



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

— A charitable institution limited by guarantee registered in Hong Kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK- 0800155
Complainant	Shure Incorporated
Respondent	Zhang Jia Bin

1. The Parties and Contested Domain Name

The Complainant is Shure Incorporated of 5800 West Tonny Avenue Niles, Illinois 60714-4608 United States, represented internally by Ms Anne Wong.

The Respondent is Zhang Jia Bin of No 25, Jiangcui Road, Jiangmen city, Tengda Co.,Ltd.China.

The domain name at issue is, **shrue.com**, is registered by the Respondent with OnlineNIC Inc.

2. Procedural History

The Complaint was filed with the Hong Kong Office of the Asian Domain Name Dispute Resolution Center (the “Center”) on January 4, 2008. On January 11, 2008, the Center transmitted by email to OnlineNIC Inc. a request for registrar verification in connection with the domain name at issue. On January 14, 2008, OnlineNIC Inc. transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy”) and the ADNDRC Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”).

In accordance with the Rules, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on January 23, 2008. In accordance with the Rules, the due date for Response was February 12, 2008. No formal response was filed by the Respondent.

The Center appointed Debrett G. Lyons as the sole panelist in this matter on February 26, 2008. The Panel finds that it was properly constituted.

The language of the proceedings is English.

3. Factual background

The factual background supported by the evidence is that:

- i. The Complainant's business was founded in 1925 and is now a leading manufacturer of microphones and other audio electronic apparatus including wireless audio systems, earphones, monitor systems and phonograph cartridges.
- ii. The Complainant's products are sold worldwide and regional sales and marketing offices are located in Germany, United Kingdom, China and Japan.
- iii. In China, the Complainant has been selling its products for 15 years and in June 2005 it established a Chinese manufacturing plant in Suzhou, Jiangsu Province.
- iv. The Complainant has registered the trade mark, SHURE, in over 100 countries, principally in respect of class 9 goods. In particular, Complainant is the proprietor of U.S. Registration No. 0921478 filed on December 5, 1969 with a claim to first use in commerce in 1932. In China, Registration No. 138,311 was filed in July 1980.
- v. The Complainant's principal website, www.shure.com, gives detailed company and product information.
- vi. The Respondent is a Chinese national.
- vii. The Respondent registered the disputed domain name on September 9, 2005 (not September 9, 1995 as repeatedly stated in the Complaint).
- viii. The disputed domain name resolves to the website, www.shrue.com, of the Chinese company, Enping Minwei Audio Co Ltd ("Minwei").
- ix. Minwei is in the business of manufacturing and selling microphones and other audio electronic apparatus, many of which are direct facsimiles of the Complainant's goods.

The Complainant petitions the Panel to order that the domain name be transferred from the Respondent to the Complainant.

4. Parties' Contentions

A. Complainant

The Complainant's contentions can be summarized as follows:

- i. The disputed domain name is confusingly similar to the Complainant's registered trade mark since it only differs by the inversion of two letters. The Complainant alleges that the inversion is a common misspelling of the Complainant's domain name and trade mark.
- ii. The Complainant contends that the Respondent has no rights or legitimate interest in respect of the disputed domain name. The Respondent is not in any way connected, associated, or affiliated with the Complainant and the Complainant has not authorized, endorsed or otherwise permitted the Respondent to register the disputed domain name or use its trade mark or any variation thereof.
- iii. The Complainant contends that the disputed domain name has been registered and is being used in bad faith by the Respondent. The domain name resolves to the website of a company which operates in direct competition to the Complainant. The "About Us" page from that website states that Minwei was established in 1998 and names a Mr. Zhang as the point of contact.

- iv. The Complainant argues that it is inconceivable that at the time of registering the disputed domain name, the Respondent was not aware of the Complainant and its trade mark.
- v. The Complainant alleges that the Respondent has registered and is using the disputed domain name with the intention to attempt to attract, for commercial gain, Internet users to www.shrue.com by creating a likelihood of confusion with the Complainant's trade mark as to the source, sponsorship, affiliation or endorsement of www.shrue.com or of products offered at www.shrue.com.
- vi. That contention is further supported, says the Complainant, by the fact that the same website can be viewed via the URL, www.min-wei.com, which simply uses the company name.
- vii. The Complainant further submits that the Respondent's bad faith is proved by the fact that several of the microphones shown on the Minwei website are clones of those microphones of the Complainant's which enjoy iconic status within the audio recording industry.
- viii. The Complainant alleges that the Respondent's action is a typical case of so-called "typosquatting" and is demonstrable bad faith under paragraph 4(b)(iv) of the Policy.

B. Respondent

The Respondent did not reply to the Complaint.

5. Findings

It is the responsibility of the Panel to consider whether the requirements of the Policy have been met, regardless of the fact the Respondent failed to submit a reply.

The Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

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

Having considered the Complainant's case and the available evidence, the Panel finds the following:

A) Identical / Confusingly Similar

The Complainant has, through registration, established rights in the trade mark, SHURE (*Innomed Techs., Inc. v. DRP Servs.*, FA 221171 (Nat. Arb. Forum Feb. 18, 2004) ("Registration of the NASAL-AIRE mark with the USPTO establishes Complainant's rights in the mark."); *see also Men's Wearhouse, Inc. v. Wick*, FA 117861 (Nat. Arb. Forum Sept. 16, 2002) ("Under U.S. trademark law, registered marks hold a presumption that they are inherently distinctive [or] have acquired secondary meaning.").

For the purpose of comparison of the domain name with the mark, the gTLD, “.com”, can be ignored as trivial and so there only remains the comparison of “shrue” with the trade mark SHURE (*Rollerblade, Inc. v. McCrady*, D2000-0429 (WIPO June 25, 2000) (finding that the top level of the domain name such as “.net” or “.com” does not affect the domain name for the purpose of determining whether it is identical or confusingly similar); *see also Gardline Surveys Ltd. v. Domain Fin. Ltd.*, FA 153545 (Nat. Arb. Forum May 27, 2003) (“The addition of a top-level domain is irrelevant when establishing whether or not a mark is identical or confusingly similar, because top-level domains are a required element of every domain name.”)).

The inversion of the two letters, “u” and “r”, does create an aural difference but it does not create another word with an obvious dictionary meaning which might help dissociate it from the Complainant’s trade mark. Visually the words remain similar. The question is whether they are confusingly similar and the Panel is of the opinion that they are. Although there is no evidence to support the Complainant’s assertion that “shrue” is a common misspelling of “shure”, the Panel accepts that a level of confusion is likely because of the similarity of the terms.

Accordingly, the Panel finds that the Complainant has met the first requirement of the Policy.

B) Rights and Legitimate Interests

Paragraph 4(c) of the Policy states that any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate rights or legitimate interests to a domain name for purposes of Paragraph 4(a)(ii):

- (i) before any notice to you of the dispute, your 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; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trade mark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

Policy ¶ 4(c)(ii) has no application in this case. There is no suggestion that the Respondent is known by the disputed domain name.

There is no suggestion that the Respondent is making legitimate noncommercial or fair use of the disputed domain name under Policy ¶ 4(c)(iii).

As for Policy ¶ 4(c)(i), Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services. The evidence raises a rebuttable inference that the Respondent is connected with Menwei. That company is in direct competition with the Complainant. Numerous prior decisions under the Policy have held that it is neither legitimate nor fair to use the trade mark of another to attract Internet traffic.

The Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the domain name. The Panel finds that the Respondent has not discharged the burden of proof which fell to it (See *Do The Hustle, LLC v. Tropic Web*, WIPO Case D2000-0624).

The Panel therefore finds that the Complainant has satisfied what was required of it under Paragraph 4(a)(ii) of the Policy.

C) Bad Faith

Paragraph 4(b) of the Policy sets out the circumstances which shall be evidence of the registration and use of a domain name in bad faith. These sets of circumstances are not exhaustive and other instances of bad faith might be in evidence however what is noteworthy about paragraphs 4(b)(i) – (iv) is that they are all cases of both registration and use in bad faith. Other times, there will be evidence of use in bad faith or registration in bad faith and the panelist will need to find both since the requirements of paragraph 4(a)(iii) of the Policy are conjunctive.

It is therefore logical to first test the facts against these given circumstances.

Paragraph 4(b)(iv) states:

by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

The Panel is of the view that the use of the disputed domain name falls squarely within sub-paragraph (iv) above. In the absence of evidence of any contrary intention, the inference can be drawn that the intention of the Respondent was to use the domain name to intercept Internet users and misdirect them to a site for commercial gain.

Furthermore, the Panel finds, separately, registration and use in bad faith for the reasons put forward by the Complainant, namely, that on the balance of the evidence, there is every likelihood that the Respondent knew the Complainant's business and its trade mark before it registered the disputed domain name and then used the name in bad faith by linking it to a website (whether connected or not with the Respondent) which offers for sale goods in direct competition with the Complainant's goods.

Finally, in the absence of any explanation from the Respondent as to why it registered the domain name, the inference can be drawn that it did so as an act of "typosquatting". Prior UDRP cases have held that the practice of typosquatting is further evidence of bad faith registration and use (see, for example, *Microsoft Corporation v. Microsof.com aka Tarek Ahmed*, WIPO Case D2000-0548; *Deutsche Bank Aktiengesellschaft v. New York TV Tickets Inc.*, WIPO Case No. D2001-1314; *Red Bull GmbH v. Harold Gutch*, WIPO Case No. D2000-0766).

The Panel therefore finds that the Complainant has satisfied Paragraph 4(a)(iii) of the Policy.

6. Decision

For all the foregoing reasons, in accordance with Paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the domain name, “shrue.com” be transferred to the Complainant.

Debrett G. Lyons
Sole Panelist

Date: March 5, 2008