



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

— A charitable institution limited by guarantee registered in Hong Kong

(Seoul Office)

ADMINISTRATIVE PANEL DECISION

Case No. KR-0900032
Complainant: ESTsoft Corp.
Respondent: wan Co. Ltd

1. The Parties & the Domain Name disputed

The Complainant:

ESTsoft Corp., 867-12, Bongcheon-dong, Gwanak-gu, Seoul 150-050, Seoul, Korea

Authorized Representative:

Shinsegi Patent Law Firm, 3 F., Yoong-Jun Building, 829-6, Yeoksam-dong, Gangnam-gu, Seoul 135-936, Republic of Korea

The Respondent:

Wan Co. Ltd, Star street, GuangZhou, 100001, GD, People's Republic Of China

The disputed domain name <cabal3.com> is registered with Beijing Innovative Linkage Technology Ltd. dba dns.com.cn, : 20th Fl., Block A, Technology square Qinghua Technology park, Haidian district, Beijing City, CHINA ".

2. Procedural History

The Complaint was filed with the Seoul Office of the ADNDRC (Asian Domain Name Dispute Resolution Center) [the 'Center'] on February 11, 2009.

The Center transmitted by email to the Registrar a request for Registrar verification in connection with the contentious domain name on February 11, 2009, February 12, 2009, February 15, 2009, and February 16, 2009. The Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the details for the administrative matter on February 18, 2009.

On February 19, 2009, the Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy") and the ADNDRC Supplemental Rules (the "Supplemental Rules").

On February 23, 2009, the Center transmitted "Complaint Transmittal Sheet" along with the Complaint to the Respondent by email, and the Center also sent a copy of the Complaint to the Respondent via registered mail service. However, the mail was returned to the Center for the incorrect address. On March 3, 2009, the Center, by email, notified the Respondent of the commencement of the proceedings as well as the due date, March 23, 2009, for the Respondent to submit the Response.

The Respondent has not submitted the Response until March 23, 2009, and the Center notified the Respondent of his missing the due date for the Response by email on March 24, 2009.

On March 25, 2009, the Center requested Moonchul Chang to be the sole panelist for the dispute case, and Moonchul Chang submitted the Statements of Acceptance and Declarations of Impartiality and Independence on March 25, 2009. On March 25, 2009, the Center noticed to the parties a notification that the Panel would be constituted; and on April 1, 2009, established the Panel legitimately in connection with this matter in accordance with paragraph 7 of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"). On April 1, 2009, the Center sent all the documents and materials received related to the Complaint to the Panelist, and confirmed that they reached the Panelist on April 2, 2009.

3. Factual Background

The Complainant, ESTsoft Corp., was founded in Korea in 1993 and has focused on producing internet software products such as ALZip (Multi-compression utility), ALSee (Picture viewer, editor and photo print ordering software), ALYac (Scan Trojan and virus in real time efficient PC management program), ALToolbar (Real application to help surf the web faster, safer and easier), ALFTP (Program for transferring and receiving files between servers and clients), ALSong (Play music with live lyrics and create custom mixed album compilations), ALShow (Movie and DVD player with the codec included). Among its products, ALZip is so popular that more than 13 million people use it.

In 2005 the Complainant also developed an internet on-line game which is called as “CABAL” OR “CABAL on line”. The game CABAL, New-age Stylish Action MMORPG (Massive Multi-player Online Role Playing Game), was a big success to the Complainant. The Complainant has expanded its business world-widely. In 2008, the game has been commercially launched in 55 countries including 45 countries in Europe. The number of the subscribers of the game in total is 22 million as of Dec. 2008.

The Complainant has applied and registered “CABAL” and “CABAL on line” as trade or service mark in many countries including Korea, Taiwan, Mexico, Thailand, USA, Hong Kong, and other European countries to become well-known world-widely. (See the list in Paragraph 7 of this Complaint) In addition the Complainant has also registered domain names comprising words “cabal” or “cabalonline”. Especially the Complainant registered many ccTLD in the related countries including China and Korea.

The Respondent registered the disputed domain name, <cabal3.com> on July 28, 2008 and has managed a website which allowed customers to play the game CABAL.

