



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (BEIJING OFFICE)

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Decision Submission

English Print

Decision ID	DE-0500033
Case ID	CN-0400037
Disputed Domain Name	www.aupres.org
Case Administrator	Xinmin Cui
Submitted By	Ping Zhang
Participated Panelist	
Date of Decision	20-01-2005

The Parties Information

Claimant	Shiseido Liyuan Cosmetics Co., Ltd.
Respondent	Jianzhong Zhang

Procedural History

On November 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 (the “ADNDRC Supplemental Rules”) being effected on February 28, 2002.

On November 26, 2004, the Centre confirmed the receipt of the Complaint and notified the registration information to the Registrar, eNom, Inc. of the domain name in dispute.

On November 30, 2004, the Centre received the confirmation of the Registrar.

On December 3, 2004, the Centre notified the Complainant of making change to the Claim.

On December 9, 2004, the Centre received new Complaint Form in English and transmitted the Complaint to the Respondent.

On December 10, 2004, the Centre notified the disputing parties, ICAAN and the Registrar of the Commencement of the Proceedings and the Claim has been confirmed and forwarded.

Until December 30, 2004, the Centre had not received the Response from the Respondent.

On December 31, 2004, the Centre notified no Response received and Hearing by Default. Pursuant to the choice of complaint, Third Panalist would be selected.

On January 4, 2005, the Centre received Confirmation of the Appointment of the Panelist.

Factual Background

For Claimant

The complainant is a joint venture established by Shiseido Co. Ltd. and Beijing Liyuan Co. Ltd. and is a manufacturer

and dealer of cosmetics in China. Since November of 1993, the complainant has been engaged in research and development of “AUPRES / 欧珀莱” line of cosmetics for Chinese ladies. Many lines of skin treatments and cosmetics, such as moisture preservation series, whitening series, DX skin activation series, sun block series, have got favorable acceptance and recognition by the Chinese ladies. In more than a decade of its existence, the complainant's corporation has set up more than 300 uniform “AUPRES” image counters in nearly 80 large and medium-sized cities. The complainant opened beauty centers in Beijing and Shanghai in order to furthest meet the demands of clients respectively in 1994 and 1998. In addition, in October of 2001, the complainant introduced JS Gentleman series, the first high-end series for gentlemen in the Chinese cosmetics market.

The identification part “aupres” in the disputed domain name is actually the complainant's registered trademark. The trademark “aupres” (in Class 3) was registered in China by Shiseido Co. Ltd. in 1993 and was later assigned by it to the complainant in 1996 (See Annex 4 of photocopies of the trademark registration certificate, the registration assignment certificate and the renewal approval certificate). Moreover, in 2002 and 2003, the trademark “aupres” was subsequently approved for registration in respect of services in Classes 42 and 35 (See Annex 5 of photocopies of trademark registration certificates). The use of the trademark “aupres” by the complainant can be traced back to 1993. Since its establishment, the complainant has made substantial investment in advertising, paying special attention to advertising in leading vogue and recreational and entertainment magazines, such as 《Fashion》, 《ELLE》, 《HOW》. At the same time, advertising and promotion expenses ever increased year after year. For the first three months of 2004, the complainant spent 28,500,000 RMB in advertising. Long and extensive use, advertising and media reporting undoubtedly have made the trademark “AUPRES / 欧珀莱” a trademark in the cosmetics sector and among relevant consumers as a result of investment and technical support from Shiseido Co. Ltd.

For Respondent

The respondent is Jianzhong Zhang, whose Address is No.1104, Zhili Plaza, Laodong West Road, Changsha, Hunan.

Parties' Contentions

Claimant

In this case, “.org” is the suffix of the disputed domain name “aupres.org”. So, the identification part of the disputed domain name should be “aupres”, which is the same as the complainant's prior registered trademark “aupres”. The disputed domain name is sufficient to cause confusion among the public so as to infringe upon the prior rights and interests of the complainant. Furthermore, since the respondent of this case does not enjoy any exclusive right, corporate title right and name right in the word “aupres” and the registration date of the disputed domain name is later than that of the complainant's trademark, the respondent does not own any lawful rights and interests in the disputed domain name.

