



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (BEIJING OFFICE)

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Decision Submission

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| Decision ID | DE-0600064 |
| Case ID | CN-0600073 |
| Disputed Domain Name | www.itt.net |
| Case Administrator | Xinmin Cui |
| Submitted By | M Scott Donahey |
| Participated Panelist | |

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| Date of Decision | 06-05-2006 |
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The Parties Information

| | |
|-------------------|-------------------------------------|
| Claimant | ITT Manufacturing Enterprises, Inc. |
| Respondent | Anything.com Ltd. (.ky) |

Procedural History

The complainant in this case is ITT Manufacturing Enterprises, Inc., a corporation organized under the laws of the State of Delaware, United States of America, whose address is 1105 North Market St., Suite 1217, Wilmington, Delaware ("Complainant"). Its authorized representative in these proceedings is Yang Zhaowen.

The respondent is Anything.com Ltd. (.ky), whose address is P.O. Box 308, Uglan House, George Town, Grand Cayman, KY ("Respondent"). Respondent' s authorized representative in these proceedings is Ari Goldberger, Esq., ESQwire.com PC.

The domain name in dispute is <itt.net>. The Registrar of the domain name is Tucows, Inc.

On 16 February 2006, pursuant to the Uniform Domain Name Dispute Resolution Policy ("the Policy"), the Rules for the Uniform Domain Name Dispute Resolution Policy ("the Rules") and Asian Domain Name Dispute Resolution Center ("ADNDRC") Supplemental Rules ("the ADNDRC Supplemental Rules"), the Complainant submitted a complaint in the English language to the Beijing Office of ADNDRC ("Beijing Office"). On 17 February 2006, Beijing Office sent to the complainant by email an acknowledgement of the receipt of the complaint and reviewed the format of the complaint for compliance with the Policy, the Rules and the ADNDRC Supplemental Rules. All correspondence to and from the Beijing Office described herein was in the English language.

On 10 March 2006 Beijing Office notified the Respondent of the commencement of the action.

On 30 March 2006, Beijing Office received the Response in this matter. On 13 April 2006, Respondent, who had originally requested a three person panel, revoked its election of a three person panel and elected to have the case decided by a single-member panel.

On 7 April 2006, Complainant filed a Supplementary Statement. The panel has exercised its discretion to accept and consider the Supplementary Statement.

On 18 April Beijing Office notified M. Scott Donahey that he had been selected to act as sole panelist in this case.

On 20 April Beijing Office notified the parties that the Panel in this case had been selected, with M. Scott Donahey acting as the sole panelist. The Panel determines that the appointment was made in accordance with the Supplemental Rules.

On 26 April 2006, the Panel received the file from Beijing Office.

Factual Background

For Claimant

Complainant owns more than 900 trademark and service mark registrations for the mark ITT in various forms in over 100 countries and jurisdictions throughout the world. These registrations date back to at least 1960. Complaint, Annex 5. The Complainant's parent and its predecessors in interest have used the ITT mark in commerce since at least as early as the 1960s. Complainant's ITT mark dates from the 1920s with its use by the International Telephone and Telegraph Corporation, commonly known as ITT. Its name was changed in 1962 to ITT Corporation, who later changed its name to ITT Industries, Inc., Complainant's parent corporation.

The ITT mark has been used in connection with electronic components, fluid handling equipment, automotive products, defense and military systems, engineering, technical and advisory services, personnel staffing, and educational services. The mark is currently used in connection with water and wastewater, space and defense, telecommunications, aerospace, automotive and leisure marine. Complainant's parent is a leading provider of electronic interconnects, electromechanical switches, keypads, dome arrays and mechatronic controls, is a leading provider of pumps and related technologies for industrial, chemical, and commercial customers and is the world's largest supplier of water and wastewater treatment solutions. Complainant's parent is active in the China market in the areas of water and sewage systems provision.

Complainant's parent's stock is traded on the New York Stock Exchange, the London Stock Exchange, the Frankfurt Stock Exchange, and the Paris Stock Exchange, among others. In 2004, Complainant's parent generated \$6.76 billion in revenues and operating income of \$635 million. Complainant's parent and affiliated companies employ approximately 44,000 people around the world. ITT's performance in China has been covered by media organizations such as China News Services, Xinhua News Agency, International Finance News, China Environmental News, Machinery & Electronics Business, City Lead News, Shanghai Star, Dragon TV, and STV-CB2. The annual advertising budget in China alone is US\$200,000.

For Respondent

Respondent registered the domain name at issue in November 1998. Respondent uses the domain name at issue in connection with a pay-per-click ("PPC") search engine scaled by Yahoo Search Marketing. Respondent shares the revenue received by Yahoo for PPC ads. Respondent has never offered to sell the domain name at issue to anyone. Respondent has registered other three letter combinations in domain names, including <ab.net>, <at.net>, <bgn.com>, <bu.com>, and <awj.com>. Respondent has also registered domain names which include common words, including <songs.com>, <ticket.com>, <marketing.com>, and <medicine.com>. Response, Annex 2.

Parties' Contentions

Claimant

Complainant asserts that the domain name at issue is identical or confusingly similar to Complainant's mark, in that the domain name at issue is comprised of the ITT mark with the addition of the gTLD .com and incorporates the ITT mark.

