



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (BEIJING OFFICE)

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Decision Submission

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Decision ID	DE-0400032
Case ID	CN-0400034
Disputed Domain Name	www.hallmart.net
Case Administrator	Xinmin Cui
Submitted By	Shaojie Chi
Participated Panelist	

Date of Decision	24-12-2004
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The Parties Information

Claimant	HALLMART LIMITED
Respondent	Michael Frank

Procedural History

On August 25, 2004, the Complainant submitted its first Complaint in Chinese to the Beijing Office of the Asian Domain Name Dispute Resolution Centre (the “Centre”), in accordance with the Uniform Domain Name Dispute Resolution Policy (the “Policy”) adopted by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on August 26, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the “Rules”) approved by ICANN on October 24, 1999, and Asian Domain Name Dispute Resolution Centre Supplemental Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the “ADNDRC Supplemental Rules”) being effected on February 28, 2002.

On August 30, 2004, the Centre confirmed the receipt of the Complaint and notified the registration information to the Registrar, ABACUS AMERICA, INC. DBA NAMES4EVER of the domain name in dispute.

On October 11, 2004, the Centre was informed that the Whois of the disputed domain name showed that the holder and the registrar of the domain name had been changed.

On October 17 2003, the Centre notified the disputing parties that the language of the proceeding be English, which was the language of the Domain Name Registration and Service Agreement between the Respondent and the Registrar.

On October 12, 2004, the Centre confirmed the registration information to the Registrar eNom, Inc. that confirmed the receipt of the information on October 14, 2004.

On October 15, 2004, the Centre notified the Complainant of the need to change Claim, and the notified party submitted a new Complainant in e-form to the Centre on November 2, 2004. The new Complainant was e-mailed to the Respondent on the same day of receipt.

On November 9, 2004, the Centre received the hard copy of the new Complaint and confirmed the receipt on November 12, 2004.

On November 12, 2004, the Centre notified the disputing parties, ICAAN and the Registrar of the commencement of the Proceedings.

On December 1, 2004, the Centre received the first e-mail from the Respondent and notified the Respondent to submit the formal Response, and conveyed the Respondent’s e-mail to the Complainant.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Mr. Chi Shaojie,

on December 7, 2004, the Centre informed the Complainant and the Respondent of the appointment of the Sole Panelist.

On December 7, 2004, the Centre transferred all the documents in hard copy to the Sole Panelist by post, and the latter confirmed the receipt of the mail.

The Sole Panelist finds that the Panel was properly constituted and appointed in accordance with the Rules and the ADNDRC Supplemental Rules.

On December 9, 2004, the Centre received the second e-mail from the Respondent and passed it on to the Sole Panelist.

Having requested the Respondent to submit the Response, the Centre has received no such a document from the requested party.

The language of the proceeding is English, as being the language of the Domain Name Registration and Service Agreement, pursuant to Paragraph 11(a) of the Rules, and also in consideration of the fact that there is no express agreement to the contrary by the disputing Parties.

Factual Background

For Claimant

The Complainant was registered and established in Hong Kong, China, in January 1999 and has been specialized in the business between China and European countries. The company is a general commercial and marketing entity involved in manufacturing process management, design, quality control, sourcing, etc. with a strong technical force focusing on the development of new products and high-techs. The Complainant has passed ISO9001 certification. The Complainant established permanent footing in Shenzhen, China in November 2003 under the name of Hong Kong Hallmart Limited's Shenzhen Representative Office, with Mr. Devoille Michel Jacques as the chief representative. The Complainant is an agent and representative institution of French Hi-tech companies, and has cooperated with Shenzhen Jingcheng Investment Development to jointly act in China as agent for imports and sales of feed and food additives bearing the mark of "Bonilait". In addition, the Complainant is involved in some other business in China. In all of its business activities, the trade name of HALLMART is indicated.

On March 3, 2003, the Complainant registered the domain name "hallmart.com.cn" in China through Xiamen-based agency called www.zzy.cn and subsequently set up a corresponding website to widely publicize its products and brand.

On July 13, 2004, the Complainant filed an application for the registration of the trademark "Hallmart" with the Chinese Trademark Office, covering such goods as money accounting and sorting machines.

