



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 - 1100333

Complainant: 3M Company

Respondent: ling ling

1. The Parties and the Disputed Domain Name

The Complainant is 3M Company of St Paul, Minnesota, the United States of America, represented by Rouse Consultancy (Shanghai) Limited.

The Respondent is ling ling, of Beijing, the People's Republic of China.

The contested domain name is <3m3m.info>, registered by the Respondent with GoDaddy.com Inc.

2. Procedural History

The Complaint was filed with the Hong Kong office of the Asian Domain Name Dispute Resolution Center ("the Center") on February 28, 2011. On March 8, 2011 the Center transmitted by email to GoDaddy.com Inc. a request for registrar verification in connection with the domain name at issue. On March 9, 2011 GoDaddy.com 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 has verified that the Complaint satisfies the formal requirements of the Uniform Domain Name Dispute Resolution Policy ("the Policy"), the Rules of Procedure under the 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 proceeding commenced on April 12, 2011. In accordance with the Rules, the due date for the Response was May 2, 2011.

No Response was received by the Center.

The Center appointed Sebastian Matthew White Hughes as the Panelist in this matter on May 18, 2011. The Panel finds that it was properly constituted and has acted impartially in reaching its conclusion.

3. Factual background

A. Complainant

The Complainant is a company incorporated in the United States of America and the owner of numerous trade mark registrations worldwide for the trade mark 3M (the “Trade Mark”), including several registrations in China, the earliest dating from 1980.

B. Respondent

The Respondent is an individual apparently with an address in the People’s Republic of China.

C. The Disputed Domain Name

The Respondent registered the disputed domain name on August 20, 2010.

4. Parties’ Contentions

A. Complainant

The Complainant made the following submissions in the Complaint.

The Complainant has registered the Trade Mark throughout the world in respect of a wide range of products and services. The Complainant is committed to innovation and has vigorously promoted its products under the Trade Mark worldwide. As a result, the Complainant has obtained extensive goodwill and reputation in the Trade Mark. Furthermore, the Trade Mark has been recognised as a well-known trade mark in several jurisdictions, including in China, where the Respondent is based.

The disputed domain name is confusingly similar to the Trade Mark. The recognisable part of the disputed domain name simply comprises the Trade Mark in duplicate. Considering the distinctiveness and well-known status of the Trade Mark, the disputed domain name will mislead consumers into assuming that it has been registered by the Complainant or that there is some connection between the Complainant and the disputed domain name, thereby causing confusion.

The Respondent does not have any rights or legitimate interests in respect of the disputed domain name. The Respondent is not an authorised distributor of the Complainant, nor does the Complainant have any business with the Respondent. The Complainant has never authorised the Respondent to use the Trade Mark or register the disputed domain name.

The disputed domain name has been registered and used in bad faith. The registration of the disputed domain name that is confusingly similar to the Complainant’s famous Trade Mark in

circumstances where the Respondent has no relationship at all with the Complainant is itself sufficient evidence of bad faith registration and use.

Furthermore, the disputed domain name has been linked to a website which disseminates pornographic material and provides links to other pornographic websites (the “Website”). The use of the disputed domain name in this manner will negatively influence and inevitably devalue the reputation and goodwill of the Complainant’s Trade Mark.

B. Respondent

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

5. Discussion and Findings

A. Identical or Confusingly Similar

The Panel finds that the Complainant has rights in the Trade Mark acquired through use and registration which predate by many decades the date of registration of the disputed domain name. The Panel also has no hesitation in finding that the Trade Mark is well-known in China and worldwide.

UDRP panels have consistently held that domain names are identical or confusingly similar to a trade mark for purposes of the Policy “when the domain name includes the trade mark, or a confusingly similar approximation, regardless of the other terms in the domain name” (*Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale*, WIPO Case No. D2000-0662).

The disputed domain name comprises the identical Trade Mark, in duplicate. The Panel finds that the duplication of the Trade Mark in the disputed domain name does not serve to obviate the confusing similarity between the disputed domain name and the Trade Mark and does not serve to distinguish the disputed domain name from the Trade Mark in any way (*LEGO Juris A/S v. crt000, chen rui ting / PrivacyProtect.org*, WIPO Case No. D2010-1520).

The Panel finds that the disputed domain name is confusingly similar to the Trade Mark.

The Panel therefore holds that the Complaint fulfills the first condition of paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that the Respondent has rights or legitimate interests in the disputed domain name:

- (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 organisation) 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 non-commercial 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.

There is no evidence that the Complainant has authorised, licensed, or permitted the Respondent to register or use the disputed domain name or to use the Trade Mark. The Complainant has prior rights in the Trade Mark which precede the Respondent's registration of the disputed domain name by decades. There is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and the burden is thus on the Respondent to produce evidence to rebut this presumption (*Do The Hustle, LLC v. Tropic Web*, WIPO Case No. D2000-0624; *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. D2003-0455).

The evidence suggests the Website is used by the Respondent to market and sell pornography. The Panel finds that the use of the Trade Mark in this manner without the authorisation of the Complainant does not give rise to any rights or legitimate interests in the disputed domain name on the part of the Respondent.

The Respondent has failed to show that it has acquired any trade mark rights in respect of the disputed domain name or that the disputed domain name is used in connection with a *bona fide* offering of goods or services.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain name.

There has been no evidence adduced to show that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name.

The Panel finds that the Respondent has failed to produce any evidence to establish rights or legitimate interests in the disputed domain name. The Panel therefore finds that the Complaint fulfills the second condition of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Pursuant to paragraph 4(b)(iv) of the Policy, the following conduct amounts to registration and use in bad faith on the part of the Respondent:

“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.”

In registering and using the disputed domain name the Respondent is clearly using the well-known Trade Mark of the Complainant in order to attract Internet users to the Website for commercial gain. The Panel finds use of the Trade Marks in this manner in order to promote pornographic products and services is clear evidence of bad faith.

The Panel further finds that such use of the disputed domain name most certainly amounts to tarnishing of the valuable goodwill of the Complainant in the Trade Mark. The Panel concludes that this constitutes further evidence of bad faith (*ABB Asea Brown Boveri Ltd. v. Quicknet*, WIPO Case No. D2003-0215).

The Panel therefore finds the requisite element of bad faith has been satisfied, under paragraph 4(b)(iv) of the Policy.

Given the circumstances of this case, the Panel also considers the failure of the Respondent to file a Response to the Complaint provides further evidence of bad faith (*Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. D2002-0787).

For all the foregoing reasons, the Panel concludes that the disputed domain name has been registered and is being used in bad faith. Accordingly the third condition of paragraph 4(a) of the Policy has been fulfilled.

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 disputed domain name <3m3m.info> be transferred to the Complainant.

Sebastian Hughes

Sole Panelist

Dated: May 23, 2011