



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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Decision Submission

English Print

Decision ID	DE-0400019
Case ID	HK-0300034
Disputed Domain Name	www.parkwaygrouphealthcare.com
Case Administrator	Iris Wong
Submitted By	Loke Khoon Tan
Participated Panelist	Loke Khoon Tan
Date of Decision	24-03-2004

The Parties Information

Claimant	(1) Parkway Group Healthcare Pte Ltd (2) Parkway Holdings Limited
Respondent	Proton - Igor Vladimirovich Sumkin

Procedural History

On 11 December 2003, the Complainants submitted an electronic copy of their Complaint and the Complaint Transmittal Sheet to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre ("Centre").

On 12 December 2003, the Complainants sent to the Respondent' s known email addresses an electronic copy of the Complaint and the Complaint Transmittal Sheet filed with the Centre.

On 15 December 2003, the Complainants submitted a hard copy of the Complaint to the Centre.

On 22 December 2003, the Centre notified eNom, Inc. ("Registrar") that the Complaint has been filed with respect to the Disputed Domain Name.

On 30 December 2003, the Centre formally confirmed with the Complainants the receipt of both the electronic and hard copy of the Complaint and corresponding payment of fee.

On the same day, the Centre also notified the Respondent that a Complaint had been properly filed against him.

On 31 December 2003, the Complainants sent to the Respondent' s known postal address by double registered post a hard copy of the Complaint and the Complaint Transmittal Sheet filed with the Centre.

On 1 January 2004, the Registrar confirmed with the Centre receipt of the notification of the Complaint and notified the Centre that the Disputed Domain Name has been duly placed on hold so that no changes can be made until the conclusion of the proceedings.

On 13 January 2004, the Centre notified the Respondent that he had twenty calendar days to submit a Response to the Complaint.

On 3 February 2004, the Centre electronically confirmed with the Complainants and Respondent that the Centre has received no Response from the Respondent.

On 9 February 2004, the Centre notified the Complainants and the Respondent of the appointment of Mr. Tan Loke-Khoo as the sole Panellist in this matter. On the same day, the Centre transferred the case file to the Panellist by post.

The Panellist finds that the Administrative Panel was properly constituted and appointed in accordance with the Rules and the ADNDRC Supplemental Rules.

The Panellist has not received any further requests from the Complainants or the Respondent regarding other submissions, waivers or extensions of deadlines. There is no need to hold any exceptional in-person hearings for deciding the Complaint, as provided for in paragraphs 12 and 13 of the Rules.

The language of the proceeding is English, it being the language of the Registration Agreement, pursuant to paragraph 11 (a) of the Rules, and there being no express agreement to the contrary by the parties.

Factual Background

For Claimant

The following information is derived from the Complaint submitted by the Complainants. Complainant 1 is a private limited company incorporated in Singapore with its principal place of business at 302 Orchard Road, Tong Building #16-01, Singapore 238862. Complainant 2 is a public listed company incorporated in Singapore, with its principal place of business at Grange Road, #11-01, Orchard Building, Singapore 239693.

Complainant 1 is a wholly-owned subsidiary of Complainant 2. Both Complainants belong to the same group of companies (“Parkway Group”).

Complainant 2 comprises of a hospitals division, a healthcare services division and a non-core segment. Within the hospitals division, Complainant 2 owns three private hospitals in Singapore and has a regional network of hospitals in Malaysia, India and Brunei. Within the non-core segment, Complainant 2 conducts property and other investments.

Complainant 1 operates within the healthcare services division of Complainant 2. Complainant 1 is one of Asia’ s leading fully-integrated healthcare providers, providing primary healthcare, diagnostic services, dialysis services, managed care, clinical research, medical assistance, procurement services, healthcare information technology services, homecare and rehabilitation as well as consultancy services for hospital development and management.

Complainant 1 reported gross profits of almost S\$112 million in 2002 and is ranked among the Top 50 Fastest Growing Company in Singapore by an independent survey conducted by the Straits Times, a national daily newspaper in Singapore. Parkway Group as a whole enjoyed gross profits of S\$252 million and net profits of S\$33 million in 2002.

For Respondent

The Respondent did not participate in this proceeding. The following information is derived from the Complaint. The Respondent is Igor Vladimirovich Sumkin of Proton with an address at Vnutrenniy Projezd 8, Moscow, MO 113149, RU.

The Respondent is the registrant of several domain names used for maintaining pornographic websites.

Parties' Contentions

Claimant

(a) Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. In Singapore, Complainant 2 has used the name “Parkway” as its corporate name since 1986, and many companies within the Parkway Group also use the name “Parkway” in their corporate name.

Complainant 2 has registered “Parkway” as a trademark in many countries within Asia, covering activities including advertising services, public relation services, building and real estate management, property leasing, property development, air freight transportation, warehousing, cargo handling, hospital and medical services as well as medical equipment planning and supply.

Being a wholly-owned subsidiary of Complainant 2 and a member of the Parkway Group, Complainant 1 has been allowed to use the “Parkway” trademark since its incorporation in 1996.