For Respondent

The Respondent was duly notified by the Centre of the Claim lodged by the Complainant and asked to submit the Response in accordance with the relevant regulations under the Policy, the Rules and the ADNDRC Supplementary Rules, but failed to give any substantive defense against the Claim by the Complainant. In his e-mail dated November 30, 2004 in response to the notification by the Centre, the Respondent stated: "I purchased this domain in good faith, and not see how I fit in to this long dragged dispute, I have no knowledge of any Hallmart in China or Asia, nor have I ever been in contact with them, our company was registered in 1986 and have been trading ever since, our two companies e-shoppen & hallmart I/S are engaged in mail order club of gift & promotion items, now I purchased this domain in good faith, and the only reason why there is no website up is that as long as there is such dispute it would not make any sense to spend money on web design. Our intention is real. we intent to launch a new website on hallmart.net which offers gift and promotion items, we are perhaps the only real e-business which has full license & approval from the Danish business council to cooperate such. I like to stress again that I have absolutely no knowledge of the dispute, nor do I ever had any contact with the disputed parties which you mentioned in your enclosed letter, nor have we ever any knowledge of any such persons, like I said I purchased this domain in good faith, and have absolutely no involvement in this, nor do I know any of the names or companies mentioned."

In his e-mail dated December 8, 2004 to the Centre, the Respondent alleged as being quoted "regarding the domain name 'hallmart.net' I have been give those two e-mails from Asia2net which clearly shows that Asia2net did in fact offer the domain to Hallmart.Ltd which you can see from below. Like I said in my other e-mail, I have absolutely nothing to do with this dispute between Hallmart.Ltd and AWTO I'm totally innocent as I purchased this domain in good faith."

According to the search report on July 15, 2004 submitted by Complainant, the registrant of the disputed domain name

was “Jesper Mortensen (96KQ6)” with address as “ASIA2NET”, Finsensvej 8H, Copenhagen, DK-2000F, Denmark, e-mail address hostmaster@asia2net.com, telephone number “+45 (35)351286”, fax number “+44 870 1282079”. The Complainant lodged the Claim to the Centre on August 25, 2004, and the latter sent a notification to the then registrar “NAMES4EVER” asking for the lock of the disputed domain name being transferred or changed. Unfortunately, the Centre received no reply from the indicated registrar. A later search through Whois database showed that the registrant of the disputed domain name was changed to the Respondent, and under the “Other Information” item of the record by the new registrar ENOM, it is stated as registrar-transfer-date: 2004-10-05 11:36:14.0.

Parties' Contentions

Claimant

The Complainant contends that:

It was established in 1999 and has ever been doing business under the trade name of “Hallmart” and has set up its presence in China and parts of Europe. Under the Paris Convention, trade name shall be protected subject matter in all the signatory states;

It registered in China the top-level domain name “Hallmart.com.cn” on March 3, 2003, and worked out the corresponding website to publicize extensively its products and services;

It filed the application for the registration of trademark “Hallmart” with the Chinese Trademark Office on July 13, 2004;

The disputed domain name is identical or confusingly similar to the trade name, the registered domain name or the mark under the pending application of the Complainant’ s;

The Respondent has no prior right on the disputed domain name in that though the Respondent claims the company with which he is affiliated uses a name of “Hallmart I/S”, no information concerning the alleged name is found through web searching;

The Claimant found, through searching, that the disputed domain name had not been in use and it being in the hand of the Respondent hampers the Claimant’ s registration and use of the domain name;

The prior registrant of the disputed domain name registered and used the name in bad faith to harm the Claimant’ s reputation and destruct the Claimant’ s normal business activities;

The prior registrant of the disputed domain name transferred the name to the Respondent has ill intentions and the Respondent has close relation to the prior registrant and is not an honest third party.

Respondent

The Respondent did not submit the Response but sent two e-mail replies to the Centre. In his November 30’ s e-mail, the Respondent contends that:

The Respondent purchased the disputed domain name in good faith, and does not know any Hallmart in China or Asia; has never had any contact to the disputing parties;

The Respondent’ s company was registered in 1986 and has been trading ever since;

The two companies of the Respondent’ s, e-shoppen & hallmart I/S, are engaged in mail order club of gift & promotion items;

The only reason why there is no website up is that as long as there is such dispute it would not make any sense to spend money on web design;

The Respondent is real to launch a new website on hallmart.net which offers gift and promotion items.

