



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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Decision Submission

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Decision ID	DE-0600073
Case ID	HK-0600079
Disputed Domain Name	www.randyhanger.com
Case Administrator	Dennis CAI
Submitted By	Arthur Chang
Participated Panelist	

Date of Decision	11-04-2006
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The Parties Information

Claimant	Randy Hangers, LLC
Respondent	Chunshui Co. Ltd.

Procedural History

The Complainant of this case is Randy Hangers, LLC. Its address is at 25 East Union Avenue, East Rutherford, New Jersey 07073, USA. Its authorized representative is Ms. Anne Wong of Simmons & Simmons.

The Respondent of this case is Chunshui Co. Ltd. with addresses at Fujiansheng Quanzhou Anhai Dier Gongyequ, Shanghai, China.

The domain name in dispute is www.randyhanger.com. The Registrar of the dispute domain name is Beijing Innovative Linkage Technology Ltd.

On January 26, 2006, the Complainant submitted a complaint to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (ADNDRC) and elected this case to be dealt with by a one-person panel. On the same day, the ADNDRC requested Beijing Innovative Linkage Technology Ltd. by email for the provision of information at their WHOIS database in respect of the domain name in dispute. On Apr 3, Beijing Innovative Linkage Technology Ltd. confirmed that the domain name www.randyhanger.com was registered with Beijing Innovative Linkage Technology Ltd. and the registrant is the Respondent.

On 4 February 2006, ADNDRC notified the Complainant by email an acknowledgement of the receipt of the complaint and reviewed format of the Complaint for compliance with the UDRP, the Rules and the Supplemental Rules.

On 11 February 2006, ADNDRC confirmed with the Complainant and the Respondent by email that the captioned case was formally commenced. ADNDRC also requested the respondent to file a response within the 20 days scheduled time.

On March 7, 2006 ADNDRC gave notice to the potential candidate of the panelist Mr. Arthur Chang, requesting him to confirm whether he would accept the appointment as a panelist for this case, and if so, whether he could maintain impartiality and independence between the parties in this case. Thereafter, Mr. Arthur Chang confirmed by email to ADNDRC his agreement to accept the appointment and declared his being able to maintain impartiality and independence in dealing with this case.

On 18 March 2006, ADNDRC informed by email the Complainant, the Respondent and the panelist, Mr. Arthur Chang that Mr. Chang would be the sole panelist of this case. ADNDRC has also transferred the files of this case to the Panel formally thereafter.

On April 1, 2006, the Panelist has requested extension of deadline for submission for this case decision to April 4, 2006,

as ADNDRC has not received final confirmation from Beijing Innovative Linkage Technology Ltd. regarding the dispute domain name registration information. ADNDRC has agreed for such extension.

Factual Background

For Claimant

The Complainant is a manufacturer and international supplier of garment hangers and has been servicing the retail and apparel communities world-wide for over 30 years. The Complainant has been using the mark “RANDY HANGERS” in commerce in the U.S. since December 1998 and confirmation of the same may be found by reference to the copy Certificate of Registration for US Registration No. 2,547,280 in Appendix G. The Trademark Schedule and copy trade mark certificate in Appendix G demonstrates that the Complainant has registered the trade mark “RANDY HANGERS” in several countries. The Complainant has also registered a domain name, randyhangers.com (which incorporates its registered trade mark “RANDY HANGERS”) on 31 May 1998. A copy of a checkdomain search in respect of randyhangers.com dated 24 January 2006 is attached marked Appendix H1. The registered trade mark, “RANDY HANGERS” is exclusively associated with the Complainant.

The Complainant operates its business through its world-wide locations of offices which are located in the U.S. Canada, Mexico, Central America, the Middle East, Israel and Jordan, Egypt, Korea, Taiwan, Bangladesh, Indonesia, Vietnam, Pakistan and India. The Complainant also has a Corporate Office and a Sale Office in Hong Kong and three offices in China, namely in Dongguan, Hangzhou and Shanghai. A list of the Complainant’s world-wide locations is attached marked Appendix H2.

For Respondent

The respondent registered the domain names randyhanger.com on October 28, 2005. The registered organization is Chunshui Co. Ltd.

Parties' Contentions

Claimant

The complainant asserts that randyhanger.com is identical or confusingly similar to a trade mark in which the Complainant has rights. The Respondent’s domain name incorporates the mark “RANDY HANGER” (i.e. without the “S” in “HANGERS”). The domain name is confusingly similar, and almost visually and phonetically identical to the Complainant’s registered trade mark, “RANDY HANGERS” in Class 20 in numerous countries, particulars of which are set out in Appendix G provided by complainant.

