



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1300555
Complainant:	The Body Shop International Plc
Respondent:	Gu Yingjun
Disputed Domain Name(s):	<thebodyshop-cn.net>

1. The Parties and Contested Domain Name

The Complainant is The Body Shop International Plc, of Watersmead, Littlehampton, West Sussex BN17 6LS, United Kingdom.

The Respondent is Gu Yingjun, of Room 401, No. 26, Lane 650, Yang Qu Road, Shanghai, P.R. China, whose email address is rex_gu@163.com.

The domain name at issue is <thebodyshop-cn.net>, registered by Respondent with eNom, Inc., of 5808 Lake Washington Boulevard, Suite 300, Kirkland, Washington, USA.

2. Procedural History

On 17 October 2013, the Complainant submitted a Complaint to the Hong Kong Office of the Asian Domain Name Dispute Resolution Center (“Center”), pursuant to the Uniform Domain Name Dispute Resolution Policy (“Policy”) adopted by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on 24 October 1999. The Center confirmed receipt of the Complaint that same day. The Complainant elected that this case be decided by a single panelist.

Also on 17 October 2013, the Center transmitted by email to the Registrar, eNom, Inc., a request for registrar verification of the disputed domain name. On 18 October 2013, the Registrar transmitted by email to the Center its verification response, confirming that the Respondent is listed as the Registrant and providing contact details as: telephone: +86.13816823341; fax: +1.5555555555; and email address rex_gu@163.com.

On 1 November 2013, the Center transmitted the Complaint and evidence to the Respondent, by email addressed to rex_gu@163.com, notifying the Respondent of the commencement of the action and requesting that the Respondent submit a Response

within 20 calendar days, further specifying the due date as being on or before 21 November 2013.

On 22 November 2013, the Center replied to the Complainant, advising that a Response to the Complaint had not been submitted to the Center within the required period of time. Since the Respondent defaulted and did not mention the Panel selection in accordance with the time specified in the Rules, the ADNDRC Supplemental Rules, and the Notification, the Center informed the Complainant and Respondent that the Center would appoint a single-member panel to proceed to render the decision.

On 22 November 2013, having received a Declaration of Impartiality and Independence and a Statement of Acceptance, the Center notified the parties that the Panel in this case had been selected, with Mr. David KREIDER acting as the sole panelist. The Panel determines that the appointment was made in accordance with Rule 6 and Articles 8 and 9 of the Supplemental Rules.

Also on 22 November 2013, the Panel received the file from the Center. The Panel issued Administrative Order No. 1 ("Order No. 1") on 26 November 2013. Order No. 1 extended the time by which a decision shall issue in these proceedings to 12 December 2013.

The Language of the Proceedings

The Complainant's covering correspondence acknowledged that, "*... under Article 11 of the UNDRP Policy, the language of the administrative proceedings shall normally be the language of the Registration Statement, but the penal (sic) has the authority to decide otherwise*". The Complainant requested "*... that Chinese be the language of the current proceedings on the basis that the Respondent is located in China and is a PRC individual, and the homepage of the disputed domain name resolved to web pages written in Chinese. This shows that the Respondent could fully understand the nature of the Complaint and adequately respond to it if the Complaint is filed in Chinese*".

The Panel notes that the Complaint was filed in Chinese and that the relevant correspondence forwarded to the Respondent was written in Chinese, accompanied by English. Accordingly, the Complainant's expressed concern that the Respondent be capable of fully understanding "the nature of the Complaint" has, in the view of this Panel, been fully satisfied and rendered moot.

Further, Article 11 of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), adopted by ICANN on 30 October 2009, which are in effect for all UDRP proceedings in which a complaint is submitted to a provider on or after 1 March 2010, recites:

- (a) 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.

The Panel finding no “exceptional circumstances” to be present as might warrant a departure from the Article 11(a) mandate that the language of these proceedings be the English language, Order No. 1 directed the Claimant to submit the Complaint in English, in MS Word file format, not later than 17:00 hours Hong Kong time on 1 December 2013.

By email to the Center and the Panelist on 29 November 2013, the Claimant submitted the Complaint in English, in compliance with Order No. 1. The Complaint is signed by Claimant's Representative and dated 16 October 2013.

3. Factual background

The Complainant, The Body Shop International Plc., is the owner of the trademarks “美体小铺” (“Mei Ti Xiao Pu” in Chinese) and “THE BODY SHOP”. Since as early as 1992, the Complainant is also the registered trade name owner in the Mainland of China for the “THE BODY SHOP”. In addition, as early as 1994, the Complainant registered “bodyshop.com”, a top level domain name, which is directed to the Complainant's official website www.thebodyshop.com. Subsequently, the Complainant also registered “the-body-shop.com”; “thebodyshop.com”; and CN domains, including “thebodyshop.cn”; and “thebodyshop.com.cn”; among other variants, totaling 125 top or second level domain names.

The Complainant's Representative in these proceedings is Dr. Isabella Liu, a Partner with the Hong Kong Office of law firm Messrs. Baker & McKenzie.

