



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (BEIJING OFFICE)

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Decision Submission

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Decision ID	DE-0500038
Case ID	CN-0500041
Disputed Domain Name	www.peoplecentergapinc.com
Case Administrator	Xinmin Cui
Submitted By	Hong Xue
Participated Panelist	Hong Xue Matthew Laight Ping Zhang
Date of Decision	25-04-2005

The Parties Information

Claimant	The Gap, Inc.
Respondent	Ling Shun Shing

Procedural History

On 2 March 2005, the Complainant submitted its Complaint 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 (the “Rules”), and ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “ADNDRC Supplemental Rules”).

On 3 March 2005, the Centre confirmed the receipt of the Complaint and forwarded a copy of the Complaint to the Registrar of the domain name in dispute, Name King, Inc.

On 11 March 2005, the Centre received the Registrar’s confirmation of registration information of the domain name in dispute.

On 11 March 2005, the Centre sent the Transmittal of Complaint to the Respondent.

On 15 March 2005, the Centre notified the Complainant that the Complaint had been confirmed and forwarded, and; the Centre notified the Respondent, the Registrar and the ICANN of the commencement of the case proceeding.

On 7 April 2005, the Centre notified the parties that the Respondent did not submit the Response within the required period and the case is going to be decided by default.

The Complainant requested a three-member panel to decide the case, while the Respondent did not submit the request. On 4 April 2005, the Centre notified the parties to rank the candidates of the third panelist. On 5 April 2005, the Centre notified the result of the ranking to the parties.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Ms. Xue Hong, Mr. Matthew Laight and Ms. Zhang Ping, on 8 April 2005, the Centre informed the Complainant and the Respondent of the appointment of the Panelists, and transferred the case file to the Panelists by email as well as by post.

The Panelists find that the Panel was properly constituted and appointed in accordance with the Rules and the ADNDRC Supplemental Rules.

The Panel does not receive any further requests from the Complainant or the Respondent regarding other submissions, waivers or extensions of deadlines.

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 Parties.

Factual Background

For Claimant

The Complainant is a leading international specialty retailer offering clothing, accessories and personal care products for men, women, children and babies under the Gap, Banana Republic and Old Navy brand names. The Complainant's marks include "GAP", "The Gap", "GAP.COM", "GAP BODY", "GAPGIRL", "BABY GAP", "GAP KIDS", "GAP" (elongated in blue box) etc. GAP is the most important trademark as well as the trade name of the Complainant for more than forty years worldwide.

The Complainant holds a number of registrations for the GAP formative trademarks in the United States of America and a number of other jurisdictions, including China.

For Respondent

The Respondent registered the domain name in dispute "peoplecentergapinc.com" on 6 October 2003.

Parties' Contentions

Claimant

The Complainant, the Gap, Inc., is one of the world's largest specialty retailers with three of the most recognized and respected brands in the apparel industry — Gap, Banana Republic and Old Navy. The complainant has more than 150,000 employees supporting about 3,000 stores in the United States, United Kingdom, Canada, France and Japan. The Complainant is a leading international specialty retailer offering clothing, accessories and personal care products for men, women, children and babies under the Gap, Banana Republic and Old Navy brand names. Gap formative marks include "GAP", "The Gap", "GAP.COM", "GAP BODY", "GAPGIRL", "BABY GAP", "GAP KIDS", "GAP" (elongated in blue box) etc. (hereinafter collectively referred to as "the Gap formative marks"), among them, GAP is the most important one used as the trademark and the trade name of the Complainant for more than forty years worldwide.

Since founding in 1969, the Complainant has provided its customers with clothing and accessories that enhance personal style. What began as one brand has grown to include Gap, GapKids, babyGap and GapBody, and customers in the United States can also shop online at gap.com. By providing great style, value and service, Gap has become one of the world's most recognized brands, with stores in the U.S., Canada, the United Kingdom, Japan and France.

The Complainant is the owner of the well-known "GAP" marks including "GAP" (word mark), "The Gap", "GAP.COM", "GAP BODY", "GAPGIRL", "BABY GAP", "GAP KIDS", "GAP" (elongated in blue box) etc.

The Complainant holds a number of registrations with the United States Patent and Trademark Office ("USPTO") for the GAP formative trademarks including U.S. Reg. No. 944941, registered as far back as on Oct. 10, 1972, for the trademark "THE GAP" in Class 42, and U.S. Reg. No. 1129294 for the trademark "GAP" registered in Class 25 with registration date of Jan. 15, 1980. The Complainant also holds numerous registrations for the GAP formative marks in a number of other jurisdictions, including China. The Complainant attaches its worldwide trademark registration list for the GAP formative marks in 134 jurisdictions.

