

**Administrative Panel Decision
In the matter of**

Between

Zurich Insurance Company Ltd
[Complainant]

And

Bras Juncs
[Respondent]

Case ID: KLRCA/ADNRC-150-2013

1. The Parties

The Complainant is Zurich Insurance Company Ltd of Mythenquai 2, P.O. Box 8022, Zurich, Switzerland, a limited public company incorporated in Switzerland.

The Respondent is Bras Juncs of Benie Balopae, 84 Maduala Road, Thorpe, WV 24888 NG.

2. The Domain Name

The disputed domain name is Zurich-Insurances.com.

3. Procedural History

The Complainant submitted its Complaint pursuant to the Uniform Domain Name Dispute Resolution Policy (“the Policy”) adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) to the Kuala Lumpur office of the Asian Domain Name Dispute Resolution Centre (ADNDRC) on 21 June 2013. In accordance with the Rules for the Uniform Domain Name Resolution Policy (“the Rules”), the proceedings formally commenced on 26 July 2013.

The Respondent did not submit any response or request for any additional time as provided by the Rules.

Wong Jin Nee, was appointed as the sole panellist in conformity with the Policy and the Rules. The Panellist has submitted a statement of Declaration of Impartiality and Independence as required by ADNDRC.

4. Factual Background

The Complainant, with its headquarter located in Switzerland, is one of the leading insurance service providers worldwide, including the Asia Pacific region and specifically Malaysia.

The Complainant is registered proprietor of the trade marks “Z ZURICH”, “Z ZURICH TAKAFUL”, “ZURICH HELPPPOINT” AND “ZURICH INFOSHELF” in classes 9, 16, 35 and 36 for various goods and services in Malaysia, in particular relating to insurance services, a list and further details of such registrations are shown in Annex 3 and Annex 4. The Complainant has also registered a large number of trade marks including the trade mark “ZURICH INSURANCE” in various countries including Brazil, Canada and Argentina. Similarly the list and details of such registrations are set out in Annex 3 and Annex 4.

The Complainant has registered many domain names incorporating the designations “zurich” and “insurance” including www.zurich.com, www.zurich.com.my and www.mciszurich.com.my and many others.

The Complainant stated that it has over the years built up a substantial reputation and goodwill in the trade mark “Zurich”.

The Respondent created the disputed domain name ZURICH-INSURANCES.COM on 23 February 2013 [as per the Whois extract as shown as Annex 1]. Copies of the print-screens of the Respondent’s website are adduced as Annex 5.

The Respondent operates a website known as “zurich-insurances.com” without the Complainant’s consent or license. The Complainant had lodged complaints with the Malaysian Communications and Multimedia Commission (MCMC) that the Respondent’s website was misrepresenting to the public that it was Zurich Insurance Malaysia Berhad and had adopted the Complainant’s image and contents. Copies of the Complainant’s communication with MCMC regarding the fake/clone website operated by the Respondent and MCMC’s response on the actions taken against the Respondent’s website are adduced as Annex 2.

5. The Complainant’s Contentions

The Complainant relies on the above stated facts and contends that the Respondent does not have any rights or legitimate interests in the domain

name Zurich-Insurances.com. The Complainant has never authorised the Respondent to use word “Zurich” in the disputed domain name. The Complainant contends that the Respondent’s use of “Zurich” in the disputed domain name, constitutes a trade mark infringement and a misrepresentation calculated to pass off the Complainant’s website and/or services provided via the Respondent’s website as being in some manner connected, associated or linked to the Complainant. The Complainant further contends that the Respondent’s conduct has injured and continues to injure the Complainant’s business, goodwill and reputation.

The Complainant further submitted that save for the Respondent’s company name which appears on the website, it was unable to provide further details relating to the Respondent as no such company exists in the records of the Companies Commission of Malaysia. The purported contact details (address and telephone number) of the Respondent identified on the Respondent’s website in fact belong to AIA Bhd., another insurance company in Malaysia. The Complainant contended that Respondent’s website has been setup in bad faith with fraudulent intentions, i.e. to induce members of the public to engage in fraudulent financial transactions or to conduct phishing.

The Complainant requests that the disputed domain name, Zurich-Insurances.com be transferred to the Complainant.

The Respondent did not file any response.

6. Discussions and Findings

Paragraph 4(a) of the Policy provides that a Complainant must prove that each of the following elements is present in order to prevail:

- (i) the Respondent’s domain name is identical or confusingly similar to a trademark 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 name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

Identical or Confusingly Similar

The Panel finds that the Complainant has adduced sufficient evidence to demonstrate that that it is the registered proprietor of the ZURICH trade marks in various jurisdictions including Argentina, Brazil, Canada and Malaysia. The disputed domain name Zurich-Insurances.com incorporates the Complainant’s

Zurich and/or Zurich Insurance trade marks. The Panellist has no difficulty in finding that the disputed domain name is identical or confusingly similar to the Complainant's Zurich trade marks.