Complainant further alleges that Respondent has no rights or legitimate interests in respect of the domain name, and that Respondent's domain name has been registered in bad faith and is being passively used in bad faith.

Respondent

The respondent concedes that the domain name at issue is identical to or confusingly similar to Complainant's mark. However, Respondent contends that it is entitled to use any three letter combination in conjunction with a PPC search engine, as such use has been held not to be in bad faith. Moreover, Respondent contends that it has rights and legitimate interests in respect of the domain name because it is merely a three-letter combination, and a particular three letter combination which many others besides Complainant use publicly. Moreover, Respondent points to the more than seven years which have elapsed between Respondent's registration of the domain name at issue and Complainant's filing of its Complaint as evidence that Complainant did not truly believe that it had a valid claim.

Findings

Identical / Confusingly Similar

Respondent concedes that the domain name at issue is identical to or confusingly similar to Complainant' s mark.

Rights and Legitimate Interests

Complainant has in a credible way alleged that Respondent has no rights or legitimate interests in respect of the domain name at issue. Respondent has argued that under the Policy he has rights and legitimate interests in using the three-letter combination corresponding to Complainant' s mark since other' s use the same three-letter combination in their businesses. Respondent cites two decisions in support of the proposition that in order to prevail in a UDRP proceeding, a complainant must show that a mark is exclusively identified with the complainant. *Energy Source Inc. v. Your Energy Source*, NAF Case No. 96364 and *Tenenhaus v. Telepathy, Inc.*, NAF Case No. 94355. To the extent that these cases stand for this proposition, which they clearly appear to do, they are wrongly decided. Nowhere in the Policy is there any requirement that a complainant must show that its mark is exclusively identified with complainant. The issue is whether the respondent has used the domain name at issue to profit from the good will developed by complainant in the use of its mark, regardless of whether others may use similar or identical marks in other geographic areas or markets.

Respondent states: "It is well-established that, like common words, anyone is entitled to register a 3-letter combination and the respondents' legitimate interest is established per se at the point of registration, since no other party can claim exclusive rights to it." Respondent then cites the *Tenenhaus* case, supra, and *Trans Continental Records, inc. v. Compana LLC*, WIPO Case No. D2002-0105. As the panel previously stated, it believes the *Tenenhaus* case to have been wrongly decided. In *Trans Continental Records*, the panel went to great pains to point out that it believed respondent' s statement that it had no knowledge of complainant' s LFO mark at the time of registration, since complainant' s mark was unregistered and since respondent registered the domain name in the ordinary course of business some months after complainant' s registration had lapsed. Had the facts been otherwise or had the three-letter combination been, for example, IBM or TWA, I believe that the distinguished panelist would have found otherwise.

What the *Trans Continental Records* decision stands for is where a three-letter combination or common word that corresponds to a mark is used in connection with a legitimate business that is not trying to profit from the goodwill associated with complainant' s mark, then the respondent has rights and legitimate interests in the domain name. In this case, we examine the issue of bad faith to determine whether respondent is attempting to profit from the good will associated with complainant' s mark, and if that is the case, then respondent cannot have rights and legitimate interests in respect of the domain name.

Bad Faith

ITT, like IBM and TWA, is a famous mark. It defies credulity that Respondent was unaware of the mark when it registered the domain name. *Yahoo! Inc. v. Jorge O. Korovsky*, WIPO Case No. D2000-0428. Complainant' s predecessor made the mark famous in the field of telecommunications. When one enters "telecommunications" in the search field at the site to which the domain name at issue resolves, there are 46 PPC links in that area, an area in which Complainant continues to be involved. When one enters "wastewater," one gets 18 PPC links, most of which are to competitors of Complainant. One finds links to competitors of Complainant when one searches for electronic interconnects, electromechanical switches, and pumps. It seems that the search engine has been optimized to search the very businesses in which Complainant and its parent are engaged. As complainant points out, when one searches the PPC site for Complainant' s name, one does not find one web site operated by Complainant.

The Panel is troubled by the lack of any explanation as to the long delay between Respondent' s registration of the domain name at issue and Complainant' s filing of the complaint. However, Respondent has acknowledged that such delay has never been used as the basis for a finding of laches, and this panel will not do so here. While the panel is troubled, it cannot ignore what it regards as clear evidence of bad faith.

Accordingly, the panel finds that Respondent has registered and is using the domain name at issue in bad faith in order to profit from the good will associated with Complainant' s use of its mark, and therefore Respondent has no rights or legitimate interests in respect of the domain name at issue. The panel finds that respondent' s registration and use of the domain name at issue comes within paragraph 4(b)(iv) of the Policy in that Respondent is using the domain name at issue to intentionally attract Internet users to the pay-per-click site for the purpose of commercial gain by creating a likelihood of confusion with Complainant. *Societe Air France v. Virtual Dates, Inc.*, WIPO Case No. D2005-0168; *RX America LLC v. Matthew Smith*, WIPO Case No. D2005-0540.

Status

www.itt.net

Domain Name Transfer

Decision

For all of the foregoing reasons, the Panel decides that the domain name registered by Respondent is identical or confusingly similar to the mark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the domain name at issue, and that the Respondent's domain name has been registered and is being used in bad faith. Accordingly, pursuant to Paragraph 4(i) of the Policy, the Panel requires that the registration of the domain name <itt.net> be transferred to the Complainant.

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