The Complainants assert that the name “Parkway Group Healthcare” incorporates the registered trademark “Parkway” and is used by Complainant 1 and its hospitals to distinguish themselves from the property and investment arm of the Parkway Group.

The name “Parkway Group Healthcare” has been widely publicised in the publicity materials of Complainant 1 including printed advertisements, newsletter, name cards, stationary, annual reports and brochures.

Complainant 1 was the previous registrant of the Disputed Domain Name through its service provider (“Service Provider”). Complainant 1 had previously used the Disputed Domain Name to provide information on its services.

According to the Complainants, the registration of the Disputed Domain Name lapsed due to a miscommunication between Complainant 1 and the Service Provider. At that time, the Service Provider was no longer under contract to provide services to the Complainants. Although the Service Provider told the Complainants that the Disputed Domain Name was expiring, the information came at a time of internal reshuffling within the Complainants. As a result, no officer was tasked and in a position to instruct the renewal of the Disputed Domain Name.

(b) Respondent has no rights or legitimate interests in respect of the domain name

The Complainants assert that the Respondent is not a healthcare company and is not known by the “Parkway” name. The Complainants see no reason why the term “Parkway” may be relevant to the pornographic materials displayed at the Disputed Domain Name, and no legitimate reason why the Respondent should choose to register the Disputed Domain Name.

The Complainants assert that the arbitrary and distinctive qualities of the “Parkway” name strongly suggest that the Respondent did not independently arrive at the conclusion that “parkwaygrouphealthcare” would be a good domain name for an online pornographic website.

The Complainants also emphasize the extensive usage and fame of the “Parkway” trademark and the “parkwaygrouphealthcare” corporate name.

(c) Respondent registered and has used the domain name in bad faith

The Complainants assert that the Respondent has deliberately intended to use the Disputed Domain Name in order to obtain access to genuine customers of the Complainants as they try to access the Complainants’ website for information on the Complainants, as well as to take advantage of the Complainants’ goodwill and reputation.

The Complainants first learned of the Respondent’ s registration of the Disputed Domain Name from a phone call made by one of their customers who had tried to log on to the old website but had found himself directed to the Respondent’ s pornographic website. Shortly after, a member of the public who was looking for job opportunities with the Complainants typed “Parkway Group Healthcare” at the Yahoo search engine and found herself directed to the Respondent’ s pornographic website. The New Paper of Singapore also published a newspaper article after another member of the public called The New Paper hotline to complain about the Respondent’ s pornographic website. The Complainants assert that these events have caused much public embarrassment to the Complainants.

The Complainants’ Internet check on sites connected with the Respondent shows that the Respondent maintains several other pornographic websites, many of which bear innocuous names that do not suggest the true nature of the contents of the websites. The Complainants assert that this shows the Respondent’ s pattern of conduct in choosing innocent sounding domain names in order to attract unwary Internet users to its pornographic materials. The rightful owners of such domain names will then be prevented from using their trademarks or corporate names as their domain names.

The Complainants cite the examples of www.natcrafts.com and www.jococc.org, both of which were maintained by the Respondent as pornographic websites. The former was originally a website promoting handcraft, and the latter was the website of the Josephine County Citizens Council in Oregon, USA. A Canadian daily internet news provider, Platinum-Celebs, also published an article on 1 Sep 2003 about the Respondent registering the old website of the Winter Haven police department in Florida, USA.

The Complainants mention the “mouse-trapping effect” on the Respondent’ s website using the Disputed Domain Name which makes leaving the pornographic site more difficult for casual Internet users, as pornographic links and images continue to pop up on the user’ s screen even after the user has left the site. The Complainants assert that this will cause much embarrassment to and misunderstanding for the innocent user who had intended to access the Complainants’ website with no intention to access pornographic materials.

Respondent

The Respondent has not responded. It has therefore not contested the allegations of the Complaint and is in default.

Findings

Identical / Confusingly Similar

According to paragraph 15(a) of the Rules, "a Panel shall decide a Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and principles of law that it deems applicable" . The Respondent has not submitted a Response and has given no explanation. Therefore, the Panel will decide the case on the basis of the evidence submitted by the Complainants. This is in accordance with paragraph 5(e) of the Rules which states that "if a Respondent does not submit a Response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the Complaint" .

Identical / Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainants to establish that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainants have rights.

The Panel accepts the assertion and evidence adduced by the Complainants that they have rights in the registered trademark of "Parkway" and in the unregistered service mark / name of "Parkway Group Healthcare" .

The Panel is persuaded by the following:

- Complainant 2 has registered "Parkway" as a trademark in various countries, covering activities including hospital and medical services as well as medical equipment planning and supply;
- In Singapore, Complainant 2 has used the name "Parkway" as its corporate name since 1986, and Complainant 1 has used the name "Parkway Group Healthcare" as its corporate name since 1996;
- Complainant 1 and Complainant 2 both belong to the Parkway Group;
- The name "Parkway Group Healthcare" incorporates the registered trademark "Parkway" and is used to distinguish Complainant 1 and its hospitals from the property and investment arm of the Parkway Group; and
- Complainant 1 is one of the leading companies in its field and has widely publicised the name "Parkway Group Healthcare" in its publicity materials including printed advertisements, newsletter, name cards, stationary, annual reports and brochures.