The complainant also asserts that The Respondent has no rights or legitimate interests in respect of randyhanger.com. The Respondent is not in any way connected or affiliated with the Complainant and does not deal in RANDY HANGERS garment hangers. The “About Us” webpage of www.randyhanger.com states that:

“The two brands “Chunshui” and “Mainetti” are well recognized by numerous garment makers throughout the world” .

A copy of the “About Us” webpage of www.randyhanger.com is attached marked Appendix H3. It should be noted that “Mainetti” is a well-known European garment hanger brand and Mainetti (HK) Limited has obtained trade mark registrations in Hong Kong for the mark “MAINETTI” and “萬美” in Class 20 in respect of inter alia, clothes hangers. The complainant also enclosed a summary of the Hong Kong trade mark registrations owned by Mainetti (HK) Limited for reference marked Appendix H4. Copy of email correspondence between Anne Wong of Simmons & Simmons and Mr. Ken Choi of Mainetti (HK) Limited in January 2006 marked Appendix H5 in which Mr. Choi confirmed that Mainetti (HK) Limited is not in any way related the Respondent and the Respondent has not been authorised to make reference to the “Mainetti” brand. Further, Mr. Choi indicated that the management of Mainetti (HK) Limited have instructed their lawyers to deal with the unauthorised and misleading use by the Respondent of the “Mainetti” brand on www.randyhanger.com. It is clear that the Respondent has attempted to ride on the reputation of the “Mainetti” brand and has deliberately attempted to mislead consumers into believing that there is some relationship between the “Chunshui” and “Mainetti” brands. The Respondent’s desire and willingness to “cash

in” on the goodwill and reputation of established and reputable garment hanger manufacturers is repeated by the bad faith registration and use of the confusingly similar domain name, randyhanger.com.

The complainant further asserts that randyhanger.com has been registered and is being used in bad faith by the Respondent. It is clear that the Respondent has intentionally selected the Complainant’ s brand, RANDY HANGERS given its established reputation and worldwide fame (including in Mainland China) in relation to garment hangers. In particular, the Respondent has chosen a domain name which is confusingly similar to the Complainant’ s domain name, randyhangers.com in an attempt to divert or attract Internet traffic - namely customers, to the Respondent’ s website for commercial gain by creating a likelihood of confusion with the Complainant’ s registered trade mark and brand, RANDY HANGERS. The minor difference in the two domain names can be seen below. The domain names are almost visually and phonetically identical:-

randyhangers.com
randyhanger.com

The Respondent has attempted to mislead Internet users that the Complainant is somehow associated with, or is endorsing the Respondent’ s website or hangers.

The registration and use of the domain name, randyhanger.com by the Registrant should be seen in context. We attach marked Appendix H5.1 copy webpages from www.chunshui.com downloaded on 25 January 2006 which you will note are identical to the webpages of www.randyhanger.com. In this regard, please refer to the webpages downloaded from www.randyhanger.com shown in Appendix E. and compare this to the copy webpages in Appendix H5.1 We further attach marked Appendix H5.2 a WHOIS search dated 25 January 2006 which confirms that the registrant of chunshui.com is ” chunshui qzchunshui@sina.com 0595-5788362” which has an address located in Fujian, China. This is the same entity as the Registrant It should be noted that the domain name, chunshui.com was created on 13 August 2001. As such, it is clear that the Registrant has some years after the registration of chunshui.com deliberately chosen and registered a domain name, namely, randyhanger.co which is confusingly similar to a well-known garment hanger brand, “RANDY HANGERS” . As previously indicated, the Registrant registered randyhanger.com in October 2005 as evidenced in Appendix A. It is also worth reiterating the mark, “RANDY HANGERS” is also a registered trade mark in several jurisdictions in respect of clothes hangers as evidenced in Appendix G.

Following the warning letter (see Appendix F) dispatched to the Respondent on 11 January 2006, Ms. Anne Wong of Simmons & Simmons, (“S&S”) and Ms. Kirsten Ke (“KK”) of the Respondent entered into negotiations by email. From the outset, S&S advised KK to obtain independent legal advice. A copy of the email chain from 11 January 2006 - 18 January 2006 (inclusive) is attached marked Appendix H6. In particular, please refer to the following e-mail correspondence which has been highlighted for ease of reference:-

(a) KK states in her email of 13 January 2006 at 4.32pm that she is the sole representative of the Respondent who will engage in email correspondence with S&S in relation to randyhanger.com;

(b) KK makes repeated attempts to elicit an “offer” from the Complainant to purchase randyhanger.com in an amount which exceeds the Registrant’ s documented out-of-pocket expenses. Please refer to the following email correspondence from KK to S&S:-

- 12 January 2006, 12.08pm: “ If your client does not like us to use this domain name, we would accept conditional transfer of it” ;
- 12 January 2006, 3.22pm: “ We would agree to transfer this domain. But it would depend on how much your client would like to offer for it;
- 12 January 2006, 6.40pm: “ We wonder what is the amount your client would like to offer” ; and
- 18 January 2006, 6.45pm: “ If you client would like to have this domain name “ randyhanger.com” we would agree to sell it to them? How much would they willing to offer?”