4. Parties' Contentions

A. Complainant

The Complainant alleges that:

(1) The domain name <cabal3.com> is confusingly similar to the complainant's trademark and service mark "CABAL". The only difference between them is that in the domain name, Arabian numeral "3" is added to the word "cabal." From the fact, it is likely that customers would be misled to recognize "cabal3" as the third version of the game CABAL.

(2) The Respondent has no right or legitimate interest in respect of the domain name in dispute. Further, considering that the Respondent had used the domain name in this Administrative proceeding in bad faith and illegally, there is no possibility for the Respondent to have any right or legitimate interest in the domain name under Paragraph 4(a) of the UDRP.

(3) Since the Respondent registered the domain name on July 28, 2008, it has used the domain name with the website of the "Free Server" which had allowed illegally customers to play the game CABAL without paying fees to the Complainant or the local publishers licensed by the Complaint, or with paying only small portion of regular fees to the Respondent. Because of such bad and illegal behavior of the Respondent, the Complainant has suffered lots of losses in Chinese market. The behavior of the Respondent was fallen under the factors in Paragraph 4(b) of the UDRP lists which is evidence of registration and use of a domain name in bad faith

B. Respondent

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

5. Discussion and Findings

(1) Preliminary Issue: Language of the Proceeding

According to paragraph 11 of the Rules, the language of the administrative proceeding shall be the language of the registration agreement unless the Panel decides otherwise. It is noted,

however, that the spirit of paragraph 11 is to ensure fairness in the selection of language by giving full consideration 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 this case, the Complainant filed the complaint in English and is not able to communicate in Chinese. On the other hand the Respondent has neither participated in these proceedings nor contended about the language issue.

Having considered the above circumstances and procedural fairness to parties, the Panel decides, under paragraph 11 of the Rules, that English shall be the language of administrative proceeding in this case. (See *Siemens Aktiengesellschaft v. bak jogsub*, WIPO Case No. D2006-0972).

(2) Review of UDRP Elements

In accordance with paragraph 4(a) of the Policy, in order to succeed in this proceeding and obtain the transfer of the domain name, the Complainant must establish that each of the three following elements is satisfied:

- (i) the domain name is identical or confusingly similar to the Complainant's trademark or service mark; and
- (ii) the Respondent has neither rights nor legitimate interests in the domain name; and
- (iii) the domain name is registered and used in bad faith.

A. Similarity between the Service Mark and the Domain Name disputed

The disputed domain name <cabal3.com> contains the Complainant's distinctive and widely known trademark "CABAL" in its entirety. Neither the addition of the Arabian numeral "3" as suffix nor the inclusion of the gTLD denomination ".com" alters the fact that the domain name is confusingly similar to the Complainant's trademark. (See *OSRAM GmbH v. Jae Gyu Park*, WIPO Case No. D2008-1578) Therefore, the Panel finds that the first element of the Policy has been established.

B. Rights or Legitimate Interests of the Respondent

The Complainant has neither licensed nor permitted the Respondent to use its trademark.

The Complainant alleges and has made a prima facie showing that the Respondent has no rights or legitimate interests in the domain name. The Respondent has not rebutted this and, based on the record of this case it is unlikely that any such rights or legitimate interests exist. Therefore, the Panel concludes that the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The trademark “CABAL” is widely known for internet online game in many countries including China in which the Respondent resides. Thus the Panel considers that the respondent most likely knew of the trademark prior to registering the domain name. It is also evidenced by the fact that the Respondent has utilized the domain name to manage the website titled as the “Free Server” which had allowed customers to play the game CABAL without paying fees to the Complainant or the local publishers licensed by the Complaint. Thus the Panel also considers that the Respondent intentionally registered and used the domain name to attract internet users to its website for commercial gain by creating confusion about the source, sponsorship, affiliation, or endorsement of its website. Therefore, the Panel concludes that the domain name was registered and is being used in bad faith.

6. Decision

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the domain name <cabal3.com> be transferred to the Complainant.

Moonchul Chang
Sole Panelist

Date: April 21, 2009