



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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Decision Submission

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Version	
Decision ID	DE-0800141
Case ID	HK-0700147
Disputed Domain Name	www.welovehongkong.com
Case Administrator	Dennis CAI
Submitted By	Paul Stephenson
Participated Panelist	Paul Stephenson Peter Bullock Gary Soo
Date of Decision	02-05-2008

Language Version : English

The Parties Information

Claimant	Excellent Management Limited
Respondent	Vich Marco

Procedural History

1. The Complainant is Excellent Management Limited of Suites 502-503,5th Floor, Cambridge House, Taikoo Place, 979 Kng' s Road, Hong Kong. The Respondent is a named Vich Marko giving an address "199 main str., null, London, London nu7 by6, GB" . The contested domain name is <welovehongkong.com>" " (" "the Disputed Domain Name" ").
2. A Complaint in this matter was filed with the Hong Kong International Arbitration Centre (" "HKIAC" "), the Hong Kong Office of the ADNDRC, dated 16 November 2007 in the prescribed form, received by HKIAC on 23 November 2007.
3. The HKIAC notified the Registrar of the Disputed Domain Name of the proceedings by email on 27 November 2007. The Registrar acknowledged this notification by email of 28 November 2007 confirming its registration of the Disputed Domain Name and including its WHOIS information.
4. On 24 January 2008, the HKIAC sent to the Respondent, via the email address provided for the registration of the Disputed Domain Name, the Complaint, demanding a response within 20 calendar days. No Response was filed with the HKIAC by 22 February 2008. A three-member Panel was appointed on 18 April 2008.

Factual Background

For Claimant

5. Marco VICH is registered as the holder of the domain name <welovehongkong.com>. The Complainant filed a complaint with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre on 23 November 2007 asserting that it is the true and rightful owner of the domain name and that the dispute as to ownership of the domain name shall be determined in accordance with the ICANN Uniform Domain Name Dispute Resolution Policy ("UDRP").
6. The Complainant has elected to have the case decided by a three-member panel who have each confirmed that there is no impediment upon them acting impartially in determining this case.

For Respondent

7. On 24 January 2008, the Complaint was served upon the Respondent who did not choose to file any submissions within the period of 20 days allowed for this purpose. No submissions of any kind have been received from the Respondent. We have, therefore, only the submissions and materials provided to us on behalf of the Complainant to consider.

Parties' Contentions

Claimant

8. The Complainant submits that it has common law rights in the mark WELOVEHONGKONG which it says it devised in 2003 upon the request of Cathay Pacific Airways who were to embark upon a tourist advertising campaign to seek to off-set the downturn caused by the SARS crisis that hit Hong Kong and the region around that time. The Complainant adds that it helped to devise the web site which operated under the domain name <welovehongkong.com>. The Complainant explains that ‘The “We Love Hong Kong” campaign was run under the umbrella of the Tourism Coalition of Hong Kong, which comprises members of the Hong Kong tourism industry including the Board of Airline Representatives, the Federation of Hong Kong Hotel Owners, the Hong Kong Hotels Association and the Travel Industry Council. The 2003 “We Love Hong Kong” campaign was a success’.

9. The Complainant asserts that it was formerly registered as the holder of the <welovehongkong.com> domain name and we are prepared to accept this as a fact although the documentary evidence in support is not explicit.

10. The Complainant also asserts that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. In this regard, the Respondent submits that (i) the Disputed Domain Name has not been used by the Respondent since it was registered on 29 April 2006; (ii) the Respondent has copied the web page of the “We Love Hong Kong” campaign; and (iii) there is no connection between the name of the Respondent and the Disputed Domain Name that would justify a legitimate interest in the Disputed Domain Name.+

11. The Complainant also makes various allegations of bad faith against the Respondent which have not been answered, pointing out that the Disputed Domain Name was not put to active use; it is most unlikely, with the marketing efforts already put in, that the Respondent was unaware of the “welovehongkong” mark; the Respondent copied and uploaded the previous webpages without authorisation; and the Respondent adopted an uncooperative attitude in respect of the Disputed Domain Name.

Respondent

12. The Respondent has not filed a response.

Findings

13. Under the heading ‘Mandatory Administrative Proceeding’, Rule 4 of the Policy sets out the necessary elements which a complainant must satisfy in order to obtain the necessary locus standi to successfully bring a complaint under the Policy, which is set out in full:

“a. Applicable Disputes. You [the Respondent] are required to submit to a mandatory administrative proceeding in the event that a third party (a “complainant”) asserts to the applicable Provider, in compliance with the Rules of Procedure, that

(i) your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

(ii) you have no rights or legitimate interests in respect of the domain name; and

(iii) your domain name has been registered and is being used in bad faith.”

In the administrative proceeding, the complainant must prove that all of these three elements are present.

Identical / Confusingly Similar

14. It is with some regret and diffidence that the Panel must come to the conclusion that the Complaint against the Disputed Domain

Name being registered in the name of the Respondent must fail. The Complainant fails at the first hurdle because the Panel cannot be satisfied on the balance of probabilities that it “has rights” in the domain name as is expressly required by paragraph 4(a)(i). There is no registered trade mark for “WELOVEHONGKONG” or anything colourably or confusingly similar thereto. Further, it is trite law that there is no copyright in a domain name and in this particular case, there is no originality in the collection of words “We Love Hong Kong”. The Panel does not see the need to deal in detail with the claim that there is “residual reputation” vested in the Claimant that is sufficient to bring the Complainant within paragraph 4(a)(i) of the Policy.