Simmons & Simmons repeatedly urged the Respondent to seek independent legal advice and to consult the UDNDRP in relation to the meaning of “bad faith” given that it is the Respondent’ s responsibility to determine whether the domain name registration infringes a third party’ s rights.

It is the Complainant’ s view that the Respondent sees no harm in adopting well-known garment hangers brands to promote its business and to create an impression to consumers that the Respondent’ s business is related to the Complainant and thereby clearly poaching the goodwill of the Complainant. In this regard, goodwill is the benefit and advantage of a reputable name and the attractive force which brings in customer. It is the one thing which distinguishes an old-established business such as the Complainants from a new start-up business, such as the Respondents.

The Respondent has deliberately registered and continues to use the domain name, randyhanger.com despite being put on formal notice of the Complainant's earlier rights. This is evidenced by the use of the brand, "Mainetti", and confusingly similar domain name. Unless restrained, the Respondent will continue to engage in such activity which constitutes trade mark infringement and an actionable passing off in several countries. This mindset is indicated in KK's email of 13 January 2006 at 4.32pm in which she states:

"We would like you to know that we do not mean to register the domain (sic) name in "bad faith" although there is some phenomenon in China. We just feel it a good name and register it."

Based on the actions of the Respondent in registering and using the domain name, randyhanger.com, and the Respondent's continued and blatant disregard of the Complainant's intellectual property rights after being put on formal notice of the same on 11 January 2006, the Complainant alleges that the Respondent is in breach of its representation and warranty given in accordance with Clause 2 of the Uniform Domain Name Dispute Resolution Policy in that "the Respondent has registered a domain name that infringes and violates the rights of the Complainant and that it continues to knowingly use the domain name in violation of applicable laws or regulations".

Respondent

The Respondent has acknowledged receipt of notice when ADNDRC notified the Respondent about the case. The Respondent also made a comment in response to the question raised by the Panelist on March 26, 2006. The Respondent pointed out that although they use randyhanger.com which is relating to hangers, their hanger type is different. Hangers from the Respondent are for supermarket and for home use, while hangers from Randy Hangers are for garment.

Findings

Identical / Confusingly Similar

Article 8 of Uniform Domain Name Dispute Resolution policy (UDRP) provides that a complaint against a registered domain name shall be supported if the following conditions are fulfilled:

- (i) the disputed domain name is identical with or confusingly similar to the complainant's name or mark in which the complaint has civil rights or interests;
- (ii) the disputed domain name holder has no right or legitimate interest in respect of the domain name or major part of the domain name;
- (iii) the disputed domain name holder has registered or is being used the domain name in bad faith.

Article 7 of UDRP states that the complainant and the respondent shall bear the burden of proof for their own claims. With reference to the complaint and the attached documents, the Panelist of this case considers that:-

Identical or Confusing Similarity

The complainant is a manufacturer and international supplier of garment hangers and has been servicing the retail and apparel communities world-wide for over 30 years. The Complainant has been using the mark "RANDY HANGERS" in commerce in the U.S. since December 1998 with a copy of Certificate of Registration for US Registration No. 2,547,280 attached in Appendix G. The Trademark Schedule and copy trade mark certificates in Appendix G demonstrate that the Complainant has registered the trade mark "RANDY HANGERS" in several countries. The Complainant has also registered a domain name, randyhangers.com (which incorporates its registered trade mark "RANDY HANGERS") on 31 May 1998. A copy of a checkdomain search in respect of randyhangers.com dated 24 January 2006 is attached marked Appendix H1. The registered trade mark, "RANDY HANGERS" is exclusively associated with the Complainant.

The Complainant operates offices worldwide, including China. These locations cover U.S., Canada, Mexico, Central America, the Middle East, Israel and Jordan, Egypt, Korea, Taiwan, Bangladesh, Indonesia, Vietnam, Pakistan and India. It should be noted that the Complainant has a Corporate Office and a Sale Office in Hong Kong and three offices in China, namely in Dongguan, Hangzhou and Shanghai.

