



Asian Domain Name Dispute Resolution Centre

seoul

(Seoul Office)

ADMINISTRATIVE PANEL DECISION

Case No. KR-1800183

Complainants: Samsung Electronics Co., Ltd.(Authorized Representative Bae, Kim & Lee IP Group)

Respondent: Liu Fa Yang

Disputed Domain Name(s): samsungiot.com

1. The Parties and Contested Domain Name

The Complainant is Samsung Electronics Co., Ltd. of 129, Samsung-ro, Yeongtonggu, Suwon-si, Gyeonggi-do, Republic of Korea.

The Respondent is Liu Fa Yang of Yi Cheng Qu Di Ge Zhen, Zao Zhuang Shi, Shan Dong, China.

The domain name at issue is <samsungiot.com>, registered by HiChina Zhicheng Technology Ltd.

2. Procedural History

The Complaint was filed with the Seoul Office of the Asian Domain Name Dispute Resolution Center (ADNDRC)[“Center”] on March 27, 2018, seeking for a transfer of the domain name in dispute.

On April 2, 2018, the Center sent an email to the Registrar asking for the detailed data of the registrant. On April 10, 2018, HiChina Zhicheng Technology Ltd. transmitted by email to the Center its verification response, advising that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the Centre's Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, the Centre formally notified the Respondent of the Complaint. The proceedings commenced on April 12, 2018 and the due date for the Response was May 2, 2018. No Response was filed by the due date.

On May 11, 2018, the Center appointed Mr. Moonchul Chang as the Sole Panelist in the administrative proceeding and with the consent for the appointment, impartiality and independence declared and confirmed by the Panelist, the Center, in accordance with paragraph 7 of the Rules, organized the Panel of this case in a legitimate way.

As the Panel requested the Center to clarify the language of registration agreement and Administrative Proceedings, the Center confirmed on June 11, 2018 that the Complaint was filed in English while the language of the registration agreement is Chinese. The Center formally informed the Respondent that the Complaint was filed in English and gave the Respondent an opportunity to comment on the language of Administrative Proceedings by June 18, 2018. However, Respondent did not respond to the Center's notification on the language of administrative proceeding by the due date.

3. Factual background

The Complainant is Samsung Electronics Co., Ltd, a Korean corporation which is one of affiliates of the Samsung Group, a global group company. The affiliates of Samsung Group are using Samsung as their business name. The Complainant owns trademark registrations for the SAMSUNG mark, in numerous countries including the Republic of Korea and China.

According to the publicly available WhoIs information and confirmed by the Registrar, the disputed domain name <samsungiot.com> was registered on April 10, 2017. The Respondent is not using the disputed domain name in connection with an active website.

4. Parties' Contentions

A. Complainant

The Complainant contends that:

(i) The disputed domain name <samsungiot.com> is confusingly similar to the Complainant's trademark SAMSUNG. It incorporates the Complainant's SAMSUNG mark in entirety with the addition of a term "iot." IOT is an abbreviation that refers to a network of internet-connected objects which is able to collect and exchange data. "SAMSUNG" is the dominant feature of the disputed domain name, causing confusing similarity to the Complainant's trademark. The Complainant is currently engaged in IOT business;

(ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has not authorized the Respondent to use the SAMSUNG mark for registration of any domain name incorporating the mark. There is no conceivable legitimate interest in the use of the disputed domain name by the Respondent;

(iii) The disputed domain name was registered and is being used by the Respondent in bad faith. The Respondent registered the disputed domain name which entirely incorporates the Complainant's famous and widely-known SAMSUNG mark without the Complainant's permission. Further, the Respondent is not substantially using the disputed domain name to operate for business purpose and only posts the advertisement for sale of the disputed domain name on his parking webpage. This indicates that the Respondent's intention of cybersquatting to register and sell a domain name which is similar to the famous and widely-known trademark to profit from it.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

5. Findings

5.1. Preliminary Issue: Language of Proceedings

According to paragraph 11(a) of the Rules, the language of the administrative proceeding shall be the language of the Registration Agreement unless the Panel determines otherwise. In this present case, the language of the Registration Agreement for the disputed domain name is Chinese.

However, the Complaint was filed in English. The Center formally notified the Respondent of the Complaint and also gave the Respondent opportunity to comment on the language of the proceeding. However the Respondent did not respond to the Center's notification on the language of administrative proceeding.