In addition, in this case, the respondent's registration and use of the disputed domain name is in bad faith. Through visiting the site under the disputed domain name, you can see that this site is designed to introduce and market strengthened floor board of “欧珀莱” brand produced by Changsha Aupres Wood Industry Co., Ltd. Although its trade name is 欧珀莱, its business scope has no commercial relations with the complainant. As the owner of the trademark “AUPRES / 欧珀莱”, the complainant has never authorized the respondent to use the trademark “AUPRES / 欧珀莱” as a trademark, trade name or domain name in a commercial manner and to distribute strengthened floor board of “AUPRES / 欧珀莱” brand or act as an agent thereof. The distribution of “欧珀莱” products on the site under the domain name “aupres.org” by this corporation is aimed at marketing its products and obtaining profits through misleading consumers to log in its web site by the reputation of “AUPRES / 欧珀莱”. The use of other's trademark and the act of distribution of its own products by taking on the popularity of other's trademark to increase the visit rate of its own site will definitely infringe upon other's lawful rights and interests and should be prohibited.

“Aupres”, the identification part in the disputed domain name, is a creative trademark. As far as the construction of the word is concerned, the word “aupres” is not an independent entry in authoritative English dictionaries and daily English. The use of such a word mark of inherent distinctiveness and high commercial value as “aupres” by any third party other than the owner itself as a commercial sign like a trademark or a domain name can not be interpreted as coincidence. Bad faith is evident in such an act. Through a random search with “aupres” being the key word in the leading search engine Baidu, it can be found that the word “aupres” usually appears as the complainant's trademark in the e-commerce environment and helps consumers and general Internet users, especially on-line consumers, to have a clear idea of such a fact that “aupres” is a brand of the complainant.

Besides, the domain names of “aupres.cn” and “japanaupres.com” had been registered in a pre-emptive way by others and were transferred to the complainant under No. 0061 (2003) and No.CN 0400029 arbitral awards made by the Domain Name Dispute Resolution Center of CCPIT on October 27, 2003 and by Beijing Office of the Asian Domain Name Disputed Resolution Center respectively after the complaint was filed.

In the complainant's view, the respondent's act of registration of a trademark in which others enjoy lawful rights and interests as its own domain name for the purpose of profits is evidently in bad faith and should be prohibited by laws.

Respondent

The Respondent has not filed a Response within the time limit prescribed by the ADNDRC.

Findings

Identical / Confusingly Similar

The identification part “aupres” in the disputed domain name is the complainant's registered trademark. The trademark “aupres” (in Class 3) was registered in China by Shiseido Co. Ltd. in 1993 and was later assigned by it to the complainant in 1996. Moreover, in 2002 and 2003, the trademark “aupres” was subsequently approved for registration in respect of services in Classes 42 and 35. The disputed domain name is sufficient to cause confusion among the public so as to infringe upon the prior rights and interests of the complainant. So the disputed domain name of the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

Rights and Legitimate Interests

Article 4(c) of the Policy stipulates how a Respondent can effectively demonstrate rights or legitimate interests in the Disputed Domain Name:

“Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of Article 4(a)(ii):

- (i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) you (as an individual, business or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

There is no evidence from the Respondent that relates to Article 4(c)(i), (ii) and/or (iii) of the Policy, especially the relationship between the Respondent and the current user of the disputed domain name, and the certificated document of current user, because the Respondent has chosen not to participate in the current proceedings, and provide nothing to prove its rights and legitimate interests.

In view of the foregoing, the Panel concludes that the Respondent has no rights or legitimate interests in the domain name of “aupres.org”.

Bad Faith

Article 4(c) of the Policy stipulates that for the purposes of Article 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that you have registered or you have 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 your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have 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 you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your web site or location or of a product or service on your web site or location.

As far as the case at hand is concerned, the Respondent, who by itself does not enjoy any legitimate right over the disputed domain name, registered the famous trade mark “AUPRES” of the Complainant as its own domain name. The registration and use by the Respondent of the domain name “aupres.org” has inevitably prevented the owner of the trademark or service mark (the Complainant) from reflecting its “AUPRES” mark in a corresponding domain name; and intentionally attempted to attract, for commercial gain, internet users to the 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 your web site or location or of a product or service on the web site or location. Meanwhile, the Respondent has not submitted any evidence showing their good faith in registration and use of the disputed domain name in the past and at present. Taking into account all of the above factors, the panel may infer that the disputed domain name was registered and is being used in bad faith.

Status

www.aupres.org Domain Name Transfer

Decision

In light of all the foregoing findings and in accordance with the Policy and the Rules, the Panel holds:

- a) That the disputed domain name “aupres.org” is identical to the Complainant’s trade mark “aupres” ; and
- b) That the Respondent has no rights or legitimate interest in respect of the disputed domain; and
- c) That the domain name registered by the Respondent was registered and subsequently used in bad faith.

As such the Panel requires that the disputed domain name “aupres.org” should be transferred to the Complainant.

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