Rights and legitimate interests

The Policy provides that the Respondent may prove its right and legitimate interest in the disputed domain name by substantiating with evidence that:

- (i) before the date of the Respondent being informed of the Complainant's dispute, the Respondent had used or made preparations to use the disputed domain name or a name corresponding to the disputed domain name in relation to a genuine offering of goods or services; or
- (ii) the Respondent is commonly known by the disputed domain name even though it has acquired no trade mark or service mark right in the same name; or
- (iii) the Respondent is using the disputed domain name for legitimate, non commercial and/or fair purposes and has no intention of using the same for profits or to deceive the public.

The Respondent did not file any response to refute the Complainant's assertions and contentions.

In light of the Respondent's failure to proffer any explanations and justifications, the Panel finds that there is no evidence on record to demonstrate that the Respondent has rights or legitimate interests in respect of the disputed domain name Zurich-Insurances.com or it has acquired any trade mark right in the same. The Respondent has not been authorised by the Complainant to operate the website or provide its services by reference to the Complainant's Zurich trade marks. The Complainant has in fact lodged complaints with the authorities (MCMC and intends to lodge a complaint to the Ministry of Domestic Trade, Cooperatives and Consumerism and Police regarding the Respondent's website) that the website operated by the Respondent is a clone or fake website that is falsely misrepresenting to the public that the Respondent's website is somehow connected, associated or linked to the Complainant.

Accordingly, the Panel finds that the Respondent has failed to establish any right or legitimate interest in the disputed domain name.

Bad faith

The Policy further stipulates that the evidence of bad faith registration and/or use of the Domain Name may include, amongst others, by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 its web site or location or of a product or service on its web site or location.

The Complainant has repeatedly stated that the Respondent has registered the disputed domain name in bad faith as there was a clear intention that the Respondent, by operating a website using the disputed domain name, deliberately misrepresents to potential customers that the Respondent's website is somehow connected to or associated with the Complainant. The Complainant further contends that the Respondent adopted the image and contents of the Complainant's website and had adduced print-screens of the Respondent's website and relevant web-pages in Annex 2 and Annex 5.

The Complainant has also highlighted numerous examples to support its contention that the Respondent has registered the disputed domain name in bad faith with fraudulent intentions to induce members of the public to engage in fraudulent financial transactions or to conduct phishing:

- (a) the fact that the Respondent adopted the words "Zurich" and "Insurance" as its domain name when it has no connection whatsoever to the Complainant;
- (b) the Respondent has provided false contact address and telephone number on the Respondent's website - it used the address of AIA Berhad;
- (c) the Respondent's website went offline after MCMC had intervened with the current hosting provider to disable access.

As indicated above, the Respondent did not contest any of the Complainant's assertions of facts nor its contentions. In particular, based on the manner in which the Respondent had adopted the images and contents of the Complainant's website and used fictitious contact details, and given the extent of fame and reputation of the Complainant's Zurich trade marks, the Panel finds that the Respondent has created a situation whereby users are likely to be misled or confused into thinking that the Respondent's website is connected to or at least associated with the Complainant and the Respondent is using the disputed domain name for the purposes of and with the intention to mislead or deceive potential customers of the Complainant's services to its website. Further, the Respondent's conduct by changing its hosting provider after MCMC's intervention clearly indicated that it has intention to mislead and deceive members of the public into believing that it is somehow connected with, associated or linked to the Complainant. It is obvious that the Respondent has actual knowledge of the Complainant's rights.

The Panel finds that disputed domain name has been registered and used in bad faith since the Respondent registered and is using the disputed domain

name for the purposes of and with the intention to attract or divert, for commercial gain, Internet users to the Respondent's website by creating a possibility of confusion or deception that the web site and/or online location is operated or authorised by, or otherwise connected with the Complainant and/or its Zurich trade marks.

In view of all the evidence submitted by the Complainant, the facts and circumstances, and in particular, the Respondent's failure to respond or refute the Complainant's contentions, the Panel finds that the disputed domain name has been registered and used in bad faith.

7. Conclusion

Based on the foregoing reasons and findings, the Panel directs that the disputed domain name Zurich-Insurances.com be transferred to the Complainant.

A handwritten signature in black ink, appearing to read 'Wong Jin Nee', is written above a horizontal dotted line.

Wong Jin Nee

Sole Panellist

Date: 1 August 2013