The spirit of paragraph 11 of the Rules is to ensure fairness in the selection of language by giving full consideration, inter alia, to the parties' level of comfort with each language, the expenses to be incurred, and the possibility of delay in the proceeding in the event translations are required and other relevant factors.

In consideration of the above circumstances and in the interest of fairness to both Parties, the Panel concludes, in view of all of the above, that it is appropriate to render this Administrative Panel Decision in English.

5.2. Merits

Under paragraph 4(a) of the Policy, the Complainants must demonstrate that the three elements enumerated in paragraph 4(a) of the Policy have been satisfied. These elements are that: 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:

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

A) Identical / Confusingly Similar

The disputed domain name <samsungiot.com> is comprised of two words: "samsung" and "iot". IOT is an abbreviation that refers to a network of internet-connected objects which is able to collect and exchange data. The dominant feature of the disputed domain name is "samsung" which is entirely identical to the SAMSUNG trademark and the word "iot" is only a descriptive suffix. Numerous UDRP panels have held that where a domain name substantially incorporates a complainant's trademark, this is sufficient to make the domain name "confusingly similar" within the meaning of the Policy (see *Amazon.com, Inc. v. MCL International Limited*, WIPO Case No. D2000-1678). The generic Top-Level Domain (gTLD) suffix ".com" can be disregarded under the confusing similarity test (see *DHL Operations B.V. v. zhangyl*, WIPO Case No. D2007-1653).

Accordingly, the Panel finds that the first element under paragraph 4(a) of the Policy has been met by the Complainant.

B) Rights and Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the overall burden of proof is on the Complainant. However, once the Complainant presents a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, the burden of production shifts to the Respondent (see *Belupo d.d. v. WACHEM d.o.o.*, WIPO Case No. D2004-0110; *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. D2003-0455).

Firstly, the Complainant contends that he has never licensed or authorized the Respondent to use the Complainant's trademark or to register any domain names incorporating the SAMSUNG mark. The Respondent has used the Complainant's trademark without permission from the Complainant. Here, the Panel finds that Complainant has made out a *prima facie* case

Secondly, the Complainant contends that the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services. In this case the Respondent failed to come forward with any appropriate allegations or evidence that might demonstrate its rights or legitimate interests in the disputed domain name to rebut the Complainant's *prima facie* case.

Thirdly, there is no evidence presented to the Panel that the Respondent has used, or has made demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services or is making a legitimate noncommercial or fair use of the disputed domain name. In addition there is no evidence to suggest that the Respondent has been commonly known by the disputed domain name.

Accordingly, the Panel concludes that the Complainant has satisfied the second element under paragraph 4(a) of the Policy in the present case.

C) Bad Faith

Paragraph 4(a)(iii) of the Policy requires that the disputed domain name "has been registered and is being used in bad faith". As this requirement is conjunctive, the Complainant must establish both bad faith registration and bad faith use of the disputed domain name. In addition, the circumstances listed in paragraph 4(b) of the Policy are not exclusive, and other circumstances may likewise lead to a finding of bad faith registration and use.

Firstly, regarding the bad faith registration, since the SAMSUNG mark is famous and widely-known in many countries, including the Republic of Korea and China, the Respondent is likely to have registered the disputed domain name with notice of the Complainant's trademark. Especially having considered that the Complainant has been engaged in IOT business, the Respondent was also aware of the Complainant's IOT business plan at the time of registering the disputed domain name.

Further, the Panel considers that the Respondent in all likelihood registered the disputed domain name with the expectation of taking advantage of the reputation of the Complainants' trademarks or selling it to the Complainants or other. This is supported by the fact that the Respondent is not using the disputed domain name in connection with an active website and is posting the advertisement of selling the domain name on his parking webpage.

On the other hand, regarding bad faith use, although the Respondent is not using the disputed domain name in connection with an active website, the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding especially considering the distinctiveness or reputation of the Complainant's trademark in this case. (WIPO Overview 3.0 para.3.3)

Accordingly, the Panel concludes that the Complainant has satisfied the third element under paragraph 4(a) of the Policy in the present case.

6. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <samsungiot.com> be transferred to the Complainant.

Moonchul Chang

Sole Panelist

Dated: June 26, 2018