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ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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Decision Submission

English	Print
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Version	
Decision ID	DE-0700105
Case ID	HK-0700115
Disputed Domain Name	www.sydus.com
Case Administrator	Dennis CAI
Submitted By	Ho Hyun Nahm
Participated Panelist	

Date of Decision 08-05-2007

Language Version : English

The Parties Information

Claimant	Sydus Pte Ltd.;Saumil Nanavati
Respondent	Jeonggon Seo

Procedural History

The Complainant (1) is Sydus Pte Ltd., of 5 Shenton Way,, #26-11 UIC Building, Singapore 068808. The Complainant (2) is “Saumil Nanavati” of the same address.

The Respondent is “jeonggon seo” , of 1475-3 youngchunri changsunggeub changsunggun chunnam, Korea.

The domain name at issue is “sydus.com” , registered by Respondent with HANGANG Systems,Inc., of 17th Floor, Specialty Construction Center 395-70 Sindaebang-dong, Dongjak-gu.

On 9 February 2007, the Hong Kong Office of Asian Domain Name Dispute Resolution Centre (“the Centre”) received a Complaint Form and its Annexes in an electronic format filed by the Sydus Pte Ltd. (Complainant (1)) pursuant to the Uniform Domain Name Dispute Resolution Policy (the “Policy”) adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) on 24-10-1999, the Rules for Uniform Domain Name Dispute Resolution Policy (The “Rules”) and the ADNDRC Supplemental Rules to the Policy and Rules (The “Supplemental Rules”).

On 12 February 2007, the Centre received the hardcopies of the Complaint and the payment for Domain Name Dispute Complaint fee in connection with the case. The Centre notified the Registrar, HANGANG Systems,Inc. on 13 February 2007 and received the Registrar’ s reply on 14 February 2007.

On 14 February 2007, the Centre forwarded the complaint to the Respondent by both courier and e-mail respectively at the Respondent’ s postal address and email address shown in the Whois database of the disputed domain name. The Centre sent a notice of commencement of proceedings to the Respondent by e-mail on the same day and asked the Respondent to submit Response to the Complaint within twenty (20) calendar days.

On 7 March 2007, the Centre confirmed the parties that No Response had been submitted by the Respondent within the required period of time and would proceed to appoint the Panelist for the case.

On 14 March 2007, pursuant to the Policy, the Rules and the Supplemental Rules, the Centre appointed Mr Ho-Hyun Nahm to serve as Panelist and notified the parties of the appointment.

On 26 March 2007, the Panelist issued a procedural order to ask the Complainant to clarify issues regarding the trademark right of “Sydus”, as well as to provide with the supporting documents in 7 days. The Respondent might submit a reply to the Complainant’s further submission within the next 7 days.

On 1 April 2007, the Complainant submitted his supplemental statement, where the Complainant (1) requested that Saumil Nanavati, the director of the Sydus Pte Ltd, should be included as a Co-Complainant. The Centre forwarded the supplemental statement to the Panelist and the Respondent for reference on 4 April 2007, and asked that the Respondent may file a reply to the Complainant’s supplemental statement on or before 11 April 2007. The Respondent submitted no response within the period.

On 17 April 2007, the Centre confirmed that the Panelist would render the decision on the captioned case on or before the 20th of April 2007.

On 19 April 2007, ‘Saumil Nanavati’ (Complainant (2)) joined the proceedings as Co-Complainant. On the same day, the Centre forwarded Panelist’s direction in accordance with Article 10 of the Rules, to the parties and asked the Complainants to provide with further supporting documents including “Saumil Nanavati” as Co-Complainant. The required documents were received in the same day.

As to the multiplicity of complainants, this Panel notes that this is a proper case to bring a single proceeding under the Policy. When complainants are seeking redress against a single respondent and their complaint is based on the same set or similar sets of facts and on the same legal basis, it seems appropriate to allow them to proceed in this way. See e.g. *Eli Lilly and Company, ICOS Corporation, and Lilly ICOS LLC v. RM-RS, LLC*, WIPO case No. D2005-1052 and *L’Oréal, Biotherm, Lancôme Parfums et Beauté & Cie v. Unasi, Inc*, WIPO case No. D2005-0623.

