



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

— A charitable institution limited by guarantee registered in Hong Kong

(Seoul Office)

ADMINISTRATIVE PANEL DECISION

Case No. KR-1300080
Complainant: TVLogic Co., Ltd.
Respondent: Desmet & Associates, Inc.

1. The Parties & The Domain Name disputed

The Complainant:

TVLogic Co., Ltd., 12F, Ace High-End Tower 8, 345-4 Gasan-Dong, Geumchoen-Gu, Seoul 153-797, Korea

The Respondent:

Desmet & Associates, Inc., 7155 Greatwood Trail Alpharetta, Georgia 30005, United States

The disputed domain name is <tvlogic.net>, which is currently registered by the Respondent to “Wild West Domain, Llc., 14455 North Hayden Rd. #226 Scottsdale, AZ 85260”

2. Procedural History

The Complaint was filed with the Seoul Office of the Asian Domain Name Dispute Resolution Center ("ADNDRC")["Center"] on February 7 2013, seeking for a transfer of the domain name in dispute.

On February 28 2013, the Center sent an email asking for the detailed data of the registrant or the Respondent to the registration organization, and the registration organization, on March 28 2013, responded with the detailed data checked, including checking over the registrant.

On March 28, the Center examined whether the Complaint meets formal requirements set out in the Uniform Domain Name Dispute Resolution Policy (the "Policy"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the ADNDRC Supplemental Rules(the "Supplemental Rules").

On March 28, the Center sent to the Respondent the "Complaint Transmission Cover“ along with

the Complaint via email as well as via registered mail. When, the Center informed the Respondent of a due date, April 17 2013, for the submission of its Response.

On April 17 2013, the Respondent didn't submit the Response.

On April 30 2013, the Center appointed Mr. Do, Doo-Hyung to the Sole Panelist of this case, 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.

3. Factual Background

The Complainant was established in 2003 and ever since has been engaged in the manufacture and sale of broadcasting HD display and other broadcasting equipment under the trademark TVLogic.

The Complainant has its websites at www.tvlogic.co.kr and www.tvlogic.tv, from which the Complainant advertises its products and solicits orders from Korea as well as other countries.

The Complainant has its trademark "TVLogic" registered in Australia (April 11, 2007), Canada (February 23, 2010), China (January 7, 2010), EU (January 24, 2008), Japan (January 25, 2008), Korea (June 4, 2010) and USA (October 7, 2008).

The Respondent registered the disputed domain name on September 1, 2006.

The Panel accessed the disputed domain name on May 23, 2013, whose website showed, at the main page, a rectangular design with a black bar located at each of the left side and upper side, and inside the above rectangular design, the following words were written; "Home/ There are no pages available on this menu./Return to Main Page." When the Panel clicked the underlined portion of the above description, the main page did not respond and remained the same.

4. Parties' Contentions

A. Complainant

The Complainant makes the following contentions:

- (i) The Complainant is operating its two websites, namely, www.tvlogic.co.kr and www.tvlogic.tv and most of the Complainant's customers visit these websites to find information about the Complainant's products as well as to contact the Complainant.
- (ii) The Respondent was a distributor of the Complainant's products in the U.S.A. and as the above distributorship had been terminated, the Respondent has no longer any relationship with the Complainant.
- (iii) The Respondent is currently selling the products of the Complainant's competitor, but still using the disputed domain name to redirect the Complainant's customers and prospective customers to the competitor's brand.
- (iv) The Respondent has no rights or legitimate interests in the disputed domain name since the Respondent is no longer a distributor appointed by the Complainant and the Complainant is

a lawful owner of the trademark “TVLogic”.

- (v) The disputed domain name was registered and is being used in bad faith to attract customers and prospective customers of the Complainant’s products to the competitor’s products. The customers and prospective customers accessing the website based on the disputed domain name to find the information on the Complainant’s products have been confused and thereby the corporate image of the Complainant has been damaged.

B. Respondent

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

5. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to be entitled to a transfer of the disputed domain name, the Complainant shall prove 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 registrant 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.

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

The Complainant has used the term “TVLogic” as its trade name since its establishment in 2003 and registered TVLogic as trademarks in several countries since at least 2007.

The difference of whether capital letters were used between the Complainant’s trademark “TVLogic” and “tvlogic”, the distinctive element of the disputed domain name, is negligible and thus irrelevant when determining whether a domain name is confusingly similar to a registered trademark.

Furthermore, the addition of a generic top-level domain extension such as “.net” is irrelevant when determining whether a domain name is confusingly similar to a registered trademark.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademark, and that the Complainant has satisfied the first element of the Policy.

B. Rights or Legitimate Interests of the Respondent

Paragraph 4(c) of the Policy provides for some examples without limitations of how a respondent can demonstrate a right or legitimate interest in a domain name:

- (i) Before receiving any notice of the dispute, the respondent used or made demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services; or

- (ii) The respondent has been commonly known by the domain name; or
- (iii) The respondent is making a legitimate noncommercial or fair use of the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark at issue.

Based on the Respondent's default and on the *prima facie* evidence in the Complaint, the Panel finds that the above circumstances are not present in this particular case and that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant has not licensed nor authorized the use of its trademark to the Respondent, and there is no indication that the Respondent is commonly known by the disputed domain name.

The present record provides no evidence to demonstrate the Respondent's intent to use or to make demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. The webpage published at the disputed domain name does not show any indication that commercial activities are engaged.

Consequently, the Panel is satisfied that the Respondent has no rights or legitimate interests in the disputed domain name, and the Complainant has proven the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that the following circumstances in particular, but without limitation, shall be evidence of registration and use of a domain name in bad faith:

- (i) Circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name; or
- (ii) The respondent registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) The respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the domain name, the respondent has intentionally attempted to attract, for commercial gain, internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location.

The webpage published at the disputed domain name does not show any indication that commercial activities are engaged.

Furthermore, the Respondent had been a distributor appointed by the Complainant for the U.S.A., but, subsequent to the termination of the above distributorship, is currently engaged in the selling of the competitor's products.

Therefore, in doing so, the Respondent;

- (i) Disrupts the business of the Complainant by confusing the visiting customers into thinking that the Complainant's products are no longer commercially dealt with; and
- (ii) Deprives the Complainant from selling its products to prospective customers who are clearly looking for the Complainant.

Accordingly, the Panel finds that the Complainant has proved that the disputed domain name was registered and is being used in bad faith, satisfying the third element of the Policy.

6. Decision

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

Do, Doo-Hyung
Sole Panelist

Date: May 31 2013