



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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Decision Submission

[English](#)
[Print](#)

Decision ID	DE-0200002
Case ID	HK-0200002
Disputed Domain Name	www.hktdc.com
Case Administrator	natalielee
Submitted By	Yong Li
Participated Panelist	Yong Li
Date of Decision	03-08-2002

The Parties Information

Claimant	Hong Kong Trade Development Council
Respondent	Han Kook Trade Data Center

Procedural History

On May 10, 2002, the Hong Kong Office of Asian Domain Name Dispute Resolution Center (hereinafter referred as “the HK Office”) received the Complaint from the Claimant.

On May 13, 2002, the HK Office sent to the Claimant the acknowledgement of receipt of the Complaint.

On May 13, 2002, the HK Office sent Notification of Complaint and Commencement of the Administrative Proceeding to both parties simultaneously

On June 10, 2002, the HK Office received an email from the Respondent to inform the HK Office that their registration agreement is in the Korean language. The Respondent requested that the documents pertaining to the Complaint should be prepared in Korean in accordance with the UDRP Rules Paragraph 11(a)(b) "Language of Proceedings" that "the language of the administrative as per proceeding shall be the language of the Registration Agreement."

On June 14, 2002, the HK Office sent to the Registrar a request for verification of the language of the signed registration agreement that the registrant of www.hktdc.com has used and signed. On the same day, the Registrar confirmed that “the registrant of hktdc.com agreed Korean registration in our web page” . The HK Office sent an email on the same day to the Registrar to request a copy of the Registration Agreement of www.hktdc.com. The Registrar replied that it could be obtained from its website.

On June 17, 2002, the HK Office replied to the Respondent that they should proceed in English language pending the formation of the panel who may decide other according to Rules 11(a).

On July 9, 2002, the HK Office notified the parties of the appointment of a single-member panel consisting of Mr. Li Yong.

On July 12, 2002, the Panel formally confirmed that the language of the proceeding should be English according to Rules 11(a).

The projected decision date is set to August 5, 2002.

Factual Background

For Claimant

Although the Claimant identified in the Complainant is Peter Wong, according to the contents of the Complainant, it is believed that he is only a representative of an organization called Hong Kong Trade development Council located at 38/F, Office Tower, Convention Plaza, 1 Harbour Road, Wanchai, Hong Kong.

The word “hktc” was trademarked and registered by the Claimant in China under Class 35 (registration No. 1659613) and class 38 (Registration No. 1635868).

The word mark “HKTDC” was also registered by the Claimant in China under Class 16 (Registration No. 735394), Class 35 (Registration No. 779437), and Class 41 (Registration No. 775719).

For Respondent

The Respondent has not submitted documents to describe itself. According to the Complainant furnished by the Claimant, the Respondent is Han Kook Trade Data Center with address C.P.O. Box No. 3033. The administrative contact is Lee Seong Yeon, netbox @dreamwiz.com

Parties' Contentions

Claimant

The Claimant, Hong Kong Trade Development Council (HKTDC), is a statutory body incorporated in Hong Kong since 1966 with the mission to create and facilitate opportunities in international trade for Hong Kong companies. Ever since the Council has been incorporated under the Hong Kong Trade Development Council Ordinance, the Council has been performing its mission for over 30 years. After many years of development, Hong Kong Trade Development Council has been awarded the good reputation both locally in Hong Kong and internationally and it is accustomed by the business community to refer hktc as the Hong Kong Trade Development Council. In fact the word mark, hktc, has gradually become the service mark of the Council, which not only represents the organization itself but also its services and functions. As a matter of fact, the Council has been using a graphical representation of “HKTDC” as its logo from since its incorporation until 1996, which has built up a worldwide recognition that “hktc” represents the Hong Kong Trade Development Council.

A corporate name might acquire intellectual property rights over time as goodwill is accumulated in the name through business practice and reputation.

The Claimant believes that the domain name, www.hktc.com, is a unique service and reflects the identity and functions of its organization. Other organization, which has registered the domain name (www.hktc.com) would project a wrong impression that they are the Council or represent the Council, both of which are not true.

The domain name, www.hktc.com, was registered by the Respondent on Mar 28, 2000. Until around April 10, 2002, the domain name did not resolve to a website. The Respondent had contacted the Claimant for resale of the domain name on April 10, 2002. In this case, the Respondent was using the name in bad faith in that (1) the primarily purpose of acquiring the name was for selling, and (2) the Respondent has directed the URL to a pornographic site, which has prevented the Claimant from reflecting its true service, which is to service the business community.

