



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (BEIJING OFFICE)

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Decision Submission

English Print

Decision ID	DE-0800193
Case ID	CN-0800206
Disputed Domain Name	www.ruyanxpress.com
Case Administrator	lvyang
Submitted By	Guangliang Tang
Participated Panelist	

Date of Decision	11-09-2008
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The Parties Information

Claimant	Beijing SBT RUYAN Technology & Development Co. Ltd.
Respondent	Ludovicus Timmermans

Procedural History

On June 11, 2008, the Complainant submitted a Complaint in English version to the Beijing Office of the Asian Domain Name Dispute Resolution Center (the "Center"), in accordance with the Uniform Domain Name Dispute Resolution Policy (the "Policy") adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") approved by ICANN, and Asian Domain Name Dispute Resolution Center Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "ADNDRC Supplemental Rules").

Then, the Center transmitted by email to GODADDY.COM, INC. (the Registrar of the domain name) a request for registrar verification in connection with the domain name at issue. On June 13, 2008, GODADDY.COM, INC. transmitted by email to the Center its verification response confirming that, the domain name at issue was registered under its domain registrar, and the Respondent is listed as the registrant.

The Center verified that the Complaint satisfied the formal requirements of the Policy, the Rules, and the Supplemental Rules. In accordance with the Rules, paragraphs 2(a) and 4(a), the Center transmitted the complaint to the Respondent on July 10, 2008.

On July 15, 2008, the Notifications of Commencement of proceedings were notified to the Parties, ICANN and the Registrar. Till August 18, 2008, the last day of the fixed period of Response, no submission came from the Respondent. The Center noticed the Parties that, as there's no response from the respondent, the case administrator would appoint the Panelist shortly, and the case would be decided by default.

Upon receiving the declaration of impartiality and independency and the statement of acceptance from the candidate Panelist, the Center appointed Tang Guangliang as the sole panelist in this matter on August 25, 2008. Then the Center transferred all the case materials to the panel on the day, and asked the panel to submit a decision before September 8, 2008.

Factual Background

For Claimant

The complainant is a company located in Beijing which is a wholly owned subsidiary of the Hong Kong SBT Group. According to the Complaint, the Complainant is the licensee of the series of trademarks “如烟” and “Ruyan”, based

on a License Agreement signed between the Complainant and the trademark owner--Shenyang SBT technology & development Co. Ltd., another wholly owned subsidiary of the Hong Kong SBT Group. As contracted by the Agreement, the complainant of this case can exclusively use all the trademarks owned by the Shenyang SBT technology & development Co. Ltd., and may take legal measures by itself against any action hazarding or infringing the trademark rights.

In this case, the Complainant authorized Fast Intellectual Property Law, LLC as its agent.

For Respondent

The Respondent is Ludovicus Timmermans, a citizen of Singapore, who registered the disputed domain name on May 24, 2007 through the Registrar. The Respondent made no response in the fixed period of time, and no agent or representative empowered thereof in this case.

Parties' Contentions

Claimant

According to the Complaint, the assertion of the Complainant includes--

(1) The disputed domain name “ruyanxpress” is similar to the complainant’ s trademarks, and they have the likelihood of confusion.

From the Complainant’ s point of view, the disputed domain name consists of two parts, “Xpress” and “ruyan” . However, “xpress” is the homophone of “express” and the producers usually take its meaning of “exhibition” to represent the new production model by “Xpress+model” . This usage and meaning have been known very well by most of consumers, so that this part loss its originality and distinctiveness. Naturally another part “ruyan” is the distinct part in the disputed domain name, which is also the substantial content distinguished from other domain names or prior rights. And this distinct part, also the distinguished substantial content, is completely same with the complainant’ s trademark “Ruyan” , the Pinyin of the Chinese characters “如烟” . Thus, since the series of products of “Ruyan” and “如烟” brands are originated from China and these products have very high publicity in the relevant fields in China and various countries and regions of the world, the relevant public are very possible to take the disputed domain name as the complainant’ s domain name for providing its products and services by mistake, and a confusion is caused in public.

