting the business of a competitor”. Respondent, who registered the domain name similar to Complainants' trademark and trade name, is a “competitor” as defined under UDRP Article 4(b)(iii). Further, Respondent's aforesaid infringement will inevitably cause damage to Complainants, and that constitutes “disrupting the business of a competitor”.

③ Preponderant evidence doctrine. The panel shall look at “the totality of circumstances” to determine if Respondent has bad faith in registering a domain name, and the preponderance of evidence doctrine shall be applied, i.e. the bad faith shall be recognized where it is more likely that Respondent has registered the domain name in bad faith, from the evidence presented.

In accordance with Paragraph 4(b)(i) of the Policy, the Complainants request the Panel to issue a decision to transfer the disputed domain name to Complainant 1.

Respondent

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

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.”

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.

Identity/Confusingly Similarity

Complainant 1 is an American company selling plastic food storage products trademarked TUPPERWARE. The products are sold worldwide and Complainant 1 won various awards all over the world. The evidence shows that Complainant 1 registered the trademark “特百惠” in mainland China as early as 1982. This trademark is still within the protection period at the moment. The Panel has no problem in finding that the Complainants enjoy the trademark rights in “特百惠”.

The disputed domain name is “tebaihui.cc”. As the suffixes “.cc” only indicate that the domain name is registered under this gTLD and is not distinctive, the main part of the disputed domain name is “tebaihui”. No doubt the pinyin form (“tebaihui”) of the Chinese trademark “特百惠” is identical to the main part of the disputed domain name. While the Chinese trademark “特百惠” is completely different in formality from the main part of the disputed domain name, several factors, besides formality, shall be taken into account in comparing the confusing similarity between the trademark and the main part of the domain name. Such factors include pronunciation, combination of words, exclusivity.

As such, the current Panel needs to consider whether the main part of the disputed domain name “tebaihui” corresponds exclusively to the Chinese trademark “特百惠”, not combination of any other Chinese words. As shown by the evidence submitted by the Complainants, the Complainants have been successfully carried out their business in China since their entry into the Chinese market; the Complainants promoted their Chinese trademark and products through various medias, including television, newspaper, magazines; through years of promotion and advertisement, the trademark has achieved great fame and is closely associated with the Complainants. By inputting the term “tebaihui” in search engines, you are either directly led to the information or news about the Complainants, or suggestions to refer to the Complainants. Moreover, the combination of three Chinese words has strengthened the possibility of correspondence between the pinyin form (“tebaihui”) and the Chinese term (“特百惠”). For most Chinese users, the term “tebaihui” will immediately lead to the Chinese term (“特百惠”). Consequently, the Panel decides that the main part of the disputed domain name (“tebaihui”) is confusingly similar to the trademark “特百惠”.

The Panel therefore holds that the Complaint fulfills the condition provided in Paragraph 4 (a)(i) of the Policy

Rights and Legitimate Interests

The Complainants contend that the Respondent does not have rights to or legitimate interests in the disputed domain names. The Complainants have never authorized the Respondent to use the trademark or the disputed domain name. The Complainants' 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.

Under Paragraph 4 (c) of the Policy, the following are relevant examples a Panel may take as evidence of the Respondent's rights or legitimate interests to the disputed domain name:

- (i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Obviously, the above circumstances do not exist in the current case. 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 Complainants 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:

- (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.

Complainant 1 has been selling products branded TUPPERWARE for more than 60 years. The business has been very successful and won many awards all over the world. Complainant 2 was set up in 1995 as a subsidiary in mainland China and has been since then very successful in the Chinese market. Several offices and thousands of franchised stores were later opened in mainland China. The trademark “特百惠” was registered in mainland China in 1982. Products trademarked “特百惠” were widely advertised and actively promoted in mainland China through various means, including newspapers and magazines. Through extensive use, advertisement and active promotion, the Complainants and the trademark “特百惠” has been well recognized by the Chinese consumers and the public has come to associate the trademark as originating from the Complainants and no other. The Respondent registered the disputed domain name in 2011, much later than the registration date of the trademark; the trademark “特百惠” is not a common Chinese word. The fact that the website of the disputed domain name contains the Chinese trademark “特百惠” and sells products trademarked “特百惠” is obvious to all that the Respondent is well aware of the existence of the Complainants and the trademark “特百惠”. The action of registering the dispute 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 Complainants have never authorized the Respondent to use the trademark or sell products trademarked “特百惠”. The fact of selling the same products (cups, flasks, etc.) trademarked “特百惠” in the website of the disputed domain name constitutes exactly the type of bad faith use of the disputed domain name as identified in the Policy, i.e. 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.

The Panel concludes that the Respondent has registered and used the disputed domain name in bad faith. Accordingly, the Panel finds that the Complaint satisfies the condition provided in Paragraph 4(a)(iii) of the Policy.

5、 Decision

Having established all three elements required under the ICANN Policy, the Panel concludes that relief should be granted. Accordingly, it is ordered that the disputed domain name “tebaihui.cc” should be TRANSFERRED to Complainant 1, DART INDUSTRIES INC.

The Sole Panelist:

A handwritten signature in black ink, appearing to be the name '赵云' (Zhao Yun), written on a light-colored background.

DATED: 20 March 2013