However, joining as a Complainant when the case is pending does not rule out the possibility that the Respondent may wish to address his/her assertion specifically against the newly joined Complainant because the legal circumstances of the Complaint and its award may vary depending on who the Complainant is. In this respect, the Panel decided to give the Respondent a further opportunity to reply to the revised Complaint on the occasion of the joining of another Complainant during the time, which the case is pending.

As such, on April 20, 2007 the Centre forwarded to the parties Panelist’s direction that:

- i) the Respondent may submit a Reply to the Revised Complaint by 4 May 2007, and
- ii) a decision will be rendered by 11 May 2007.

The Respondent submitted no reply within the period.

Factual Background

For Claimant

Complainant (1), Sydus Pte Ltd, was founded in December 2000 according to the additional exhibit the Complainants submitted on April 23, 2007, and it was registered on May 24, 2004. Since the foundation, this company has produced and provided a free mobile radio service for handsets including Nokia and Sony Ericsson. Virgin Radio and Bacardi are its corporate partners. Complainant (2), Saumil Nanavati is the President of Complainant (1) Sydus Pte Ltd. Complainant (2) Saumil Nanavati currently holds the trademark ‘Sydus & Device’ in class 9 as filed on July 5, 2006 and duly registered on April 9, 2007 with the Intellectual Property Office of Singapore (IPOS) in Singapore.

For Respondent

The respondent, Jeonggon Seo, is the current registrant of the disputed domain name <sydus.com>, which was registered on October 23, 2001 according to the Whois information. Respondent is using the disputed domain name to host a web site that provides directory services and links users to other commercial websites.

Parties' Contentions

Claimant

A. Complainants make the following assertions:

1. Respondent’s <sydus.com> domain name is confusingly similar to Complainant’s SYDUS mark.

2. Respondent does not have any rights or legitimate interests in the <sydus.com> domain name.
3. Respondent registered and used the <sydus.com> domain name in bad faith.

B. Additional Submissions

Complainants submitted additional evidence showing that they adopted and began using SYDUS Mark before Respondent registered the Disputed Domain Name and that the mark proceeded to registration.

Respondent

Respondent failed to submit a Response in this proceeding and failed to file an additional rebuttal or Reply even within the additionally granted designated period.

Findings

Paragraph 15(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”) instructs this Panel to “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.”

In view of Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of Complainant's undisputed representations pursuant to paragraphs 5(e), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence suggests to the contrary. See *Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc.*, FA 95095 (Nat. Arb. Forum July 31, 2000) (holding that the respondent's failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true); see also *Talk City, Inc. v. Robertson*, D2000-0009 (WIPO Feb. 29, 2000) (“In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.”).

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:

- i) the domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- ii) the Respondent has no rights or legitimate interests in respect of the domain name; and
- iii) the domain name has been registered and is being used in bad faith.

Identical / Confusingly Similar

It is recognized that Complainant (2) owns a registered trademark for the mark Sydus. Although its filing date as well as the registration date is posterior to the registration date of the disputed domain name, it is recognized that the date of first use of the name or the mark ‘Sydus’ is earlier than the registration date of the disputed domain name.

Complainants have provided little information on the use of the name ‘Sydus’ as a symbol for goods or services, but merely provide evidence that the Complainants have used the name “Sydus” as a name to designate a mobile music company. However, in the absence of the contrary submissions by the Respondent, the Panel has no reason to deny Complainant’s submissions as to the trademark use and accepts that Complainants have used “Sydus” both as a trade name and a trademark since December 2000, which is prior to the registration date of the disputed domain name.

In comparison with the disputed domain name <sydus.com> and Complainants’ SYDUS mark, the portion <.com> in the disputed domain name is considered as being non-distinctive and thus should not be considered in determining similarity of marks. Complainants’ SYDUS mark and the disputed domain name appear confusingly similar to each other, as the disputed domain name constitutes the identical spelling of the Complainants’ SYDUS mark, and thus the Disputed Domain Name is confusingly similar to the SYDUS Mark in terms of appearance and pronunciation.

The Panel finds that Policy 4(a)(i) has been satisfied.