(2) The respondent “Ludovicus Timmermans” does not have any legal right and benefit on the disputed domain name and its main part “ruyan” .

As the Complainant stated above, “Ruyan” and the corresponding Chinese characters “如烟” are the main trademarks of the complainant, and are known well by public through a long period of use and advertisement.

The evidence shows that, on the website “www.ruyanXpress.com” to which the respondent directs with the domain name, the main products sold are the so-called “RUYAN E-Cigarette” products, and the word “RUYAN” is shown prominently on the advertising pictures for each product. The E-Cigarette is only an English presentation mode of electrical cigarette. So, in fact, “Ruyan” is the brand of the sold products.

To the knowledge of the Complainant, the respondent “Ludovicus Timmermans” has no relationship with the complainant, and has no business contact, and absolutely can not obtain any legal right or benefit under the condition that the complainant and its brands have achieved so high publicity.

(3) The respondent “Ludovicus Timmermans” has bad faith in registration and use of the disputed domain name.

Firstly, “Ruyan” and the corresponding “如烟” are not common wordings, and they are created as a brand name from the combination of the health idea of “real smoking feeling with similar appearance, lighting cigarette, blinking and smokes” and the high and new technology, and have very strong distinctiveness and originality. They are possessed exclusively by the complainant and its associated enterprise. Obviously, it is not a coincidence that the respondent registered the domain name “ruyanxpress.com” which is very similar with the trademarks. These actions of translating, copying and imitating other’ s trademark have constituted an infringement to trademark right.

Secondly, the series of products with the trademarks “Ruyan” and “如烟” which have become the name of the complainant’ s novel “smoke-controlling” products were known long by the public upon the appearance of the products in 2004. Based on the special honors of the products in China and other parts of the world and the great significance, the series of brands are enough to be considered as well-known by China consumers even the worldwide consumers. As the respondent is a seller who similarly sells the smoking products, it is absolutely impossible it did not

know the complainant and the series of trademarks “Ruyan” and “如烟”. From the website directed by the disputed domain name, the wording “RUYAN” and the pictures showing various series of products similar with the complainant’s products are seen everywhere. All these indicate the respondent’s bad faith in applying registration of the disputed domain name.

Thirdly, as said above, the respondent does not have any legal prior right for “RUYAN”. In the case that he has known the trademarks “Ruyan” and “如烟” and the series of products with the trademarks “Ruyan” and “如烟” have gained high degree of publicity and he per se does not have any right and benefit, the respondent registered the domain name “ruyanxpress.com”, this is for causing the confusion and mistake of public due to the preemptive registration and getting the illegal benefits which can not be get under normal condition. This action is a typical business free-riding and has an unfair competition purpose. Especially, the wording “RUYAN” marked prominently in the contents of the website and a series of resembling products showed in pictures which are exactly same with the products produced and sold by the complainant, including the V8 series, disclose the respondent’s bad faith and unfair competition purpose clearly.

Respondent

There’s no Response came from the Respondent. But 1 week after the final date of response fixed by the Center, an email came from ruyanstore@yahoo.com as follows:

From: "Ruyan Store" <ruyanstore@yahoo.com>

To: "Ivyan" <lvyan@cietac.org>

Sent: Tuesday, August 26, 2008 1:58 PM

Subject: Re: Confirmation of the Appointment of the Sole Panelist

Dear Ivyan,

I have taken all necessary steps to remove ruyanxpress from search engines, I am not trading off the ruyan brand name.

I want to re-initiate the ruyanxpress.com website in 6 months from now, when all previous links that led to this misunderstanding will be totally vanished. I want to use my domain name ruyanxpress.com for a website with the promise that it has no reference to electronic cigarettes and no affiliation to the brand name ruyan for all the categories as stipulated in the documents you sent me.

If this is not possible then I think it would only be fair that no one gets the domain name - that the domain name gets blocked and that the domain name goes back into the pool of available domain names after 1 year or 2 years.

I hope you can agree to this.

What is your advise as the best course of action?

Thanks

As the email is not qualified as a Response either in format or in content, and not submitted within the stipulated time limit, the Panel decided not to accept it as a Response.

