



## ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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### Decision Submission

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Version  
 Decision ID DE-0900203  
 Case ID HK-0800232  
 Disputed Domain Name www.walmartstores.info  
 Case Administrator Dennis CAI  
 Submitted By Lyons Debrett G.  
 Participated Panelist

Date of Decision 27-02-2009

Language Version : English

#### The Parties Information

**Claimant** Wal-Mart Stores, Inc.  
**Respondent** Kevin Roberts

#### Procedural History

The Complaint was filed with the Hong Kong office of the Asian Domain Name Dispute Resolution Center (the "Center") on November 18, 2008. On November 19, 2008, the Center transmitted by email to Melbourne IT Ltd. a request for registrar verification in connection with the domain name at issue. On November 21, 2008 Melbourne IT Ltd. 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"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the Center's Supplemental Rules. In accordance with the Rules, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on December 5, 2008. In accordance with the Rules, the due date for Response was December 29, 2008. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 30, 2008.

The Center appointed Debrett G. Lyons as the sole panelist in this matter on February 26, 2009. 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. It does business under the trademark WAL-MART.
2. The Complainant has not licensed or otherwise permitted the Respondent to use the trademark or to register or use any domain name incorporating the trademark.
3. The Complainant petitions the Panel to order transfer the disputed domain name from the Respondent to the Complainant.

##### For Respondent

1. The Respondent is a resident of the USA.
2. The Respondent registered the disputed domain name on October 31, 2005.
3. A portal website corresponding with the disputed domain name carries numerous links to third parties which offer goods or services in competition to the Complainant.

## Parties' Contentions

### Claimant

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

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."

The ICANN Uniform Domain Name Dispute Resolution 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 trademark 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.

The Panel is entitled to accept reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory (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) stating that "In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.").

### 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 has registered numerous domain names and the Complainant's trademark has been registered in 95 countries or regions (for example, United States Federal Trademark Registration No. 1,322,750 from February 26, 1985).

The Panel has no hesitation in finding that the Complainant has rights in the trademark acquired through both use and registration (see *State Farm Mut. Auto. Ins. Co. v. Malain*, FA 705262 (Nat. Arb. Forum June 19, 2006) finding that "Complainant's registrations with the United States Patent and Trademark Office of the trademark STATE FARM establishes its rights in the STATE FARM mark pursuant to Policy ¶ 4(a)(i)."; see also *Mothers Against Drunk Driving v. phix*, FA 174052 (Nat. Arb. Forum Sept. 25, 2003) finding that the complainant's registration of the MADD mark with the United States Patent and Trademark Office establishes the complainant's rights in the mark for purposes of Policy ¶ 4(a)(i)).

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 trademark. The disputed domain name wholly incorporates the Complainant's trademark. The addition of the purely descriptive word, "stores", and the gTLD, ".info" are trivial and do nothing to defeat the Complainant's claim of confusing similarity. Similarly, the omission of the hyphen is legally inconsequential ( see *Rollerblade, Inc. v. McCrady*, WIPO Case No. D2000-0429 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 *Wal-Mart Stores, Inc. v MacLeod d/b/a For Sale*, WIPO Case No. D2000-0662 holding confusing similarity when the domain name includes the trademark, or a confusingly similar approximation, regardless of the other non-distinctive terms in the domain name; see also *Wal-Mart Stores, Inc. v Tauer*, WIPO Case No. D2000-1076; finding <walmartx.com> confusing similar to the WAL-MART trade mark).

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 (see *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. D2000 0624; *Hanna Barbera Prods., Inc. v. Entm't Commentaries*, NAF Case No. 741828; *AOL LLC v. Gerberg*, NAF Case No. 780200). 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 trademark 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 trademark 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 trademark 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 trademark 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.

The Complaint uses the language of paragraph 4(b)(iv) of the Policy. It reads in part:

"The Disputed Domain Name is resolved to a commercial link farm website which provides links to various websites which offer for sale retail goods that are in direct competition with the Complainant. Attached at Annex 11 is a print-out from this website dated 14 November 2008 which shows the advertised hyperlinks to the aforementioned websites. By providing links to such websites, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the website, by creating the likelihood of confusion with the Trade Mark as to the source, sponsorship, affiliation, or endorsement of the website, the hyperlinked websites or products or services on such sites (*Schneider Electric SA v Ningbo Wecans Network Technology Co Ltd*, WIPO Case No. D2004-0554).

The presence of third-party links on the website shows that the Respondent receives a financial benefit from its diversion of the Complainant's potential customers to its site."

The Panel is in agreement with the Complainant that the Respondent's actions fall squarely under paragraph 4(b)(iv) and that the disputed domain name was registered and used in bad faith.

Accordingly, the Complainant has satisfied the third and final element of the Policy.

## Status

**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 "walmartstores.info" be transferred to the Complainant.

Debrett G. Lyons  
Sole Panelist

Date: February 27, 2009

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