Rights and Legitimate Interests

Complainants contend that Respondent does not have rights to or legitimate interests in the <sydus.com> domain name. Complainant’s assertion is sufficient to establish a prima facie case under Policy 4(a)(ii), thereby shifting the burden to Respondent to present evidence of its rights or legitimate interests. See *Do The Hustle, LLC v. Tropic Web*, D2000-0624

(WIPO Aug. 21, 2000); see also *Clerical Med. Inv. Group Ltd. v. Clerical-medical.com*, D2000-1228 (WIPO Nov. 28, 2000).

Complainants also contend that the Respondent, in order to capture its search results, has placed keywords such as ‘Sydus Radio,’ ‘Free Radio,’ ‘Virgin Radio for Nokia 6600’ on his/her website and clicking on these aforementioned links simply takes the user to a list of sponsored links that vaguely related to the text that the user clicked on, and therefore the disputed domain name cannot be viewed as a bona fide offer of goods or services.

There are no indications whatsoever that Complainant has granted Respondent any rights to use its service mark or trademarks, nor are there any indications that the Respondent is using the contested domain name in connection with a bona fide offering goods and services, or is making a legitimate, non-commercial and fair use of it. Under these circumstances, the Panel is thus satisfied that Complainants have established a prima facie case that the Respondent has no rights or legitimate interest in the disputed domain name. See *Computer Doctor Franchise Sys., Inc. v. Computer Doctor*, FA 95396 (Nat. Arb. Forum Sept. 8, 2000) (finding that a respondent’s website, which is blank but for links to other websites, is not a legitimate use of a domain name); see also *TM Acquisition Corp. v. Sign Guards*, FA 132439 (Nat. Arb. Forum Dec. 31, 2002) (finding that a respondent’s use of a complainant’s marks to send Internet users to a website which displayed a series of links, some of which linked to that complainant’s competitors, was not a bona fide offering of goods or services under the Policy).

The Panel therefore finds that Policy 4(a)(ii) has been satisfied.

Bad Faith

Complainants contend that Respondent’s use of the <sydus.com> domain name will likely cause confusion as to the source of the goods and services, and such a confusion is detrimental to the Complainants’ business as its mobile music service is broadcasted under the Sydus banner and the name appears on all their products. Complainants also contend that the Respondent is looking to generate revenue by misleading their customers to sponsored links that are similar to the products and services they offer.

Paragraph 4(b)(iv) of the Policy lists as a further typical situation of evidence of registration and use in bad faith that, by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of its website or of a product or service on its website.

Internet users, when typing the disputed domain name, will expect to hit a website of the Complainants or at least a website somehow related to the Complainants. Therefore, by using the domain name for a website, that provides sponsored links to other websites, the Respondent attempts to attract Internet users for commercial gain to this website, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the website. Even where Internet users realize when they view the Respondent’s web page that it is not connected with the Complainants, the Respondent may still profit from their initial confusion, since they may be tempted to click on the sponsored links.

Such exploitation of trademarks to obtain click-through commissions from the diversion of internet users has been considered in many decisions to be a common example of use in bad faith as referred to in paragraph 4(b)(iv) of the Policy (see *L’Oreal, Biotherm, Lancôme Parfums et Beauté & Cie v. Unasi, Inc.*, WIPO Case No. D2005-0623 with references).

The Panel finds Respondent has allowed the disputed domain name to be used for diverting Internet traffic that was initially intended for Complainant. (on this kind of bad faith behavior, see WIPO Case No. D2001-0193 *Microsoft Corporation v. Mindkind*; WIPO Case No. D2000-0049 *Tata Sons Ltd. v. The Advanced Information Technology Association*; WIPO Case No. D2001-0673 *America Online, Inc. v. Exit New York Magazine Corp.*, a.k/a *Exit Magazine Corp.*; WIPO Case No. D2000-1206 *Buy As You View Limited v. Kevin Green*; WIPO Case No. D2002-1098 *FINAXA Societe Anonyme v. James Lee*; *Deloitte Touche Tohmatsu v. Chan*, WIPO case No. D2003-0584).

In conclusion, the Panel finds that the Respondent has registered and used the domain name in bad faith.

The Panel finds that Policy 4(a)(iii) has been satisfied.

Status

www.sydus.com

Domain Name Transfer

Decision

Having established all three elements required under the ICANN Policy, the Panel concludes that relief shall be GRANTED.

Accordingly, it is Ordered that the <sydus.com> domain name be TRANSFERRED from Respondent to Complainant (2) 'Saumil Nanavati' .

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