Respondent

The Respondent fails to submit its contention during the administrative proceeding.

Findings

Identical / Confusingly Similar

In accordance with the ICANN Policy, the Claimant asking for transfer of the domain name must prove the Respondent's domain name is identical or confusingly similar to the trademark or service mark in which the Claimant has rights (ICANN Policy, 4 (a)(i)).

The Claimant has proved that it is the owner of the trademarks “hktc” and “HKTDC” which have been registered in China in Classes 35, 38 and 35, 41 respectively. The disputed domain name is “hktc.com.” By making comparison

between the domain name and the Claimant's trademarks, it is clear that the trademark letters "hktc" are directly and wholly incorporated into the domain name at issue. The only difference between the domain name and the trademarks is ".com". However, the top level domain designator ".com" is only a necessary portion to form a business-related domain name and cannot function to distinguish that name from the Claimant's mark. Therefore, the Panel holds that the first element of ICANN Policy, 4 (a) is met.

Rights and Legitimate Interests

In accordance with the ICANN Policy, the Claimant asking for transfer of the domain name must prove the Respondent has no rights or legitimate interests in the domain name (ICANN Policy, 4 (a)(ii)).

The ICANN Policy, 4(c) provides that "Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4 (a) (ii): (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.

The Respondent has not provided evidence of circumstances of the type specified in the ICANN Policy, 4(c). Furthermore, the Respondent has not provided evidence of any other circumstances giving rise to a right or legitimate interest in the disputed domain name. The name of the Respondent is Han Kook Trade Data Center. There might be a possibility that the Respondent used the first letters of every words composing the name of the Respondent to register the disputed domain name. However, the Respondent does not allege this and does not make any elaboration thereof before this panel. The panel cannot see any evidence which demonstrates, for example, the legal status of the Han Kook Trade Data Center, the function and activities of the Center, the business done by the Center, or the reputation or influence of the Center. As such, the Panel believes that the Respondent has no rights or legitimate interests with respect to the disputed domain name.

Bad Faith

In accordance with the ICANN Policy, the Claimant asking for transfer of the domain name must prove the Respondent has registered the domain name and is using it in bad faith (ICANN Policy, 4 (a)(iii)).

Paragraph 4(b) of the ICANN Policy specifies four types of circumstances that could be evidence of the registration and use of a domain name in bad faith. They include: (i) circumstances indicating that the holder of the domain name has registered or has 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) the holder of the domain name has 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) the holder of the domain name has registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, the holder of the domain name has intentionally attempted to attract, for commercial gain, Internet users to his 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 his web site or location or of a product or service on his web site or location.

From the evidence furnished by the Claimant, the panel finds that the Respondent has registered the domain name primarily for the purpose of selling or transferring the domain name registration to the Claimant who is the owner of the trademark for valuable consideration in excess of his documented out-of-pocket costs directly related to the domain name. The Respondent registered the domain name at issue on Mar 28, 2000. Until around Apr. 10, 2002 the domain name did not resolve to a website. According to the Annex 6 of the Complainant, the Respondent (SY Lee, the administrative contact person) sent an e-mail from netbox@dreamwiz.com to the Claimant on Apr. 10, 2002, offering to sell the domain name "hktc.com" with price of USD 1,500. The panel holds that this is just the circumstance stipulated in the ICANN Policy 4(b) (i) which demonstrates that the domain name at issue has been registered and use in bad faith.

In addition, the Claimant has proven that the Respondent has directed the URL of the domain name at issue to a pornographic site. (the Annex 7 of the Complainant) It is an established principle made by previous panels that the fact the domain name is directed to a pornographic site is evidence of bad faith. See *Alta Vista Company v. Lars Fleck*, No FA95735.

Based on the above analysis, the panel holds that the domain name at issue has been registered and used in bad faith.

Status

www.hktdc.com

Domain Name Transfer

Decision

The Panel concludes (a) that the domain name “hktdc.com” is identical to the trademark owned by the Claimant, (b) that the Respondent has no rights or legitimate interest in the domain name and (c) that the domain name at issue has been registered and used in bad faith. Therefore, pursuant to paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the domain name “hktdc.com” be transferred to the Claimant, namely, Hong Kong Trade development Council which is represented by Peter Wong.

[Back](#)[Print](#)