

**Asian Domain Name Dispute Resolution Centre
(Hong Kong Office)**

Uniform Domain Name Dispute Resolution Policy

Panelist Decision

Complainant	:	Hang Lung Properties Limited
Respondent	:	Liu, Jianguo
Case Number	:	HK-1100363
Contested Domain Name	:	hangelung-group.com
Panel Member	:	Christopher To

1. Parties and Contested Domain Name

The Complainant is **Hang Lung Properties Limited** of 28/F, Standard Chartered Building, 4 Des Voeux Road Central, Hong Kong.

The Respondent is **Liu, Jianguo** Address 62/F & 66/F, The Center, 99 Queens Road, Central, Hong Kong

The contested domain name is “hangelung-group.com” (“*Disputed Domain*”)

2. Procedural History

On 18 May 2011, the Complainant filed a Complaint in this matter with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (“*ADNDRC-HK*”). On 19 May 2011, the ADNDRC-HK confirmed receipt of the Complaint and reminded the Complainant to “*submit the case filing fees in accordance with*

article 15 of the Supplemental Rules". On the 30 May 2011 the Complainant submitted the necessary filing fees.

On 19 May 2011, ADNDRC-HK notified GoDaddy.com, Inc ("**Registrar**") of the Disputed Domain of the proceedings by email.

On 22 May 2011, the Registrar acknowledged the email of ADNDRC-HK confirming that the Disputed Domain is registered with the Registrar, that Jianguo Liu is the holder of the Disputed Domain, that the Internet Corporation For Assigned Names and Numbers Uniform Domain Name Dispute Resolution Policy ("the Policy") is applicable to the Disputed Domain, the language of the Registration Agreement of the Disputed Domain is English as provided by the WHOIS (<http://www.who.is>) information in relation to the Disputed Domain and confirmed that the Disputed Domain is under Registrar lock status.

On 3 June 2011, the ADNDRC-HK sent a Notification of Commencement of Proceedings ("**Notification**"), together with the Complaint, to the email address of the Respondent's nominated registrant contact for the Disputed Domain (as recorded in the WHOIS database). The Notification gave the Respondent twenty (20) calendar days to file a Response (i.e. on or before 23 June 2011).

On 3 June 2011, the ADNDRC-HK sent the Notification together with the Complaint, to the fax number of the Respondent's nominated registrant contact for the Disputed Domain.

On 7 June 2011, the ADNDRC-HK also sent the Notification together with the Complaint by courier, to the address of the Respondent's nominated registrant contact for the Disputed Domain (as recorded in the WHOIS database). The courier company who delivered the documentation confirmed that the documents were delivered to the Respondent on 16 June 2011 [16.10].

On 28 June 2011 ADNDRC-HK sent an email to the Complainant copying the Respondent informing the Complainant that the Respondent did not file a Response to the Disputed Domain within the required time period (i.e. on or before 23 June 2011) and that a Panelist for the Disputed Domain will be appointed shortly by the ADNDRC-HK.

The Panel comprising of Christopher To as a single panelist was appointed by the ADNDRC-HK on 6 June 2011. The papers pertaining to the case were delivered to the Panel by email on 6 June 2011, followed by a hard copy on 7 June 2011.

3. Factual Background

For the Complainant

The Complainant is a company incorporated in Hong Kong and is listed on The Stock Exchange of Hong Kong Limited (stock code: 101) and is a constituent stock of the Hong Kong's Hang Seng Index and the Hang Seng Corporate Sustainability Indices. Further, the Complainant is the operating arm and subsidiary of another listed company, Hang Lung Group Limited (stock code: 10).

The Complaint is based on the Complainant's registrations for the mark "HANG LUNG" in respect of a wide range of goods and services in Hong Kong and the Mainland of China. The Complainant is a leading Hong Kong company which boasts an extensive real estate portfolio in Hong Kong, as well as the Mainland of China. It has been involved in building, owning and managing world-class commercial complexes in key cities in the Mainland of China since the 1990s. The Complainant is world famous and has won international acclaim for its excellence in architectural design and services. Plaza 66, a landmark property in Shanghai known for being the ideal shopping destination in Shanghai for high-end consumers, was developed by the Complainant. The Chinese name of Plaza 66, "恒隆廣場", literally reads "Hang Lung Plaza" in English.

The Complainant is also recognized internationally through its achievements and multi-city operation. In June 2010, the Complainant was awarded "*The Best of Asia*" in the "Corporate Governance Asia Recognition Awards 2010" presented by the Corporate Governance Asia Magazine.