The Panel also accepts that the Disputed Domain Name is confusingly similar to unregistered service mark / name of "Parkway Group Healthcare" , the former being different only insofar as the words ".com" is added which is of no significance. Objectively, Internet users would associate the Disputed Domain Name with the Complainants.

Accordingly, the Panel finds in favour of the Complainants under this head.

Rights and Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the Complainants to demonstrate that the Respondent has no rights or legitimate interests in the Disputed Domain Name.

Paragraph 4(c) of the Policy provides three ways to do so:

- (i) Before any notice to Respondent of the dispute, the Respondent's 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;
- (ii) The Respondent (as an individual, business or other organization) has been commonly known by the domain name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) The Respondent is making a legitimate non-commercial 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 any of the above situations. Even though the Respondent is not obliged to do so, as per *Massachusetts Institute of Technology v. Vitty, Inc.*, WIPO Case No. DBIZ2002-00241, "the Respondent is vulnerable to inferences that flow naturally from the information provided by the Complainant" .

In particular, the Panel is persuaded by the following:

- The Respondent has no business in or connection to the field of healthcare;
- The Respondent is not known by the “Parkway” name;
- There is no legitimate reason why “parkwaygrouphealthcare” would be a good domain name for a pornographic website; and
- Complainant 1 was the prior registrant of the Disputed Domain Name and the Respondent only registered it when the prior registration by Complainant 1 had lapsed.

Accordingly, the Panel accepts that the Respondent has no rights or legitimate interests in the Disputed Domain Name, and finds in favour of the Complainants under this head.

Bad Faith

Paragraph 4(a)(iii) of the Policy requires the Complainants to demonstrate that the Respondent has registered and is using the Disputed Domain Name in bad faith.

Paragraph 4(b) of the Policy provides, inter alia, that the Complainants can do so by showing that the Respondent, by using the Disputed Domain Name, has intentionally attempted to attract, for commercial gain, Internet users to the Respondent’s website by creating a likelihood of confusion with the Complainants’ mark as to the source, sponsorship, affiliation or endorsement of the Respondent’s website.

Again, the Respondent has not responded to the Complainant. The Panel is prepared to accept assertions by the Complainants which are reasonable and supported by evidence. See *Diebold, Incorporated v. Paul Terwilliger*, WIPO Case No. D2003-0416, which held that “the Panel can accept all reasonable allegations and inferences submitted by the Complainant in the absence of a response”.

In particular, the Panel is persuaded by the following:

- Use of the Disputed Domain Name offering pornographic material damages the Complainants’ existing marks / names, which is evidence of bad faith. See *Match Net plc. v. MAC Trading*, WIPO Case No. D2000-0205, which held that “the Respondent has used its website to furnish sexually explicit and pornographic material under the domain name and in the circumstances, given the likelihood of confusion, there is a prima facie case that this could tarnish the Complainant’s goodwill in its common law service mark.” See also *America Online, Inc. v. East Coast Exotics*, WIPO Case No. D2001-0661, which held that “registration of a domain name incorporating another’s mark and use of that domain name for a pornographic website has been widely held to be registration and use in bad faith”;
- The Complainants have provided incidents of actual confusion where members of the public tried to access the Complainants’ website but instead found themselves in the Respondent’s pornographic website, causing much public embarrassment to the Complainants;
- The Complainants have substantiated the Respondent’s pattern of conduct in registering domain names previously maintained by other organizations, thereby attracting unwary Internet users to its pornographic materials;
- The Respondent has incorporated a “mouse-trapping effect” into the Respondent’s website so that pornographic links continue to pop up on the Internet user’s screen even after the user has left the site, which is evidence of bad faith. See *Dell Computer Corporation v. RaveClub Berlin*, WIPO Case No. D2002-0601, which held that “the fact that the pornographic website uses “mouse-trapping” techniques to prevent visitors from leaving it clearly reinforces the bad faith use of the disputed domain name”;
- The Respondent has done nothing to rebut the presumption of bad faith raised by him picking up lapsed domain names and directing them to pornographic websites. See *Pedro Latorre Beroiz v. Domain Strategy, Inc.*, WIPO Case No. D2002-0508, which held that “the picking up of a lapsed domain name and directing it to a pornographic website raises an overwhelming presumption that the registration and use of the domain is to trade upon the confusion created with the Complainant’s trademark and the residual reputation of the Complainant’s original website”.

Accordingly, the Panel finds in favour of the Complainants under this head.

Status

www.parkwaygrouphealthcare.com Domain Name Transfer

Decision

In light of the above findings, the Panel hereby decides that:

- (a) the Disputed Domain Name is identical or confusing similar to the trademark or service mark of “Parkway Group Healthcare” in which the Complainants have rights;
- (b) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- (c) the Disputed Domain Name has been registered and is being used in bad faith.

As such, the Panel requires that the registration of the Disputed Domain Name be transferred to the Complainants or a nominee nominated by them.

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