Findings

As stipulated in the Paragraph 4(a) of the Policy, when claiming dispute to a domain name registered by another, the Complainant must prove each of the following:

- (i) That the domain name of the Respondent's is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) That the Respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) That the domain name has been registered and used in bad faith.

Based on the relevant stipulations under the Policy, the Rules and ADNDRC Supplemental Rules, the Panel needs to determine whether the Complainant satisfies each of the afore-said prerequisites. If all the answers are “yes”, the Panel will make a final decision in accordance with the facts and relevant stipulations under the Policy, the Rules and the ADNDRC Supplemental Rules; if not, the Complaint shall be rejected.

With regard to the current dispute, a fundamental fact is that the Respondent failed to submit a defense or a response of

any sort. Particularly, the Respondent did not exhibit any intention to RETAIN the disputed domain name. As stipulated in Paragraph 5(e) of 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". In light of this stipulation, the Panel has no choice but to make the decision based primarily on the Complainant's contentions and the accompanying exhibits unless proven otherwise or that the Panel, based upon its professional experiences, thinks that the Complainant's allegations are not logical or obviously contradictory to a prior judgment or any other enforceable decisions.

Identical / Confusingly Similar

Pursuant to Paragraph 4(a) (i) of the Policy, the Complainant must prove that the domain name in dispute is identical or confusingly similar to a trademark or service mark in which the Complainant has right.

When making a judgment on the issue of identity or confusing similarity, the Panel often compares the identifying part of the questioned domain name with that of the registered trademark. In this case, the identifying part of the domain name in dispute is "ruyanxpress", which might be identified as composed of two parts, namely "ruyan" and "xpress". As the Complainant argued that, "xpress" is the homophone of "express" and the producers usually take its meaning of "exhibition" to represent the new production model by "Xpress+model". This usage and meaning have been known very well by most of consumers, so that this part has no originality and distinctiveness.

The Panel agrees with the Complainant, and holds that the identifying part of the domain name in dispute should be "ruyan", which is identical to the registered trademark "RUYAN" belonging to the Complainant, and as a whole, "ruyanxpress" is confusingly similar therewith, thus the Complainant satisfies the first requirement when claiming back a domain name registered by another as set forth in the Policy.

Rights and Legitimate Interests

Paragraph 4(c) of the Policy stipulates how a Respondent can effectively demonstrate its rights or legitimate interests with regard to the disputed domain name, as an argument against the Complainant's claim. As the Complainant claimed that the respondent "Ludovicus Timmermans" has no relationship and business contact with the Complainant, and absolutely can not obtain any legal right or benefit under the condition that the complainant and its brands have achieved so high publicity, while the Respondent didn't reply formally, the Panel thinks that the Complainant meets the second requirement as set forth in the Policy.

Bad Faith

The Complainant also needs to establish the Respondent's bad faith as set forth in the Paragraph 4(a)(iii) of the Policy. Under Paragraph 4(b)(i) of the Policy, the following circumstances in particular shall be considered as 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."

The Complainant alleged and proved that, by using the disputed domain name, the Respondent created a website where the wording "RUYAN" marked prominently in the contents and a series of resembling products showed in pictures which are exactly same with the products produced and sold by the Complainant, including the V8 series.

The Respondent did not deny the allegation of the Complainant.

The Panel finds that the acts of Respondent fall under the circumstances in Paragraph 4(b)(iv) and shall be considered as evidence of the registration and use of the disputed domain name in bad faith and thus the Complainant meets the third requirement under the relevant articles of the Policy.

Based on all the above findings and comments, the Panel makes ruling that the Complainant fulfills all conditions provided in Paragraph 4(a)(i)(ii) (iii) of the Policy, hence its claims shall be held.

Status

www.ruyanxpress.com 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 “ruyanxpress.com” is confusingly similar to the Complainant's registered trademark “RUYAN” ; and
- b) That the Respondent has no right or legitimate interest with regard to the identifying part of the disputed domain name; and
- c) That the domain name was registered and subsequently used in bad faith.

As the final decision, the Panel requires the domain name “ruyanxpress.com” be transferred to the Complainant.

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