



# ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

— A charitable institution limited by guarantee registered in Hong Kong

(Hong Kong Office)

## ADMINISTRATIVE PANEL DECISION

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Case No.	HK-1100408
Complainant:	Skytan (dba ShuziQi)
Respondent :	Yang Tae Sik

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### 1. THE PARTIES

The Complainant is Skytan (dba ShuziQi), United States of America ("US").

The Respondent is Yang Tae Sik of Korea.

### 2. THE DOMAIN NAME AND REGISTRAR

The disputed domain name <shuzi.com> (the "Disputed Domain Name") is registered with OnlineNIC, Inc. (the "Registrar").

### 3. PROCEDURAL HISTORY

The Complaint was filed with the Asian Domain Name Dispute Resolution Center (the "Center") on 28 November 2011. On 2 December 2011, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On 9 December 2011, the Registrar transmitted by email to the Center its verification response, confirming, amongst other things, the Respondent as the registrant of the Disputed Domain Name. The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

On 12 December 2011, the Complainant submitted to the Centre a revised Complaint. On the same day, in accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings were commenced. In accordance with the Rules, paragraph 5(a), the due date for Response was 1 January 2012. The Respondent submitted its Response to the Centre on 16 December 2011.

Both parties elected to have the Complaint decided by a sole panelist. On 12 January 2012, the Centre appointed Gabriela Kennedy as the sole panelist in the matter. The Panel finds that it was properly constituted. The Panel has submitted the Statement of

Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. **FACTUAL BACKGROUND**

The Complainant is a US company that trades under the name of "ShuziQi" and sells functional / healthcare jewelry and accessories, which incorporate Nano vibrational technology. The Complainant sells its products in numerous countries around the world, including Korea, Australia, Canada, France, Hong Kong, Italy, Singapore and the United Kingdom through local distributors and has been in business and sold its products internationally since at least 2004. The Complainant owns numerous registrations for the SHUZI mark in various jurisdictions including Australia, China, the European Union, New Zealand, and the US, the earliest of which (according to the available records provided by the Complainant) was registered in April 2008. The Complainant also holds the domain name <shuziqi.com>, which was registered on 11 September 2006, and through its distributors, holds various other domain names incorporating SHUZI, including <shuziqi.kr>, <shuzichina.com>, <shuzi.com.au>, and <shuzi.usa.com>.

The Respondent is an individual residing in Korea. The Respondent registered the Disputed Domain Name on 5 January 2000. As at the date of this decision, the Disputed Domain Name resolves to a website displaying a message that the site is under construction and that the relevant website operator is seeking founding members for a Chinese business, and containing mainly inoperable links to pages with miscellaneous labels, including "digital", "beauty" and "system" (the "Website").

5. **PARTIES' CONTENTIONS**

**A. Complainant**

The Complainant's contentions can be summarised as follows:

- (a) The Disputed Domain Name is identical or confusingly similar to the Complainant's SHUZI trade mark:
  - (i) the Complainant has sold its products in over 14 different countries and has been in business for the past seven years, and is known by the majority of its customers as "Shuzi";
  - (ii) the Complainant and its partners / distributors owns numerous domain names incorporating SHUZI; and
  - (iii) the Complainant owns registrations for the SHUZI trade mark in the US, as well as the European Union, China, Japan, New Zealand and Australia.
- (b) The Respondent does not have legitimate rights or interests in the Disputed Domain Name:
  - (i) the Respondent has held the Disputed Domain Name for almost 12 years without ever setting up a website; and

- (ii) in response to the Complainant's offer to purchase the Disputed Domain Name, the Respondent offered to co-own the Disputed Domain Name with the Complainant and thereby partner with the Complainant to set up a 'digital business'.
- (c) The Disputed Domain Name has been registered and is being used in bad faith:
  - (i) the Respondent is looking for someone with a business who has interest in the Disputed Domain Name and is trying to force his way into the business as a shareholder even though he has no legitimate business or contribution to the Complainant's business;
  - (ii) the Respondent does not have an active business and neither is the Respondent pursuing businesses related to the Disputed Domain Name; and
  - (iii) a Google search for the Respondent's email address shows that he owns other names that are not being used, such as the domain names: <xitong.com>, <meinu.com>, <baifen.com>, and <bingdu.com>.