The disputed domain name "randyhanger.com" is confusingly similar, visually and phonetically similar to the Complainant's registered trade mark, "RANDY HANGERS" in Class 20 in numerous countries as stated above.

As such, the Panelist decides that it fulfills the condition in Article 8(i) of UDRP.

Rights and Legitimate Interests

From all the material provided and the attached documents, the Respondent's name has no connection with "Randy" or "Randyhanger". Besides, the Respondent has not offered any evidence to show association with "Randy" or the business of complainant or the authorized trademark owner. Furthermore, the complainant clearly states that it has not authorized the respondent to use the "Randyhangers" mark or name for domain name or otherwise. Hence, the Panelist finds that the Respondent does not have right or legitimate interest in respect of the domain name or major part of the domain name.

Bad Faith

Article 9 of UDRP provides that in any of following circumstances, the conduct of the holder of the domain name that is subject to the complaint amounts to registration or use of a domain name in bad faith:-

- (i) the disputed domain name holder has registered or acquired the domain name for the purpose of selling, renting or otherwise transferring the domain name to obtain unjustified benefits;
- (ii) the disputed domain name holder registered the domain name in order to prevent the owners of the name or mark from reflecting the name or the mark in a corresponding domain name, provided that the domain name holder has been engaged in a pattern of such conduct;
- (iii) the disputed domain name holder has registered or acquired the domain name for the purpose of damaging the Complainant's reputation, disrupting the Complainant's normal business or creating confusion with the Complainant's name or mark so as to mislead the public;
- (iv) other circumstances which may prove the bad faith.

The Panelist has checked the web site www.randyhanger.com on March 26, 2006 and found that it is virtually hosted with www.fuchaoco.com/mainetti, but misled users that it is an url of www.mainetti.com.cn. The Panelist has further confirmed with Mainetti Group (another garment hanger company) that none of the company under Mainetti Group is in any way related to Respondent and the Respondent is infringing the Intellectual Property right of using Mainetti brand in the www.randyhanger.com which is currently under the Respondent's control. The integrity of the Respondent is therefore seriously questioned.

It is clear that the Respondent engages in a similar business as the Complainant, and the intention for Respondent to choose a domain name which is confusingly similar to the Complainant's domain name, randyhangers.com, is highly suspicious too. With the Mainetti case described above and the use of a confusing similar domain name randyhanger.com, it is strongly believed that the Respondent try to mislead users and divert Internet traffic from Randy Hangers and Mainetti for commercial gain. The Respondent has attempted to mislead Internet users that the Complainant is somehow associated with, or endorsing the Respondent's website or hangers.

Furthermore, when the authorized representative of Complainant tried to contact the Respondent for a request of domain name transfer, the Respondent has not provided a firm offer price, but repeatedly asked for an offer. The Respondent did not reply to the Panelist's clarification for the offer price neither when the Panelist sent a clarification email on March 26, 2006. It is therefore suggested that the Respondent is asking for a price which is more than the Registrant's documented out-of-pocket expenses. (Otherwise the Respondent should have responded with a firm answer about a price which is roughly the same as the Registrant's documented out-of-pocket expenses)

The Respondent has pointed out the hangers offered by the Complainant and the Respondent is not quite the same type, but both are still engaging in a similar space of business. More importantly, all the misconduct and behavior of the Respondent have led the Panelist to believe that

- the Respondent has registered or acquired the domain name for the purpose of selling, transferring the domain name to obtain unjustified benefits;
- the Respondent has registered the domain name in order to prevent the owners of the name or mark from reflecting the name or the mark in a corresponding domain name; and
- the Respondent has registered or acquired the domain name for the purpose of disrupting the Complainant's normal business or creating confusion with the Complainant's name or mark so as to mislead the public;

As such, the Panelist decides that it fulfills the condition in Article 9 of UDRP and the Respondent has registered the dispute domain name in bad faith.

Appropriate Remedy

The Complainant asks for the Panelist's decision to transfer of the disputed domain name. In view of the above reasoning, the Panelist decides that transfer of the disputed domain name to the complainant is an appropriate remedy.

Status

www.randyhanger.com Domain Name Transfer

Decision

Based on the above analysis, the Panelist decides that: (1) the disputed domain name randyhanger.com is confusingly similar to the Complainant's name or mark in which the complaint has civil rights or interests; (2) the Respondent has no right or legitimate interest in respect of the disputed domain names or major part of that domain name; (3) the Respondent has registered or is using the domain name in bad faith. Accordingly, the Panelist decides that the disputed domain name randyhanger.com should be transferred to the Complainant.

Panelist : Arthur Chang

April 4, 2006
Hong Kong

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