The Complainant claims that through extensive trade, advertising and many years of continuous success, the Complainant has established a substantial reputation and goodwill in the Mark and the trade name "Hang Lung". The Mark has become distinctive of the Complainant's business. The public, particularly in Hong Kong, Shanghai and the Mainland of China, will relate the Mark exclusively to the Complainant.

For the Respondent

The Respondent is an individual who has an address in Hong Kong. The Respondent has not responded to the ADNDRC-HK within the stipulated timeframe (i.e. on or before 23 June 2011) as set out in an email dated 28 June 2011 from ADNDRC-HK to the Complainant copying the Respondent. As such the Respondent has not contested the allegations of the Complaint and is in default.

4. Parties' Contentions

The Complainant

The Complainant submits that, through its legal representatives, attempted to visit the Respondent's ("Hanglung Group") registered address at 62/F and 66/F, The Center, 99 Queens Road, Central, Hong Kong (as stated in its website www.hanlung-group.com) on 25 March 2011 (at 11.15 am to 12.00 am) but to no avail, as there was no such registered company with the name "Hanglung Group" listed at the premises in question.

The Complainant submits that the Disputed Domain is identical to the Trade Mark, which the Complainant has rights in. This right is also reflected in the Complainant's company name ("Hang Lung").

The Complainant submits that the Respondent who is the holder of the Disputed Domain has no rights or legitimate interests in respect of the Disputed Domain.

The Complainant submits that the Disputed Domain incorporates the Complainant's "Hang Lung" trade mark in its entirety. The only difference between the Disputed Domain and the Complainant's "Hang Lung" trade mark is the inclusion of the word "-group" as a suffix at the end.

The Complainant submits that "Hang Lung" is clearly the distinctive and prominent component of the Disputed Domain and the addition of the word "-group" does nothing to distinguish it from the Hang Lung Trade Marks. In fact, the inclusion of "-group" in the Disputed Domain increases the risk of public deception and/or confusion as it is the same as the name of the Complainant's parent company, Hang Lung Group Limited, and is virtually identical to the registered domain name of Hang Lung Group Limited, hanglunggroup.com.

The Complainant submits that the fame of the Complainant's "Hang Lung" trade mark (particularly in the Mainland of China and in Hong Kong where the Respondent is located) is such that the use of the words "-group" in connection with the word "Hang Lung" does nothing to dispel confusion as to an association with the Complainant and, the relevant Disputed Domain considered as a whole would be likely to be understood by potential customers of the Complainant as a reference to the Complainant's business.

The Complainant submits that it did not authorise, license or otherwise permit the Respondent to use the mark "Hang Lung" or any other name / mark of the Complainant.

The Complainant submits that the Respondent has deliberately registered the Complainant's famous "Hang Lung" mark as a domain name with the intention of misleading and confusing the public into believing that the Respondent, "Hanglung Group", the Respondent's website and/or services promoted on the website are related to or associated with the Complainant.

The Complainant submits that the Disputed Domain has been registered and is being used by the Respondent in bad faith. Further the Complainant submits that the Respondent does not have any legitimate right or interest in the Disputed Domain.

The Complainant accordingly submits that the Respondent's use of the Disputed Domain is identical and/or confusingly similar to the registered trade marks in which the Complainant has rights or interests, that the Respondent has no rights or legitimate interests in respect of the Disputed Domain and that the Respondent has registered and used the Disputed Domain in bad faith. On this basis the Complainant requests that the Disputed Domain be transferred to the Complainant.

The Respondent

The Respondent did not file a Response to the ADNDRC-HK within the required timeframe stipulated by the ADNDRC-HK in its email of 28 June 2011 and as such has not contested the allegations of the Complaint and is in default.

5. Findings

A. The Language of the Proceedings

The Internet Corporation For Assigned Names and Numbers Rules for Uniform Domain Name Dispute Resolution Policy (“the Rules”) Paragraph 11 (a) provides that:

“Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.”

In the present case the Parties had not agreed to use a particular language for these proceedings. As the Registration Agreement is in the English language as confirmed by the Registrar in its email of 22 May 2011 then in accordance with Article 11(a) of the Rules for Uniform Domain Name Dispute Resolution Policy the language of the administrative proceedings shall be in the English language. In these circumstances given that the Complaint is drafted in the English language which is in line with the Registration Agreement and that the Respondent has failed to communicate on the matter, the Panel considers that it would be appropriate (and without prejudice to any of the parties) for the present proceedings to be conducted in the English language.

B. Discussions and Findings

Having considered all the documentary evidence before me, and the Respondent’s non-participation in these proceedings after being afforded every opportunity to do so in accordance with Paragraph 14 of the Rules for Uniform Domain Name Dispute Resolution Policy (“the Rules”) the Panel is of the view that it should

proceed to decide on the Disputed Domain (“*hanglung-group.com*”) based upon the Complaint and evidence submitted by the Complainant.