## **B. Respondent**

The Respondent's contentions can be summarised as follows:

- (a) the word "shuzi" means digital in Chinese and as early as 2000, the Respondent was planning to use the Disputed Domain Name to operate a digital business;
- (b) the Respondent (natively Korean) has been learning the Chinese language and is interested in doing business in China;
- (c) the Respondent is looking for a business partner and is planning to start a business once all the necessary resources have been prepared;
- (d) the Respondent has been contacted by the Korean representative of the Complainant and has informed such representative that the Disputed Domain Name would not be for sale as the Complainant's business is not related to the digital business that the Respondent is planning to engage in;
- (e) subsequently, in email correspondence with Erik Chang (a representative of the Complainant), the Respondent offered to do business with the Complainant using the Disputed Domain Name on the basis that the Respondent believed Erik Chang to be Chinese and the Respondent was looking for a Chinese partner, given that the Disputed Domain Name is more meaningful in Chinese;
- (f) if the Respondent had known that Erik Chang wished to use the Disputed Domain Name for the Complainant's business, the Respondent would have informed him that the Disputed Domain Name was not for sale, given that the Complainant's business is far removed from the digital business that the Disputed Domain Name is meant for;

- (g) the Respondent has been discussing his business plan with programmers and digital business specialists in order to gauge whether such plan can be successfully realised and commercialised; and
- (h) the Respondent has not heard of the Complainant and has never thought of doing any harm to the Complainant.

## 6. DISCUSSION AND FINDINGS

Under paragraph 4(a) of the Policy, the burden of proof lies with the Complainant to show each of the following three elements:

- (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- (iii) the Disputed Domain Name has been registered and is being used by the Respondent in bad faith.

### (i) Identical or Confusingly Similar

The Panel accepts that the Complainant has rights in respect of the SHUZI trade marks on the basis of the numerous trade mark registrations owned by the Complainant for such marks.

It is a well-established rule that in making an enquiry as to whether a trade mark is identical or confusingly similar to a domain name, the domain extension, in this case <.com>, should be disregarded (*Rohde & Schwartz GmbH & Co. KG v Pertshire Marketing Ltd*, WIPO Case No. D2006-0767).

The Disputed Domain Name incorporates the Complainant's SHUZI mark in its entirety.

The Panel accordingly finds that the Disputed Domain Name is identical to the Complainant's SHUZI mark, such that element 4(a)(i) of the Policy is satisfied.

### (ii) Rights or Legitimate Interests

Paragraph 2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions ("WIPO Overview") states that once a complainant makes a *prima facie* case in respect of the lack of rights or legitimate interests of the respondent, the respondent carries the burden of demonstrating it has rights or legitimate interests in the disputed domain name. Where the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Panel finds that there is no evidence to show that the Respondent has any rights in any trade marks or service marks which are identical, similar or related

to the Domain Name. Therefore, the Panel will assess the Respondent's rights in the Domain Name (or lack thereof) based on the Respondent's use of the Disputed Domain Name in accordance with the available record.

The Panel accepts that the Complainant has not authorised the Respondent to use the SHUZI trade mark and that there is otherwise no connection between the Complainant and the Respondent. The Panel further accepts that the Respondent has not become commonly known by the Disputed Domain Name. However, the Panel notes that "Shuzi", if interpreted as being an English transliteration (or *Pin Yin*) of Chinese characters, can refer to a generic Chinese dictionary word, such as the Chinese characters / word meaning "digital", as contended by the Respondent in the Response.

