



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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Decision Submission

English Print

Version
 Decision ID DE-0800171
 Case ID HK-0800200
 Disputed Domain Name www.cnwalmart.com
 Case Administrator Dennis CAI
 Submitted By Lyons Debrett G.
 Participated Panelist

Date of Decision 14-11-2008

Language Version : English

The Parties Information

Claimant (1) Wal-Mart Stores, Inc. (2) Wal-Mart China Co. Ltd.
Respondent Ure Zaragoza

Procedural History

The Complaint was filed with the Hong Kong office of the Asian Domain Name Dispute Resolution Centre (the "Centre") on September 10, 2008. On September 17, 2008, the Centre transmitted by email to GoDaddy.com Inc. a request for registrar verification in connection with the domain name at issue. On September 27, 2008 GoDaddy.com Inc. transmitted by email to the Centre its verification response confirming that the Respondent is listed as the registrant and providing the contact details. The Centre verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the Centre's Supplemental Rules.

In accordance with the Rules, the Centre formally notified the Respondent of the Complaint, and the proceedings commenced on October 2, 2008. In accordance with the Rules, the due date for Response was October 22, 2008. The Respondent did not submit any response. Accordingly, the Centre notified the Respondent's default on October 23, 2008.

The Centre appointed Debrett G. Lyons as the sole panelist in this matter on October 30, 2008. The Panel finds that it was properly constituted and has acted impartially in reaching its conclusion.

Factual Background

For Claimant

1. The Complainant is a retailer and owner of department stores in the United States and many other countries including China. It does business under the trade mark WAL-MART.
2. The Complainant has not licensed or otherwise permitted the Respondent to use the trade mark or to register or use any domain name incorporating the trade mark.
3. There is no evidence of pre-Complaint contact between the parties.
4. The Complainant petitions the Panel to transfer the disputed domain name from the Respondent to the Complainant.

For Respondent

1. The Respondent registered the disputed domain name on April 10, 2008. .
2. A rudimentary website corresponding to the disputed domain name is "parked" with the domain name registrar, GoDaddy.com Inc.
3. There is no evidence of pre-Complaint contact between the parties.

Parties' Contentions

Claimant

The Complainant asserts rights in the trade mark WAL-MART and states that the disputed domain name is confusingly similar to the trade mark.

The Complainant alleges that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant alleges that the Respondent registered and used the disputed domain name in bad faith.

The detail of the Complaint is included where necessary in Part 5 of this decision.

Respondent

The Respondent did not reply to the Complainant's contentions.

Findings

Notwithstanding the fact that the Respondent did not offer a response to the Complaint, the Rules instruct the 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."

According to paragraph 4(a) of the Policy, the Complainant must prove that:

- (i) the domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- (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.

The Panel is entitled to accept reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory. Having considered the Complainant's case and the available evidence, the Panel finds the following:

Identical / Confusingly Similar

The Complainant states that the first WAL-MART store was opened in the United States in 1962 and that since then the Complainant's business has grown enormously. The Complainant now operates over 6,800 stores and has more than 1.9 million employees spread over the US, Canada, China, Japan, Mexico, Argentina, Brazil, Germany, Puerto Rico, Costa Rica, Nicaragua, Guatemala, Honduras, El Salvador and the United Kingdom. The Complainant's global sales in the 2007-2008 US financial year exceeded US\$374 billion. The Complainant has been listed as the number one Fortune 500 company almost every year since 2002. Each week, more than 180 million customers visit the Complainant's stores. The Complainant operates department stores in China under the trade mark and its Chinese character equivalent. The first Chinese store opened in Shenzhen in 1996. The Complainant now employs over 83,000 people in China in its 99 Supercenters, 2 Neighbourhood Markets and 101 Trust-Mart Hypermarkets stores .

The Complainant has registered numerous domain names and the Complainant's trade mark has been registered in 95 countries or regions including China .

The Panel has no hesitation in finding that the Complainant has rights in the trade mark acquired through both use and registration .

Applying the principles developed and now broadly accepted under the Policy, the Panel also finds the disputed domain name to be confusingly similar to the trade mark. The disputed domain name wholly incorporates the Complainant's trade mark. The omission of the hyphen and the addition of the country code for China, 'CN' and the gTLD, ".com", are trivial and do nothing to defeat the Complainant's claim of confusing similarity .

The Panel finds that the Complainant has satisfied the first element of the Policy.

Rights and Legitimate Interests

The Complainant has the burden to establish that the Respondent has no rights or legitimate interests in the domain name. Nevertheless, it is well settled that the Complainant need only make out a prima facie case, after which the onus shifts to the Respondent to demonstrate rights or legitimate interests .

Paragraph 4(c) of the Policy states that any of the following circumstances which if found by the Panel to be proved based on its evaluation of the evidence, 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 trademark or service mark at issue.

The Complainant has established its trade mark rights. There is no evidence that the Respondent has similar rights, registered or not. The WHOIS data does not support any argument that the Respondent might be commonly known by the domain name. The Complainant has stated there to be no relationship between the parties.

The Respondent is not using, nor has it made demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services.

The Panel finds that the Complainant has succeeded in making a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name, and that the Respondent in failing to reply has not discharged the onus which fell to it as a result. The Panel finds that the Respondent has no rights or legitimate interests in the domain name and so the Complainant has established the second limb of the Policy.

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. They are:

- (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trade mark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out of pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website 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 website or location or of a product or service on your website or location.

What is noteworthy about paragraphs 4(b)(i)-(iv) is that they are cases of both registration and use in bad faith. Paragraph 4(b) is not exhaustive and other instances of bad faith might be in evidence but, in those instances, the Panel must be able to find both bad faith registration and bad faith use. In this case, the Complainant does not cite any of paragraphs 4(b)(i)-(iv). Instead, it claims bad faith registration because of the overwhelming likelihood that the respondent registered the disputed domain name in the knowledge of the Complainant's trade mark and its business. Complainant also claims bad faith use through passive holding of a domain name in circumstances where no good faith use is conceivable. The Panel accepts both of those submissions and finds that the disputed domain name was registered and used in bad faith within the meaning former panels have given to paragraph 4(a)(iii) of the Policy .

Accordingly, the Panel finds that the Complainant has satisfied the third and final limb of the Policy.

Status

www.cnwalmart.com

Domain Name Transfer

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 "cnwalmart.com" be transferred to the Complainant. The wording of the Complainant does not make it clear whether the transferee should be Wal-Mart Stores, Inc. or Wal-Mart China Co. Ltd and so the Panel directs the Complainant to notify the Center of the intended transferee and authorizes the Center to act on that notification.

Debrett G. Lyons
Sole Panelist

Date: November 4, 2008