The Complainant also attached the Recordal Certificate of PRC Customs Protection for Intellectual Right for GAP with duration of validity from February 28, 2000 to February 27, 2007.

Through broad and extensive use of the GAP formative marks, consuming public has associated the trademarks with the Complainant per se. And, the Complainant has also established broad legal rights through worldwide trademark registrations. Since the GAP formative marks have been legally registered, the registrations thereof are prima facie evidence of legitimate trademark rights owned by the Complainant.

Thus, the Complainant has established legal rights and legitimate interests for the GAP formative marks.

"GAP" is also the main part of the formal corporate name of the Complainant, i.e. The Gap, Inc. This corporate name has been duly and legally registered at the competent authority of California under the laws of California. In addition, among the scope of the Complainant's international operation, including U.S.A, the original development of the Complainant, and many other states and regions, expression GAP has always been used as the Complainant's trade name.

Through actual use and according to the pertinent legal regulations, including Article 8 of Paris Convention, the Complainant enjoys trade name right to the word "GAP". The Complainant has established legal rights and legitimate

interests for GAP as trade name.

The Complainant uses its website at the domain name www.gapinc.com as its official website to inform present and potential customers of the broad array of services offered by the Complainant.

Please refer to ANNEX FIVE, the original Affidavit executed by Julie Gruber, Associate General Counsel for The Gap, Inc. The Affidavit fully presents the established rights to and the continuous use of “People Center” by the Complainant. The Affidavit demonstrates that “People Center” is an internal application the Complainant developed to display company policies, manage employee benefits, payroll, stock and other internal employee-related information. Employees of the Complainant can access the Company’s “People Center” website by visiting “peoplecenter.gapinc.com”, which is routed back to Complainant’s servers. Furthermore, the “People Center” website has been in use and available to Complainant’s employees since Fall 2002, earlier than Oct. 6, 2003, the registration date of the disputed domain name.

Exhibit A attached to ANNEX SIX is the printouts of the Complainant’s “peoplecenter.gapinc.com” website, Page 1 thereof shows that “People Center” is a link under the title of the “People” on the Complainant’s web page, used as the Complainant’s new online human Resources center. Page 2 is the web page of “People Center”, on which the employees of the Complainant may use their pertinent user name and password to manage their lives and careers hereof. The other pages are all web pages of “People Center”, which may further prove that the Complainant has been using “People Center”. Thus, the Complainant enjoys legal rights to “People Center”.

The Respondent’s domain name peoplecentergapinc.com is confusingly similar to the Complainant’s prior intellectual property rights.

The disputed domain name is composed of two parts, i.e., “People Center” and “Gap Inc”. The former is the internal computer software developed by the Complainant, and the latter “GAP Inc.” incorporates the Complainant’s famous trademark, trade name, and also, forms essential similarity with the Complainant’s own website gapinc.com. Taken into account the public knowledge to the trademark and trade name “GAP”, taken into account the outstanding achievement the Complainant has accomplished in the filed of specialty retailers services, the Respondent has, by using expression “People Center” and “Gap Inc”, created a strong likelihood that Internet users will associate the disputed domain name with the Complainant or his services, and consequently, will definitely mislead the consuming public as to sources.

The combination of “People Center” and “Gap Inc” does not create sufficient distinctiveness for Internet users to avoid confusion and it was so designed only to strengthen the possibility that Internet users would be misled to assume all information contained on the disputed domain name solely concerns the Complainant.

The Complainant holds that this Complaint has fulfilled the Policy Art. 4 (a) (i).

The Respondent does not have any rights or legitimate interests in the peoplecentergapinc.com domain name. The Complainant asserts that the Respondent has no rights or legitimate interests in the disputed domain name.

Respondent, Ling Shun Shing, registered the peoplecentergapinc.com domain name without the Complainant’s authorization. The Complainant has never authorized the Respondent to use “People Center” and “GAP”, separately or in combination, to which the Complainant enjoy legitimate intellectual property rights. The disputed domain name redirects Internet users to a website, where Internet users are subjected to a series of pop-up advertisements for varieties of goods and services.