The Panel notes that according to paragraph 2.2 of the WIPO Overview, a respondent does not automatically have rights or legitimate interests in a domain name comprised of a dictionary word, but such rights or interests can be inferred if the respondent is able to show one of the three circumstances under paragraph 4(c) of the Policy and in light of other relevant factors, including the status and fame of the trade mark in question, whether the respondent has registered other domain names containing dictionary words or phrases, and whether the domain name is used in connection with a purpose relating to its generic or descriptive meaning. In this regard, the Panel notes the Respondent's record of registering domain names representing English transliterations of generic Chinese words / characters (namely "xitong" (meaning, amongst other things, system); "meinu" (meaning, amongst other things, beautiful girl/woman); "baifen" (meaning, amongst other things, one hundred percent); and "bingdu" (meaning, amongst other things, virus) indicates that the Respondent is in the practice of registering generic dictionary words as domain names (rather than trade marks), such that it is more likely than not that the Respondent is using the Disputed Domain Name in a descriptive, rather than a trade mark sense.

The Panel is mindful of the Complainant's contention (raised in correspondence to the Centre on 12 December 2011 by electronic mail, subsequent to the filing of the Complaint) that the Website content was only placed on the Website on 29 November 2011, that is, one day after the filing of the Complaint, and that prior to this date, the Website contained no content. Further, the Panel notes that a screenshot history search for the Disputed Domain Name reveals that as at March 2009, the Website featured a parking page containing miscellaneous links, including links that seem to refer to the Complainant / its healthcare jewelry and accessory products, namely "Shuzi Watch", "Health and Beauty" and "Nano Technology". The Panel accepts that in other circumstances, the above two facts would not ordinarily constitute the actions of a registrant capable of demonstrating rights or legitimate interests in a relevant domain name. However, on the facts of the present case, the Panel finds insufficient evidence to rebut the Respondent's apparent rights and/or legitimate interests in the Disputed Domain Name, given that the Disputed Domain Name is, more likely than not, used to refer to a generic, Chinese word and that the present use of the Website contains

no evidence of use of the Disputed Domain Name otherwise than for noncommercial or fair use, given the noted absence of any sponsored links or other apparent profit-generating activities.

The Panel accordingly finds that the Complainant has not satisfied paragraph 4(a)(ii) of the Policy in respect of the Disputed Domain Name. However, as the Panel anticipates that it is at least arguable that the name "Shuzi" is not wholly generic, it will proceed to discuss its findings under the third element of the Policy.

**(iii) Registered and Used in Bad Faith**

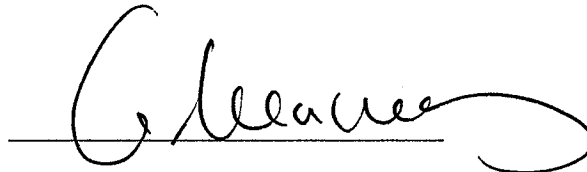
For the Complainant to succeed in this claim, the Complainant must satisfy the Panel that the Respondent knew or was likely to have known of the Complainant's SHUZI trade mark at the time of registering the Disputed Domain Name (in January 2000). However, given that the Complainant did not commence its business until at least 2004 and did not register its first SHUZI trade mark until April 2008, there is no possible basis upon which the Panel can find that the Respondent registered the Disputed Domain Name with knowledge of the Complainant or its SHUZI mark.

The Panel accordingly finds that the Complainant has failed to discharge the burden of proving that the Respondent registered the Disputed Domain Name in bad faith, and paragraph 4(a)(iii) of the Policy has not been satisfied.

As the Panel finds that the Complainant has failed to discharge its burden of proof under paragraph 4(a)(iii) of the Policy in respect of bad faith registration, it considers it unnecessary to proceed to consider the satisfaction or otherwise of the requisite elements regarding bad faith use.

**7. DECISION**

For all the foregoing reasons, the Panel orders that the Complaint be denied.

A handwritten signature in black ink, appearing to read 'G. Kennedy', written over a horizontal line. The signature is cursive and extends to the right of the line.

Gabriela Kennedy  
Sole Panelist

Date: 26 January 2012