Paragraph 14(a) of the Rules provides that:

“In the event that a Party, in the absence of exceptional circumstances, does not comply with any of the time periods established by these Rules or the Panel, the Panel shall proceed to a decision on the complaint.”

According to Paragraph 4a Internet Corporation for Assigned Names and Numbers Uniform Domain Name Dispute Resolution Policy (“the Policy”), which is applicable hereto, the Complainant has the burden of providing that:

- (i) the Disputed Domain 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 Disputed Domain; and
- (iii) the Disputed Domain has been registered and is being used in bad faith.

(1) **Identical/confusing similar**

Paragraph 4(a)(i) of the Policy requires the Complainant to prove that the Disputed Domain is identical or confusingly similar to a trademark or a service mark in which the Complainant has rights.

The Disputed Domain incorporates the Complainant’s “Hang Lung” trade mark in its entirety. The only difference between the Disputed Domain and the Complainant’s “Hang Lung” trade mark is the inclusion of the word “-group” as a suffix at the end. It is well-established that in cases where the distinctive and prominent element of a Disputed Domain is the Complainant’s mark and the only addition is a generic term that adds no distinctive element, such an addition does not negate the confusing similarity between the Disputed Domain and the mark.

See, for example *LEGO Juris A/S v. Huangderong*, WIPO Case No. D2009-1325; *National Football League v. Alan D. Bachand, Nathalie M. Bachand d/b/a superbowl-rooms.com*, WIPO Case No. D2009-0121; *National Football League v. Peter Blucher d/b/a BluTech Tickets*, WIPO Case No. D2007-1064.

“Hang Lung” is clearly the distinctive and prominent component of the Disputed Domain and the addition of the word “-group” does nothing to distinguish it from the Hang Lung Trade Marks.

The prominence of the Complainant’s Hang Lung trade mark (particularly in the Mainland of China and Hong Kong where the Respondent is located) is such that the use of the words “-group” in connection with the word “Hang Lung” does nothing to dispel confusion as to an association with the Complainant and, the relevant Disputed Domain considered as a whole would be likely to be understood by potential customers of the Complainant as a reference to the Complainant’s business. See, for example *eBay Inc. v. SGR Enterprises and Joyce Ayers* (Case No. D2001-0259) where, the Panel held that the domain names in question, namely <ebaylive.com> and <ebaystore.com>, were confusingly similar to the Complainant’s trade mark.

In light of the prominence of the Hang Lung and the Hang Lung Marks, it may be inferred that the Respondent elected to incorporate “Hang Lung” in order to misappropriate the Complainant’s goodwill and leverage off the Complainant’s reputation in “Hang Lung” by creating confusion among consumers as to some affiliation with, or endorsement by, the Complainant. In fact, e-mails have been sent to the Complainant by persons contacted by "Hanglung Group", inquiring about the relationship between "Hanglung Group" and the Complainant. Further, in attempting to inform "Hanglung Group" that it does not have the license required under relevant laws for the provision of commercial banking services in Austria, the Austrian Financial Market Authority ("FMA") was unable to distinguish between "Hanglung Group" and the Complainant and sent a warning

letter to the Complainant instead. Such confusion clearly shows that the Disputed Domain and the Mark are confusingly similar.

Apparently, the trademark “Hang Lung” is the same as the distinctive part of the Disputed Domain in question. It is the view of this Panel that the Complainant has discharged its burden of proof to establish the element of identical and confusingly similar mark under Paragraph 4(a)(i) of the Policy.

(2) Rights or Legitimate Interests of Respondent

The Complainant’s “Hang Lung” brand has been in use since at least 1998. According to the WHOIS search result, the Disputed Domain was registered on 31 January 2011, some 13 years after the Complainant had begun using the Hang Lung Trade Marks. .

The fact that the Complainant’s adoption and first use of the Hang Lung name and marks significantly (i.e. 1998) predates the Respondent’s registration and use of the Disputed Domain has the practical effect of shifting to the Respondent the burden to proof in establishing that it has legitimate rights and/or interest in the Disputed Domain. See, for example the WIPO decision of *PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS COMPUTER INDUSTRY (a/k/a EMS) (Case No. D 2003-0696)* as a reference to this principle.

From the ownership details of the Disputed Domain that the Disputed Domain is not the registered name of the Respondent. The Respondent is therefore not commonly known by the Disputed Domain. In fact, there is no connection, either in appearance, in meaning or phonetically, between the Disputed Domain and the Respondent’s name (Liu Jianguo).

The Complainant has clearly indicated that it did not authorise, license or otherwise permit the Respondent to use the mark "Hang Lung" or any other name / mark of the Complainant.

