



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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Decision Submission

English Print

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| Decision ID | DE-0400027 |
| Case ID | HK-0400047 |
| Disputed Domain Name | www.plan-in.com www.qds-net.com |
| Case Administrator | Iris Wong |
| Submitted By | Arthur Chang |
| Participated Panelist | Arthur Chang |
| Date of Decision | 07-10-2004 |

The Parties Information

| | |
|-------------------|---------------------------------------|
| Claimant | Plan In Interior & Contracting Co Ltd |
| Respondent | Ashura Lee |

Procedural History

On June 28, 2004, the Complainant has submitted Complaint to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (the “Centre”), in accordance with the Uniform Domain Name Dispute Resolution Policy (the “Policy”) adopted by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on 26 August 1999, the Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the “Rules”), and ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the “ADNDRC Supplemental Rules”). Additional information has been requested or asked to be clarified, the final version of the Complaint has been submitted to the Centre on July 28.

The Complainant has sought a one-person Panel.

On July 12, 2004, the Centre forwarded a copy to the Respondent by on-line notification. The 20 day deadline for the Respondent to respond calculated from July 12, 2004 expired and the Respondent did not file a Response with the Centre, as confirmed by the Centre.

On August 7, 2004, Arthur Chang has been appointed as the sole Panelist for this case and all parties have been informed by email.

The Panelist has sent questions for clarification and asked the Complainant to provide evidence to support their claim from August 12, 2004 and such communications continued until September 6, 2004. The Panel therefore asked for extension of submitting the decision to September 8, 2004.

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

Factual Background

For Claimant

The following facts are asserted by the Complainant in the Complaint:

The Complainant, Plan In Interior & Contracting Co Ltd (Plan In), was established in Hong Kong since 1993 and Quality

Design System Ltd (QDS) a related company of Plan In. Plan In and QDS are interior design and contracting companies in both China and Hong Kong market and the Complainant has been using Plan In and Quality Design Ltd. since its incorporation as trade name for doing business in 1993 and 1996 respectively. The company is currently publishing its web site using plan-in.com. Furthermore, the Complainant is using plan-in.com and QDS is using qds-net.com for all their email contacts since these domains were initially set up in year 2000.

The Complainant has commissioned 328 Link Ltd, to set up the network and web server for the domain name and web site of the disputed domain names. The Complainant has provided a signed quotation (Ref: PI-0002) dated September 13, 2000 for the service provided by 328 Link Ltd. to register domain names for 2 years while another invoice (Ref: IN-PL-0015) dated October 2, 2002 for domain renew service for 5 years for domain name www.plan-in.com. However, the quotation does not reveal much detail about the scope of service. The Whois record shows Ashura Lee is the representative of 328 Link Ltd. to provide service for the Complainant and the address shown in the Whois record matches the one shown on the signed quotation as described above."

The Complainant further explained when the first system was set up, the Complainant did not have any computer or technical knowledge/experience to manage the project properly. The Complainant had no idea on how to set up a domain name or even what a domain name is. The Complainant just paid for the job when the web and email server was set up.

On inspection by the Panelist on 23 August 2004 both Disputed Domain Names were found to resolve to the web site of Plan In Interior & Contracting Co Ltd., showing all the information related to the Complainant's business.

For Respondent

The Centre did confirm that documents have been sent and received by the Respondent. However, the Respondent had verbally informed the centre that he would not respond to the case, and as such nothing has been received by the Centre from the Respondent.

Parties' Contentions

Claimant

The Claimant asserts that the Respondent has no connection with the trade name "Plan In" or "QDS" and has no material or legal interest in the business activities of Plan In Interior & Contracting Co Ltd or Quality Design Ltd. The Claimant further asserts that the Respondent was engaged and paid to set up these domain names on behalf of Plan In & QDS. Since these domain names were set up, they are hosted at Plan In's working office. Plan In & QDS have been using both domain names for their day-to-day email contacts. And therefore, the Respondent has no rights or legitimate interests in respect of these domain names.