15. The Panel is prepared to accept that the Complainant was formerly registered as the holder of the <welovehongkong.com> domain name, notwithstanding that the documentary evidence in support is not explicit. The fact remains that there is only a one-page email, seemingly concerning the registration of the <welovehongkong.com> in 2003. There is no explicit link of this email to the Complainant, nor any explanation regarding the email. Further, all other documents provided by the Complainant merely showed that the <welovehongkong.com> website was used for Cathay Pacific and/or the ‘Tourism Coalition of Hong Kong’, but not the Complainant. No documentation or explanation has however been provided to the Panel as to, for instance, the constitution of the ‘Tourism Coalition of Hong Kong’ which might have helped to explain the ownership or licensing of intellectual property or domain name rights, nor as to any licensing agreements/arrangements showing the relationship of the Complainant with Cathay Pacific and/or the Tourism Coalition of Hong Kong, as regards the uses of or rights over the “We Love Hong Kong” campaign website on the part of the Complainant or the <welovehongkong.com> domain name at the time of this Complaint.

16. In order to establish a prima facie case of passing off (which the Panel consider would bring a complainant within paragraph 4(a)(i) of the Policy), the Complainant needs to show that it has a reputation connected with a business in Hong Kong or, as a minimum, a reputation connected with the mark or sign, in this case, “WELOVEHONGKONG” or something confusingly similar thereto.

17. The Complainant has not provided any evidence that the trade and/or the public who come into contact with the mark or sign “WELOVEHONGKONG” would consider the Complainant has a reputation that is capable of being protected at law. The fact that the Complainant has coined the name “WELOVEHONGKONG” and was formerly registered as the holder of the domain name <welovehongkong.com> cannot, without more, amount to reputation or rights for bringing this Complaint.

18. In reaching this conclusion the Panel has considered the following decisions available on the website of WIPO: Uniroyal Engineered Products, Inc. v. Nauga Network Services D2000-0503; Thaigem Global Marketing Limited v. Sanchai Aree D2002-0358; Consorzio del Formaggio Parmigiano Reggiano v. La casa del Latte di Bibulic Adriano D2003-0661; Lion Country Supply, Inc. v. J. Katz D2003-0106

In each of those cases, the complainant had registered trade mark rights although the Panel takes the view that since common law rights are enforceable in Hong Kong, this would amount to a “right” within paragraph 4(a)(i) of the Policy. The Policy does not contain a definition of “a right” and in Hong Kong intellectual property statute law, for instance, only the Patents Ordinance (Cap. 514) contains a definition in section 2: “right” in relation to any patent or patent application, includes an interest in the patent and, without prejudice to the foregoing, any reference to a right in a patent includes a reference to a share in the patent”. In our view, this kind of definition places a “right” on a level higher than merely a “better claim” and for reasons that will be explained under the heading “Bad Faith”, the Panel considers that the Complainant may have a considerably better claim to the domain name <welovehongkong.com> than does the Respondent but it is implicit in a “right” that there is a consequential power ‘to stop another’ acting without consent. The Complainant’s common law reputation or goodwill, or indeed any other rights, (on the evidence available) falls far short of this.

19. The Panel also notices that a case which also failed because of the inability of the complainant to show it had sufficient locus standi was PC Mall, Inc. v. Pygmy Computer Systems, Inc. D2004-0437.

20. To ensure that there is a genuine “right” rather than a mere “claim”, the Panel notes also the commentary on the WIPO web site concerning the decisions referred to, namely, that in highly limited circumstances, a panel may examine the circumstances of a trademark registration to determine whether the registration satisfies UDRP requirements. Trademark registrations that are automatic or unexamined (such as US state registrations as opposed to US federal registrations) may not always be owed the same deference as examined registrations. In other words, the “right” must be a real and effective right, not one that is an illusory right registered on paper only.

Rights and Legitimate Interests

21. As the Complainant fails to establish the necessary rights to bring this Complaint against the Disputed Domain Name, there is actually no need for the Panel to deal with this issue on the rights and legitimate interests of the Respondent.

Bad Faith

22. We have already observed that the decision reached has not been without concern but the Panel feels bound by the exacting requirement of paragraph 4(a)(i) of the Policy. The Policy does not say “...a better claim than the Respondent having regard to the equity and merits of the case” or wording of such import.

23. We do not propose to deal with the issue of bad faith in any great detail since we have already determined that the Complainant does not have the necessary locus standi to object to the domain name <welovehongkong.com> being registered in the name of the Respondent. The Complainant submits with considerable force of argument that there are three strands to the allegation of bad faith in this case, namely:

(a) The Respondent has not put the domain name <welovehongkong.com> into use since obtaining registration in 2006;

(b) That given the extensive marketing effort to promote the tourism campaign in 2003, it was most unlikely that the Respondent was unaware that other parties had a claim to the domain name <welovehongkong.com>;

(c) That there has been copying of the webpages devised by the Complainant. The remedy here is in an action for copyright infringement but this is not something this tribunal can consider as giving rise to the necessary locus standi vis-à-vis the domain name pursuant to paragraph 4(a)(i) of the Policy.

24. The Complainant adds a fourth ground in support of the allegation of bad faith in that the Respondent has not been co-operative in respect of the disputed domain name and, in particular, has failed to respond to cease and desist letters. We are, however, unable to draw any adverse inferences from this inaction on the part of the Respondent: there is no positive obligation to answer lawyer’ s correspondence.

Status

www.welovehongkong.com Complaint Rejected

Decision

25. The Panel accordingly decides that the Complainant does not have the locus standi to bring this complaint as required by paragraph 4(a)(i) of the Policy. Therefore, the Panel rules and decides that the Complaint in respect of the domain name <welovehongkong.com> is hereby dismissed.

Dated this the 2nd day of May 2008

PAUL STEPHENSON
(PRESIDING PANELIST)

PETER BULLOCK
(CO-PANELIST)

GARY SOO
(CO-PANELIST)