In his December 8 e-mail to the Centre, the Respondent informs that:

The Respondent has been given two e-mails from Asia2net, which clearly show that Asia2net did in fact offer the domain name to Hallmart Ltd., and the Respondent has absolutely nothing to do with the dispute between Hallmart and AWTO.

Findings

Identical / Confusingly Similar

The Respondent failed to submit the Response with any and all necessary evidence to support its defense to retain the disputed domain names as required by the Policy, the Rules and the ADNDRC Supplementary Rules. As stipulated in Paragraph 5(e) in the Rules, “If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint”. The Panel pays sufficient attention to the Respondent’s allegations in his two e-mails to the Centre, but does not see any accompanying exhibit to support his assertions, let alone the underlying arguments of his allegations, i.e. bona fide buyer and knowing nothing of the disputing parties. The Panel also notices that the disputed domain name was transferred to the Respondent after the Claimant’s initiation of the proceedings against the prior registrant of the domain name and the Centre sent the corresponding notifications to the prior registrant and the prior registrar to lock the potential transfer of the disputed domain name in accordance with regulations under Paragraph 8 (a) of the Policy. In view of the afore-mentioned two factors, the Panel cannot but make the decision based primarily upon the contentions by the Claimant, except otherwise there is an exhibit proving to the contrary.

Identical or Confusing Similarity

Pursuant to Paragraph 4(a) (i) of the Policy, a complainant must prove that the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights. The Panel understands that the general principles laid down by the Policy is to prevent the cyber-squatters or bad-faith registrants from registering domain names which are in contradiction with prior legitimate rights of others, especially those in a trademark or a service mark. As found by the Panel, the Claimant started to use the word “Hallmart” in 1999 in its business activities. Obviously, the Claimant is entitled to mark “Hallmart”, either service mark or trademark. The Hong-Kong-based Claimant created its representative office in Shenzhen, China and registered the domain name “Hallmart.com.cn” in China in 2003 and designed the website to publicize its products and business in the mark of “Hallmart”. On July 13, 2004, the Claimant filed the application for the mark of “Hallmart” with the Chinese Trademark Office, and up to the time of this decision, the Panel has no reason to predict that the application shall be rejected. The Panel is of the opinion that the decisive factor in making a decision on a domain name dispute is to find out whether the Claimant is entitled to a mark which the Claimant is used as in its business activities and known to the consumers to identify the products or service bearing the mark from those bearing different marks supplied by others. Base upon the evidence submitted by the Claimant and the fact that no evidence was given by the Respondent, the Panel holds that the Claimant began to use the mark “hallmart” in its commercial involvement earlier than the disputed domain name was registered, thus the Panel supports the claim by the Claimant to have the prior right in the mark.

The Complainant claims that the disputed domain name “Hallmart.net” is identical to the mark of “Hallmart” to which the Claimant enjoys a prior right and for which the Claimant has filed formal registration application. The Respondent does not plea against the claim. The Panel does not see any evidence proving to the contrary. Therefore, based upon the Claimant’s assertion and judging by the comparison of the disputed domain name and the mark claimed by the Claimant, the Panel finds that the disputed domain name is identical to the mark which has been used by the Claimant in its business activities prior to the disputed domain name was registered and is the subject matter under the pending trademark application of the Claimant’s.

Rights and Legitimate Interests

The Complainant claims that the Respondent has no legitimate right or interest in respect of the disputed domain name. The Respondent alleged in his e-mail dated November 30, 2004 to the Centre that his company by the name of Hallmart I/S was registered in 1986 and had been trading ever since. Obviously, if the allegation by the Respondent is true, his company by the name of “Hallmart” was established earlier than the Claimant’s company, thus the Panel has the supporting evidence to hold that the Respondent is entitled to a mark which has been existing prior to the mark claimed by the Claimant. Nevertheless, the Panel has not seen any exhibit proving the Respondent’s allegation to be true. Thus, the Panel has no reason to hold that the Respondent has legitimate rights or interests in the disputed domain name. The Claimant also pointed out that the prior registrant of the disputed domain name does not have rights or legitimate interests in the disputed name. The Panel does not see any argument against the allegation by the Claimant either. Lack of sound reasoning by the Respondent to make the Panel believe that what claimed by the Claimant is not true, the Panel cannot but hold that neither the Respondent nor the prior registrant of the disputed domain name has rights or legitimate interests in the disputed subject matter.