The Claimant further asserts that the Respondent was engaged to register these domain names for the Complainant. Instead of registering The Complainant as the registrant, the Respondent registered himself as the registrant without The Complainant's consent. In Nov 2003, when qds-net.com was expired, The Complainant was unable to renew the domain name.

According to the Complainant, during a verbal conversation with the Respondent, the Respondent agreed to renew the domain name for the Complainant for a technical service fee to be determined by him. The Respondent also agreed to transfer these domain names unless the Complainant paid the Respondent a significant amount of money for service he has not performed. The Respondent is using these domain names to obtain monetary beneficiary from The Complainant and therefore the Respondent has been using these domain names in bad faith.

Respondent

Save as outlined above, the Respondent did not respond to any of the claim as submitted by the Complainant.

Findings

Identical / Confusingly Similar

The Complainant has not registered any trademark or service mark for the word "Plan in" or "QDS". However, unregistered Trade Mark is sufficient if the Mark is used in trade and distinguishes goods & services of one supplier from those supplied by others as in the case of pcgateway.com & pcgateway.net of Gateway Inc. v. Cadieux. The Complainant

has operated business under the trade name of Plan In and Quality Design System Ltd. since 1993 and 1996 respectively. The trade names used are confusingly similar with the Disputed Domain Names.

The Panel is satisfied that the Complainant has met the requirements of paragraph 4(a)(i) on the basis of two additional key points:

1. For the reasons follow, the Respondent does not have rights or legitimate interest in the Disputed Domain Names and
2. The Complainant has been using the domain names since its registration and has been displaying company information of the Complainant at the web site of the Disputed Domain Names, while the Respondent is a pure service provider to help the Complainant register and manage the domain name system

Rights and Legitimate Interests

The Complainant asserts that the Complainant only paid the Respondent to set up the domain name and related website system. The Respondent is not known by the Disputed Domain Names, or does not operate any business with trade name similar to the Disputed Domain Names.

The Disputed Domain Names are resolved to a web site with description matching the business of the Complainant. The quotation (Ref: PI-0002) dated September 13, 2000 and the invoice (Ref: IN-PL-0015) dated October 2, 2002 identifies the Respondent as a service provider who provided domain name registration service for the Complainant. Although there is no clear description about the service provided by the Respondent, it is highly suggestive and believed to be a normal arrangement that the Complainant has employed Respondent to register the Disputed Domain Names on the Complainant behalf, while the Respondent is only a service provider to register the Disputed Domain Names instead of a registrant of the Disputed Domain Names. There is no evidence that the Respondent has Rights or Legitimate interests in the 2 Disputed Domain Names.

The Panel is satisfied that the Complainant has met the requirements of paragraph 4(a)(ii).

Bad Faith

According to the Complainant and without objection from the Respondent, during a verbal conversation with the Respondent, the Respondent agreed to renew the domain name for the Complainant for a technical service fee to be determined by him. The Respondent also agreed to transfer these domain names if the Complainant paid the Respondent a significant amount of money. The Respondent is using these domain names to obtain monetary benefits from the Complainant and the Respondent has been using these domain names in bad faith according to the Uniform Domain Name Dispute Resolution Policy 4b.

The failure of the Respondent to reply to the Complainant's Case and Complainant request also indicate bad faith on the part of the Respondent. The Respondent has verbally communicated with the Centre and clearly stated that the Respondent will not provide any response to this case. These facts indicate a lack of good faith on the part of the Respondent.

The Panel is satisfied that the Complainant has met the requirements of paragraph 4(a)(iii) in showing bad faith registration and use of the Disputed Domain Names.

Status

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|-----------------|----------------------|
| www.plan-in.com | Domain Name Transfer |
| www.qds-net.com | Domain Name Transfer |

Decision

Based on the information provided to it and on its findings of fact, the Panel concludes that the Complainant has established its case.

The Complainant asks that both Disputed Domain Names be transferred to it. The Panel orders that the Disputed Domain Names to be transferred to the Complainant.

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