The Respondent, Mr. GU Yingjun is a natural person, resident in Shanghai, P.R. China. The WHOIS search conducted by the Claimant reflects that the Respondent registered the disputed domain name on 11 January 2013. The Respondent has defaulted and has not submitted a Response to the Complaint.

4. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

- 1. The disputed domain name is identical to the Complaint's registered trademarks and trade name, which the Complainant owns prior rights, the similarity is sufficient to lead to consumer confusion.**

The Complainant is a well-known UK company engaged in the health and beauty retail businesses. Ever since its founder, Anita Roddick, opened the first “THE BODY SHOP” in

1976, the Complainant has established 2,748 branches with over 5,000 employees in 52 countries around the world. In as early as 1984, the Complainant entered the Hong Kong market, and is operating 49 stores in Hong Kong now. Further, as at 2012, the Complainant has opened 54 and 3 stores respectively in Taiwan and Macau Special Administrative Region. Meanwhile, the Complainant has also set up Airport Free Zone counters in Beijing and Shanghai since 2011. The Complainant was listed on the London Stock Exchange in 1985. In the fiscal year of 2011, the Complainant's revenue and stock price increased drastically. The Complainant's yearly revenue is around €1,344,000,000 (CNY 12,000,000,000)

The Complainant's main line of business includes high-end body and skin care products. Its “美体小铺” (“Mei Ti Xiao Pu” in Chinese) and “THE BODY SHOP” trademark is a distinctive dark green color based logo, indicating the natural and non-artificial nature of its line of products. The Complainant's products have a vast variety, over 600 types of hair and skin care products, 400 other skin care related products.

The Complainant calls itself as “Business as Unusual,” this is because unlike other businesses for profit, ever since the founding day of the Complainant's business, the Complainant focused on five principles: against animal testing, self-awareness, fair trade, protect our environment and human rights. Due to the efforts of the Complainant, UK and a number of other European countries have passed legislation banning animal testing. The Complainant has received praise from many international organizations.

According to the 1997 Interbrand survey criteria, the Complainant was named as the 28th top brand in the world and 2nd in the retail sector. The Financial Times voted the Complainant as the 27th most respected company in the world in a 1998 report. In 1999, the Complainant was voted the second most trusted brand in the UK by the Consumers Association. “THE BODY SHOP”/“美体小铺” (“Mei Ti Xiao Pu” in Chinese) based on its all-natural ingredients and high quality control philosophy, is highly influential internationally.

In the greater China region, the Complainant started its promotional campaign in Hong Kong Special Administrative Region and Macau Special Administrative Region for “THE BODY SHOP” and “美体小铺” (“Mei Ti Xiao Pu” in Chinese) brand a long time ago. The Complainant has opened counters at the airports in Beijing, and Shanghai, and its products are also extremely popular by Chinese consumers who purchase online.

Further, as described in detail by various related websites to “THE BODY SHOP”, the “美体小铺” (“Mei Ti Xiao Pu” in Chinese) and “THE BODY SHOP” cosmetics products has the closest to nature and conservation of human excellence efficacy. This efficacy has also been widely known in China's consumer groups making the brand more well known and loved by Chinese consumers.

The Complainant points out that “美体小铺” (“Mei Ti Xiao Pu” in Chinese) and “THE BODY SHOP” are well recognized by all the leading international cosmetic associations and received recognition from national official organizations in many countries. The Complainant received positive reinforcement from the China International Economic and

Trade Arbitration Commission in the form of a number of decisions in its favour, including CND-2004000025 and CND-2004000050 for dispute over "thebodyshop.com.cn"; CND-2004000026 and CN-20060182 for dispute over "bodyshop.cn", CND-2009000144 for dispute over "thebodyshop-china.com.cn", CND-2009000157 for dispute over "bodyshop.net.cn"; CND-2010000104 for dispute over "thebodyshop-sh.cn", Asia Domain Name Dispute Resolution Centre's decision in CN-1200600 for dispute over "thebodyshop-cn.com", CN-1200627 for dispute over "bodyshop-china.com", HK-1300479 for dispute over "china-thebodyshop.com", HK-1300492 for dispute over "thebodyshop-home.com", HK-1300497 for dispute over "buy-thebodyshop.com", and WIPO Domain Name Case DWS-2013-0001 for dispute over "thebodyshop.ws". In dispute resolution decision No. CND-2004000025 and No. CND-2004000050, the panel decided that "The Complainant had widely (inclusive of the Hong Kong Special Administrative Region and Taiwan) used the trademark "THE BODY SHOP" internationally, and the mark "THE BODY SHOP," due to the complainant's long term investment had become a well known and well respected mark internationally.

Within the disputed domain name "thebodyshop-cn.net", except for ".net" which denotes the category and level of the domain name, the domain name portion selected by the Respondent is "thebodyshop-cn", which includes the Complainant's trademark "THE BODY SHOP" in its entirety. The disputed domain name only includes an additional portion of "-cn", which is the abbreviation for "China" and is identical to China's top-level country domain ".cn". Therefore, the disputed domain is highly likely to be understood by visitors as "thebodyshop-China," which is an extremely misleading message to the general public stating that this disputed domain name is the Complainant's China website.