Bad Faith

The Claimant proves that through searching on July 15, 2004, he got the report that the registrant of the disputed domain name was Jesper Mortensen (96KQ6) hostmaster@asoa2net.com. As shown in the report, the record was created on October 19, 2002 and updated on July 15, 2004. A further search report in October 2004 shows that the registrant of the disputed domain name has been changed into the Respondent. As shown in that report, the created date is August 22, 2002 and the updated date is October 13, 2004, and the registrar-transfer-date is October 5, 2004. The status of the domain name is “Registrar-Lock”. The current registrant of the disputed domain name is Michael Frank with the contact address of Koersgade 18, Copenhagen, Norrebro DK-2200, Denmark, e-mail address of info@shoppen.com, telephone number of 1 45 2620 6022. The Claimant alleges that the address, telephone and fax numbers of the Asia2net to which the prior registrant of the disputed domain name is affiliated is identical to those of an organization called Asia World Trade Organization (AWTO for short), and the current registrant of the disputed domain name is working with the Denmark Office of AWTO. The contact details of the prior registrant of the disputed domain name are identical to those of AWTO Denmark Office. Judging from those correlations among those parties, the Claimant came to the conclusion that the transfer of the disputed domain name after the initiation of the proceedings by the prior registrant to the Respondent was intentionally and the Respondent is not a bona fide third party.

The Claimant claims that the prior registrant of the disputed domain name, i.e. Asia2net has close relations with AWTO, and the latter published untrue words through www.hallmart.net website to have harmed the Claimant’s reputation and destructed the Claimant’s normal business activities. The Claimant makes the statement that there has been conflict in the interests in the business competition between the Claimant and AWTO. The prior registrant, the current registrant, Asia2net and AWTO have very close relationship, and all the arrangements made in relation to the disputed domain name were well-designed to prevent the Claimant from legally using the disputed domain name. In his e-mail dated December 8, 2004, the Respondent indicated that he got two e-mails from Asia2net showing that the disputed domain name did in fact being offered to the Claimant, but the Respondent had nothing to do with the dispute between Hallmart Ltd. Based upon the claims by the Claimant, i.e. the Respondent, the prior registrant who transferred the disputed domain name to the Respondent after the commencement of the proceedings, Asia2net and AWTO have close relations, and the argument by the Respondent, i.e. he has nothing to do with the prior registrant, Asia2net or AWTO, one of the key fact-findings is that whether the Claimant’s claim can be proved.

In the exhibits submitted by the Claimant, the person by the name of Michael Frank is closely related to AWTO. The Respondent was notified of the claim by the Claimant, but did not argue against the Claimant’s claim by submitting any evidence. The Panel is aware of the possibility that two persons could be using the same first and family names in reality, thus it is not always correct to hold a fact in relation to a person by the name only. But in this case, the Respondent did not claim that the name of Michael Frank listed on the website of AWTO is not his but somebody else. Under the circumstances, the Panel cannot but hold, based upon the Claimant’s allegation and the supporting exhibits, that the Respondent is the Michael Frank having relations with AWTO.

Based upon the claims by the Claimant and the accompanying evidence and in consideration of the lack of counter-claims that AWTO did not conduct in an ill-faith way relating to the disputed domain name, the Panel cannot but find that the prior registrant has certain relations with AWTO that uses the disputed domain name in bad-faith.

Based on the above findings, the Panel ruled that the Complaint fulfills the conditions provided in Paragraph 4(a)(i)(ii) (iii) of the Policy, thus his claims shall be held.

Status

www.hallmart.net

Domain Name Transfer

Decision

In light of all the foregoing findings and in accordance with Paragraphs 4(a), 8(a) of the Policy and 5(e) of the Rules, the Panel holds:

- a) That the disputed domain name “hallmart.net” is identical to the mark “Hallmart” which has been used by the Claimant in its business and is the subject matter under the pending trademark application, in which the Claimant has rights; and
 - b) That the Respondent has no rights or legitimate interest in respect of the disputed domain; and
 - c) That the domain name transferred to the Respondent was registered and subsequently used in bad faith.
- As such the Panel requires that the registration of the “hallmart.net” domain name be transferred to the Claimant.

[Back](#) [Print](#)