



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

— A charitable institution limited by guarantee registered in Hong Kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Complainant: The Body Shop International PLC

Respondent: Chen Zhenzhong

Case Number: HK-1100400

Contested Domain Name: <bodyshopchina.com>

Panel Member: Adam Samuel

1. The Contested Domain Name

The contested or disputed domain name is <bodyshopchina.com>.

2. Procedural History

On 30 September 2011, lawyers for the Complainant filed the Complaint with the Hong Kong International Arbitration Centre (HKIAC) pursuant to the Uniform Policy for Domain Name Dispute Resolution approved by ICANN (the “Policy”). Receipt was acknowledged on 10 October 2011. On the same day, the HKIAC asked the registrar, Name.com LLC to confirm that the then-named Respondent was the Registrant of the contested domain name and for other factual information. On the following day, the registrar revealed that the Respondent was the registrant of the disputed domain name. This information was passed to the Complainant’s lawyers who filed an amended Complaint with the HKIAC on 25 October 2011. Receipt of this was acknowledged the following day.

On the same date, the HKIAC served the Complaint on the Respondent indicating to it that it had 20 calendar days ending on 15 November 2011 in which to file a response. No response has been received to date. On 18 November 2011, the HKIAC appointed Adam Samuel to serve as the Panelist in this case having received the appropriate declarations of independence.

3. Factual Background

The Complainant owns a number of Hong Kong trademarks for the name THE BODY SHOP, including number 19832280 registered on 20 October 1983 and 19890506 registered on 24 October 1986. The Complainant also owns a number of PRC trademarks, notably number 624133, registered on 30 November 1992. The Complainant makes and sells perfumes, toilet preparations and other related products.

The contested domain name was registered on 24 January 2010.

4. Parties' Contentions

The Complainant

These are the Complainant's contentions with which the Panel does not necessarily agree in their entirety.

The Complainant owns numerous trademark registrations for THE BODY SHOP covering various goods and services in countries throughout the world. It was founded in 1976 and has over 2,400 stores across 61 countries with a range of over 1200 products. In China, the Complainant has registered several trademarks consisting of or including the words "The Body Shop" since 1992.

Consumers expect to find a trademark owner on the Internet at a domain name address comprised of the company's name or mark. Numerous UDRP decisions have recognized that adding a generic word is insufficient to give any distinctiveness to the domain name in dispute and geographic terms are generally considered to be generic terms for this purpose. When comparing the disputed domain name and the Complainant's trademark, the one difference is the omission of the word "the" from the disputed domain name. This does not detract from the fact that the dominant part of the Complainant's trademark has been incorporated in the disputed domain name. The additional word "China" is insufficient to remove the likelihood of consumer deception. It would lead others to think that the said domain name is specific to the Complainant's activity in China.

The Respondent is not a licensee of the Complainant nor in any way associated with the Complainant. The Complainant has never authorized the Respondent to register and use any domain name. The Complainant's Chinese trademarks all predate the Respondent's registration of the domain name on 24 January 2010 by many years. The website contains a link to a commercial website illegally offering the Complainant's cosmetic products for sale into China, where the Complainant's products are not registered and may not be sold legally under Chinese law. The Respondent is using the Complainant's trademark as a domain name to bring people to website that offers goods not authorized by the Complainant.

In the light of the fame and reputation of the Complainant's trademark globally and in China, the disputed domain name can only refer to the Complainant. The obvious implied reference to such a well-known brand by a part with no connection to the brand has been consistently found to be an indicator of opportunistic bad faith. The domain name started redirecting to the website offering the Complainant's unregistered products right after it was registered in January 2010 and the website identifies itself currently as the "unofficial website of the THE BODY SHOP". The Respondent registered the domain name with full knowledge of the Complainant's trademark rights as evidence by the direct referral to the Complainant and its trademarked product on its home page screen. The disputed domain name was previously used by the Respondent to sell the Complainant's cosmetic goods into China by hosting a website which made substantial use of the Complainant's registered trademarks and copyright-protected images in such a way that would lead to confusion by Internet users. The Respondent has also intentionally attempted 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 its website or of a product on its website.