In addition, the Complainant had already registered the domain names "bodyshop.com" in 1994, it is very likely that the general public would think that the disputed domain name "thebodyshop-cn.net" belongs to the Complainant's PRC division.

2. The Respondent has no rights or legitimate interests in respect of the domain name

The Complainant owns the trade name and trademark rights of "THE BODY SHOP" in China and worldwide. The registrant does not own rights for "THE BODY SHOP". The Complainant confirms that the registrant is not a licensee of the Complainant and is not in any way associated with the Complainant. The Complainant has never authorized the Respondent to register and use the domain name "thebodyshop-cn.net".

From the above, it is submitted that the Respondent has no rights or legitimate interests in respect of the domain name.

3. The domain name was registered and is being used in bad faith

First, the Respondent is not a licensee of the Complainant nor in any way associated with Complainant to use Complainant's trademark. The Respondent clearly did not register the disputed domain name for legitimate business nor personal entertainment reasons. The Respondent's action to register the disputed domain name is clearly motivated by illegal commercial gains.

Second, as shown by the result of Complainant's investigation, the disputed domain name has been used by Respondent to sell illegally imported "THE BODY SHOP" products, the disputed domain name leads to a webpage that is almost identical to Complainant's official Hong Kong website. The Respondent also named its home page as "The Body Shop". The Respondent clearly has the knowledge that the pictures and trademarks used under the disputed domain are properties of the Complainant, and the Respondent never obtained permission from the Complainant to use the Complainant's properties. The Respondent's attempt to confuse consumers into believing that the disputed website is associated with Complainant's products and brand is clear, and its bad faith is obvious.

The website that is linked to the domain name under dispute states under the heading "About Us" that "*Shanghai Junsheng International Trade Co., Inc. is in partnership with The Body Shop International PLC*". This clearly shows the Respondent's ill intention to mislead and confuse consumers and obtain illegitimate commercial gain through its illegal acts.

The Respondent registered the disputed domain name knowing the Complainant's prior rights and the fame associated with Complainant that the Complainant spent years to build. The Respondent's ill intention and bad faith to free ride the Complainant's fame and long-term reputation is clear, therefore, the Complainant satisfied the three requirements set out in Article 4(a) of the Uniformed Domain-Name Dispute-Resolution Policy.

Based on the above arguments, the Respondent does not have any legal rights and registered the disputed domain name in bad faith. Allowing the disputed domain name to remain registered will lead to public confusion, therefore, the Complainant's plead to have the disputed domain name transferred to Complainant should be answered.

B. Respondent

The Respondent has defaulted and has not submitted timely a Response to the Complaint.

5. Findings

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:

- (a) Respondent's domain name must be identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (b) Respondent has no rights or legitimate interests in respect of the domain name; and
- (c) Respondent's domain name has been registered and is being used in bad faith.

The Panel will address these three requirements *seriatim*:

A) Identical / Confusingly Similar

The disputed domain name incorporates the Complainant's trademark "THE BODY SHOP" in its entirety, to which has been appended the suffix "-cn", which is the abbreviation for "China" and is identical to China's top-level country domain ".cn", under the top level domain ".net". The whole of the Complainant's trademark having been incorporated within the disputed domain name, the Panel finds that the disputed domain name is identical in substantial part, and is therefore confusingly similar, to the Complainant's registered trademarks and trade name.

B) Rights and Legitimate Interests

The Complainant is the registered trade name owner for the "THE BODY SHOP", which was registered in China as early as 1992. As early as 1994, moreover, the Complainant had registered "bodyshop.com," a top level domain name, which resolves to the Complainant's official website www.thebodyshop.com. Thereafter, the Complainant also registered "the-body-shop.com"; "thebodyshop.com"; and various similar CN domains, including "thebodyshop.cn" and "thebodyshop.com.cn", among others, totaling 125 top or second level domain names. The Panel finds on the evidence adduced by the Claimant that the Respondent, who has filed no response and has defaulted in these proceedings, has no rights or legitimate interests in respect of the domain name.

C) Bad Faith

The disputed domain name resolves to a webpage that is identified by the heading "The Body Shop", portraying the Claimant's pictures and trademarks, which, the Claimant proffers, offers for sale unauthorised "The Body Shop" products. The Panel finds that the Respondent registered and used the domain name in bad faith, with the intent and for the purpose of attracting Internet users to Respondent's website for commercial gain, by creating a likelihood of confusion with the Claimant's mark as to the source of the products being offered for sale.

6. Decision

Having established all three elements required under Art. 4(a) of the ICANN Policy, the Panel concludes that relief should be granted. Accordingly, it is ordered that the

<thebodyshop-cn.net> domain name must be TRANSFERRED from the Respondent to the Complainant.

David KREIDER
Sole Panelist

Dated: 2 December 2013