Given the fame and notoriety of the Complainant and the Hang Lung Trade Marks, particularly in the Mainland of China and Hong Kong where the Respondent has an office address, the Respondent must have known of the existence of the Hang Lung Trade Marks when registering the Disputed Domain.

Internet users are likely to assume that the Respondent's website is associated with the Hang Lung Group Limited. Such use cannot be deemed to be (i) "use in connection with any bona fide offering of goods or services" or (ii) "legitimate non-commercial use" which, in the absence of the trade mark rights or lawfully acquired reputation in "Hang Lung", may otherwise have served to confer upon the Respondent a legitimate right or interest in the Disputed Domain.

Given that there is no evidence from the Respondent (notably the absence of a Response) on its right and/or interest in the Disputed Domain, this Panel concludes that the Respondent has no rights and/or legitimate interests in respect of the Disputed Domain.

(3) **Bad faith**

Paragraph 4(b) of the Policy sets down four (4) factors in which the Panel will need to examine to determine whether the Respondent has registered or used the Disputed Domain in bad faith. The four (4) factors are as follows:

"Evidence of Registration and Use in Bad Faith. For the purposes of [Paragraph 4\(a\)\(iii\)](#), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(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 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 Respondent, having an office address in Hong Kong, must have been aware of the Complainant's prior rights and interest in the Disputed Domain by virtue of the Complainant's reputation in the mark “Hang Lung” in the Mainland of China and Hong Kong as of the date that the Respondent registered that Disputed Domain.

On the issue of the Respondent's address of 62/F & 66/F, The Center, 99 Queens Road, Central, Hong Kong ("Premises") as used for registration purposes of the Disputed Domain and as stated on the Respondent's website being it's business address of "Hanglung Group", an on-site visit conducted at the Premises by the legal representatives of the Complainant on 25 March 2011 discovered that

neither the Respondent nor "Hanglung Group" was located there. This shows that the Respondent may have used a "fake" address to evade being located and that "Hanglung Group" probably does not have a genuine and legitimate business in Hong Kong. Further, the telephone number of "Hanglung Group" as provided on the Respondent's website only directs the caller to voicemail. This creates further doubts in the minds of the Panel as to whether "Hanglung Group" operates a bona fide business in Hong Kong.

According to the web pages under the Disputed Domain, "Hanglung Group" provides consultancy and business planning services. The Complainant submits that the Respondent has deliberately registered the Complainant's famous "Hang Lung" mark as a domain name with the intention of misleading the public into believing that the Respondent, "Hanglung Group", the Respondent's website and/or services promoted on the website are related to or associated with the Complainant.

It is clear that the Disputed Domain was chosen intentionally with the aim of misleading the public that services of "Hanglung Group" are endorsed, managed or provided by the Complainant. The circumstances indicate that the Respondent has used the Complainant's "Hang Lung" mark as part of the Disputed Domain in an attempt to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.

Given the Complainant's reputation, it is most unlikely that the Respondent is unaware of the Complainant's rights in the Mark. Further, it cannot be a mere coincidence that the Respondent has chosen the Disputed Domain as the words "Hang" and "Lung" do not have any special meaning in Chinese or English when put together. Other than attempting to pass off as being a part of or authorised by the Complainant, or otherwise benefit from the strong reputation and goodwill of

the Complainant, there is simply no explanation as to why such a confusingly similar and almost identical domain name was chosen by the Respondent.

The Respondent's registration and use of the Disputed Domain must involve mala fides in circumstances where the registration and use of the Disputed Domain was and continues to be made in the full knowledge of the Complainant's prior rights in the Hung Lung Trade Marks, and in circumstances where the Respondent did not seek permission from the Complainant, as the owner of the trade marks, to such registration and use. See, for example the WIPO decision of *Venve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co.* (Case No. D2000-0613) in which the registrant had used and registered the domain name in bad faith, the Panel took into account the fact that the Respondent registered the domain name with knowledge of the Complainant's longstanding prior rights.

For these reasons, the Panel is of the view that the Respondent registered and used the contested domain name in bad faith.

6. Conclusions


The Complainant has proved its case. It has a registered trademark in the name “Hang Lung” to which the contested domain name is confusingly similar.

The Respondent has shown no rights or legitimate interest in the Disputed Domain.

The Complainant has proved that the Respondent registered and used the Disputed Domain in bad faith.

For the foregoing reasons and in accordance with Paragraph 4 of the Policy, the Panel concludes that the relief requested by the Complainant be granted and do hereby order that the Disputed Domain “**hanglung-group.com**” be transferred to the Complainant **Hang Lung Properties Limited**.

Dated 26 day of July 2011


Christopher To