The domain name is currently still being used for commercial purpose. The Respondent has intentionally attempted to attract for commercial gain Internet users to its website and other on-line location by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of its website or location or of a product or service on its website or location .

The Respondent

The Respondent did not reply to the Complaint.

5. Findings

Under the Policy, the Complainants must prove that:

- (i) the domain name is identical or confusingly similar to a trademark or service mark in which it 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.

(1). Identical/confusing similarity

The disputed domain name consists of a well-known trademark with the addition of the geographic description, China, the removal of the definite article and the usual addition of the generic top-level domain ".com". The trademark consists primarily of two common generic words which, nevertheless, only appear very rarely together except in the Complainant's trademark. The definite article here contributes no particular strength to the trademark.

The test of confusing similarity is one of whether a reasonable Internet user would be confused as to the identity of the owner of the domain name. When faced with a well-known trademark shorn of its almost irrelevant definite article, and a geographic description like China, such confusion is likely to exist with the obvious inference to the user that the website to which the domain name resolves represents in some way the Complainant's business in China.

For these reasons, the Panel concludes that the disputed domain name is confusingly similar to the trademark in which the Complainant has rights.

(2). Rights or Legitimate Interests of Respondent

The Respondent is not called "Body Shop" or anything similar and does not appear to trade under that or any related name. There is no evidence that the Complainant has authorized the Respondent to use its trademark. The Respondent has never asserted any rights or legitimate interests in that name or replied to the Complaint on the subject. For these reasons, on the basis of the available record, notably the absence of a Response, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

(3). Bad faith

The name, "Body Shop", has no independent significance or meaning except as the Complainant's trademark and trading name. The Complainant's trademark was registered in China, Hong Kong and elsewhere many years before the domain name was registered.

A 2010 screenshot of the website to which the disputed domain name resolved shows references to "The Body Shop" and a treatment for oily skin and an elderflower cooling eye gel of the type that the Complainant might be expected to sell. It is apparent from this that the Respondent knows of the Complainant's business and its likely ownership of its trademark. (Currently, the domain name resolves to a standard parking page.) The Respondent appears to have registered and been using the disputed domain name knowing of the Complainant's name and likely trademark rights. It is provided no justification for doing this.

The only available explanation of what has happened is that the Respondent's motive in registering and using the sites seems to be do one or more of the following: disrupt the Complainant's relationship with its customers or potential customers, attempt to attract Internet users for potential gain or persuade the Complainant to buy the domain name from it for an amount in excess of the Respondent's out-of-pocket expenses. These all constitute evidence of registration and use in bad faith: paragraph 4(b) of the Policy.

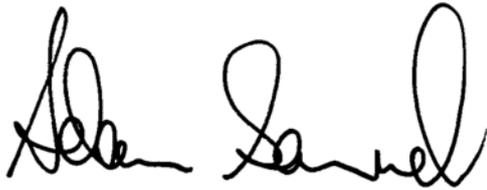
For these reasons, the Panel concludes that the Respondent registered and used the contested domain name in bad faith.

6. Conclusions

The Complainant has proved its case. It has registered Hong Kong and Chinese trademarks in a name THE BODY SHOP to which the contested domain name is confusingly similar. The Respondent has shown no rights or legitimate interest in the name. The Complainant has proved that the Respondent registered and has used the domain name in bad faith. In the circumstances, it is unnecessary to deal with the other points raised in the complaint.

For all the above reasons, in accordance with paragraph 4 of the Policy, the Panel orders that the domain name <bodyshopchina.com> be transferred to the 1st Complainant.

Dated 23 November 2011

A handwritten signature in black ink, appearing to read 'Adam Samuel', written in a cursive style.

Adam Samuel