Moreover, the Respondent has not established rights or legitimate interests in the disputed domain name pursuant to the Policy Art. 4 (c) (ii); neither did Respondent ever apply for a license or permission from the Complainant to use the intellectual rights in “People Center” and “Gap”. Respondent is not commonly known by the disputed domain name or using the domain name in connection with a legitimate or fair use.

The Complainant asserts that the Complaint has fulfilled the Policy Art. 4 (a) (ii).

The Respondent registered and used the disputed domain name peoplecentergapinc.com in bad faith.

The Respondent registered the peoplecentergapinc.com domain name on 6 October 2003, much later than the dates when the Complainant commenced to use GAP and PEOPLE CENTER respectively in commercial activities. And the registration and use of the disputed domain name by the Respondent was neither, in any event or by any methods, shown to the Complainant nor authorized by the Complainant.

The Respondent is using the peoplecentergapinc.com domain name to earn referral-fee revenue through pop-up advertising and links to various third-party websites. In this connection, please refer to ANNEX SEVEN, the printouts of the web page of www.peoplecentergapinc.com.

Such use established Respondent’s bad faith registration and use pursuant to Policy 4 (b)(iv) because Respondent is using the disputed domain name to attract Internet users to Respondent’s website for commercial gain by creating a likelihood of confusion with Complainant’s intellectual property rights.

The most important of all, the Complainant found out that the Respondent repeatedly registered many domain names containing the well-known trademarks of other third parties. Please refer to ANNEX EIGHT, seven copies of Domain Names Decisions made by different arbitration organizations and 24 disputed domain names involved, at the end all the 24 disputed domain names involved have been transferred to their true owners, thus, we believe the subject evidences can also prove the Respondent’s bad faith in registering the disputed domain name with the aims of acquiring undue benefit in bad faith.

The Respondent’s registration of the domain name, a domain name that incorporates the Complainant’s well-known registered trademark in its entirety and deviates only adding an internal software products “People Center” devised by the Complainant, suggests that the Respondent fully knew of Complainant’s rights in the GAP mark, the high standard of professionalism that mark represents, the commercial value of the trademark GAP, and the reputation the Complainant

has established within the business of specialty retailer services; thus, the Respondent is likely to choose the <peoplecentergapinc.com> domain name based on the distinctive and well-known qualities of the Complainant's mark.

To conclude, by using the domain name, the Respondent has 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 and IP rights as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

The Complainant holds that this Complaint has fulfilled the Policy Art. 4 (a) (iii).

The Complainant requests that the domain name be transferred from Respondent to Complainant.

Respondent

The Respondent did not submit the Response.

Findings

Identical / Confusingly Similar

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 domain name in dispute is <peoplecentergapinc.com>. The Complainant has the trademark registrations of the word "GAP". The domain name in dispute and the Complainant's trademark are not identical, and the issue is therefore whether the domain name and the mark are confusingly similar.

The domain name consists of "people", "center", "gap", "inc" and ".com". "Gap" is the trademark of the Complainant but it is also a generic word; however, once "gap" is combined with "inc", that is nearly identical with the Complainant's enterprise name "Gap, Inc." that has been used for decades. Thus, the "gap" in the combination of "gapinc" is clearly inferring that it is the Complainant's trademark "GAP". The Complainant is therefore able to prove its right with respect to the part "gapinc". As far as the part of the domain name "peoplecenter" is concerned, the Complainant claimed that it has been used as the name of an internal application for online human resource management. It is arguable that the Complainant would be able to claim any trademark right in an internally used name, which has never been used in connection with any goods or services offered to the public. However, even if "peoplecenter" is treated as a combination of two generic words-- "people" and "center", it has been well established that the addition of generic words to the Complainant's mark was not sufficient to escape the finding of similarity (see *Quixstart Investments Inc. v Dennis Hoffman*, WIPO Case No. D2000-0253). The fact that the disputed domain name contains two generic words, instead of one, has minimal impact on what the viewer focuses on, namely, the mark "GAP" and enterprise name "Gap, Inc" (see *Harrods Limited v. Peter Pierre*, WIPO Case No. D2001-0456 <harrodsdepartmentstores.com>; *Telstra Corporation Limited v. Peter Lombardo, Marino Sussich and Ray Landers*, WIPO Case No. D2000-1511 <telstrafreeonline.com>, <telstrafreeonline.net>, <telstra-free-online.com>, <telstra-free-online.net>, <telstra-freeonline.com>, <telstra-freeonline.net>, <telstraprimebuy.com> and <telstraprimebuy.net>). Finally, the gTLD suffix ".com" forming part of the domain name in dispute has no relevant distinguishing function. The Panel in any event finds that the disputed domain name is confusingly similar to the Complainant's "GAP" trademark and that the Complainant has proven paragraph 4(a)(i) of the Policy.

Rights and Legitimate Interests

The Complaint asserts that the Respondent has no rights or legitimate interests in the disputed domain name and, as stated above, the Respondent has provided no information to the Panel asserting any right or legitimate interest it has in the disputed domain name.

A number of panels have held that the burden on a complainant regarding the second element is necessarily light, because the nature of the registrant's rights or interests, if any, in the domain name lies most directly within the registrant's knowledge (see *Packaging World Inc. v. Zynpak Packaging Products Inc.*, NAF Case No. AF-023; *Education Testing Service v. TOEFL*, WIPO Case No. D2000-0044; *Grove Broadcasting Co. Ltd. v. Telesystems Communications Ltd.*, WIPO Case No. D2000-0158). Other panels have held that once the complainant makes a prima facie showing that the registrant does not have rights or legitimate interest in the domain name, the evidentiary burden shifts to the registrant to rebut the showing by providing evidence of its rights or interests in the domain name (see *Nicole Kidman v. John Zuccarini, d/b/a Cupcake Party*, WIPO Case No. D2000-1415; *Inter-Continental Hotels Corporation v. Khaled Ali Soussi*, WIPO Case No. D2000-0252; *Electronic Commerce Media Inc. v. Taos Mountain*, NAF Case No. AF0008000095344).

It is apparent from the Complaint that there is no connection between the Respondent and the Complainant or its business. Paragraph 4(c) of the Policy lists a number of circumstances which, if proven to exist by the Respondent, can be taken to demonstrate a Respondent's rights or legitimate interests in the domain name. However, there is no

evidence whatsoever before the Panel that any of the situations described in paragraph 4(c) of the Policy apply in the case of the Respondent.

Although it is possible that Respondent does have some legitimate interest in respect of this domain name, given that the Respondent's failure to submit a Response and the fact that the disputed domain name contains both the Complainant's trademark "GAP" and the Complainant's name for online human resources management "PeopleCenter", it is not unreasonable for the Panel to infer a lack of legitimate interest. The lack of a Response constrains the Panel to draw the inference otherwise, and any resulting prejudice to Respondent is a result of its own failure to comply with the Rules.

Therefore, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

Accordingly, the Complainant has proven paragraph 4(a)(ii) of the Policy.

Bad Faith

Based on the Complainant's submissions, the Respondent is using the disputed domain name

"peoplecentergapinc.com" to earn referral-fee revenue through pop-up advertising and links to various third-party websites. The Respondent did not dispute the truthfulness and accuracy of these submissions. In such a scenario, Respondent is using the domain name "peoplecentergapinc.com" to attract Internet users to its website by creating a likelihood of confusion with Complainant's mark and it is doing so for direct or indirect commercial gain. Upon examination of Respondent's "peoplecentergapinc.com", Internet users would become aware that the website is not sponsored by Complainant (see *AT&T Corp. v. Yong Li*, WIPO Case No. D2002-0960). However, commercial benefit may well accrue to Respondent if the products/services it offers for sale (directly and indirectly) are purchased by those visiting its website, and commercial harm may well be suffered by Complainant if Internet users abandon their efforts to reach its website (see *Yahoo! Inc. v. M & A Enterprises*, WIPO Case No. D2000-0748).

Also, the Respondent has specifically violated the paragraph 4(b)(ii) of the Policy in that the Respondent registered the disputed domain name to prevent the Complainant from reflecting its trademark in the corresponding domain name and has engaged in a pattern of conduct by registering 24 domain names each of which contains the trademarks of the other parties.

The Panel therefore determines that Respondent acted in bad faith in registering and using the disputed domain name.

The Complainant has thus established the third and final element stipulated in paragraph 4(a)(iii) of the Policy, which is necessary for a finding that the Respondent has engaged in abusive domain name registration.

Status

www.peoplecentergapinc.com Domain Name Transfer

Decision

The Complainant has established each of the three requirements set forth in the Policy paragraph 4(a) - the disputed domain name is confusingly similar to the Complainant's GAP trademark, the Respondent does not have any rights or legitimate interests in the disputed domain name, and the Respondent registered and is using the disputed domain name in bad faith. In accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel therefore directs that the registration of the disputed domain name be transferred from the Respondent to the Complainant.

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