



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (BEIJING OFFICE)

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Decision Submission

English Print

Decision ID	DE-0800181
Case ID	CN-0800207
Disputed Domain Name	www.ruyanchina.com www.ruyan.offerchina.com
Case Administrator	lvyang
Submitted By	Gary Soo
Participated Panelist	
Date of Decision	14-08-2008

The Parties Information

Claimant	offerchina .com
Respondent	Chen Yongmei

Procedural History

On 11 June 2008, the Complainant submitted a complaint in the English language to the Beijing Office of the Asian Domain Name Dispute Resolution Center (“the ADNDRC”) and elected this case to be dealt with by a one-person panel, in accordance with the Uniform Domain Name Dispute Resolution Policy (“the Policy”) approved by the Internet Corporation for Assigned Names and Numbers (“ICANN”), the Rules for Uniform Domain Name Dispute Resolution Policy (“the Rules”), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (“the ADNDRC Supplemental Rules”).

On 12 June 2008, the ADNDRC 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. On the same day, upon request by the ADNDRC, the Registrar transmitted by email to the ADNDRC its verification response, confirming that the Respondent is listed as the registrant and providing the contact details.

On 19 June 2008, the ADNDRC transmitted the complaint to the Respondent.

On 26 June 2008, the ADNDRC notified the Respondent of the commencement of the proceedings. On the same day, the ADNDRC notified the Complainant that the complaint has been confirmed and transmitted to the Respondent, and notified the Registrar of the commencement of the proceedings.

On 16 July 2008, the Respondent filed a response in Chinese with the ADNDRC, which was subsequently transmitted to the Complainant on 29 May 2008.

On 24 July 2008, the ADNDRC informed the Complainant and Respondent that the ADNDRC would appoint a one-person panel to proceed to render the decision. Having received a declaration of impartiality and independence and a statement of acceptance, the ADNDRC notified the parties, on 28 July 2008, that the Panel in this case had been appointed, with Mr. Gary Soo (苏国良 ‘Su Guoliang’) acting as the sole panelist.

The Panel determines that the appointment was made in accordance with Rules 6 and Articles 8 and 9 of the Supplemental Rules.

On 24 July 2008, the Panel received the file by email from the ADNDRC and was requested to render the Decision on or before 11 August 2008.

Pursuant to Paragraph 11 (a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the registration agreement, the language of the administrative proceedings shall be the language of the registration

agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceedings. The language of the current disputed domain name registration agreement is English, thus the Panel determines English as the language of the proceedings.

Factual Background

For Claimant

The Complainant in this case is Beijing SBT RUYAN Technology & Development Co., Ltd.. The registration address is Room 11/F A Xincheng Commercial Building, 11 Chongwenmenwai Street, Beijing, People's Republic of China. The Complainant appointed Beijing Fast Intellectual Property Law, LLC, the address of which being at Room 1801, Tri-tower C Building, No. 66 Zhongguancun East Road, Haidian District, Beijing 100190, People's Republic of China, as its authorized representative in this matter. The Complainant is a legitimate user of a series of trademarks in relation to “Ruyan” and “如烟”.

For Respondent

The Respondent, Chen Yongmei (陈永梅), is the current registrant of the domain names <offerchina.com> and <ruyanchina.com> according to the Whois information and one of the disputed domain name, i.e. <ruyan.offerchina.com> is a sub-domain name of <offerchina.com>.

Parties' Contentions

Claimant

The Complainant averred that the Complainant had exclusive rights to use the “Ruyan” and “如烟” series of trademarks as its associated enterprise, Shenyang SBT Technology & Development Co. Ltd., had created these trademarks and that the Complainant was responsible for maintaining all the legal interests associated with these trademarks. The Complainant also remarked that these trademarks had been registered widely in China and had gained the corresponding exclusive rights to the use of the trademark. The Complainant noted that “Ruyan” was the Chinese Pinyin of the Chinese characters “如烟”.

According to the Complainant, the registration of these trademarks were filed with the PRC State Administration for Industry and Commerce on 9 October 2004; the Complainant acquired the trademark rights of the Chinese characters “如烟” and their corresponding Chinese Pinyin “Ruyan” respectively on 7 March 2007 and 21 May 2007; the series of trademarks of “如烟” and “Ruyan” were created independently and used firstly by the Complainant, prior to the registration dates of the registration of the domain names <ruyanchina.com> and <offerchina.com>, which were respectively 4 April 2007 and 12 December 2007.

The Complainant pointed out that Beijing SBT RUYAN Technology & Development Co. Ltd. and Shenyang SBT Technology & Development Co. Ltd. were wholly owned subsidiary companies under the Hong Kong SBT Group and, based on an exclusive license contract of these trademarks, the Complainant of this case could exclusively use all the trademarks owned by the Shenyang SBT Technology & Development Co. Ltd. and might take legal measures by itself against any action in relation to any infringement of such trademark rights.

The Complainant stated that it integrated the aspects of study and development of patented products, production operation, and native and foreign market operation, focusing on development in the bioelectronic consumer goods field, while crossing multiple high-tech industry fields such as electronic ultrasonic, bio-medicine and fine chemicals and having the leading research and development level and product concepts in the world. As such, the Complainant noted that it had several high-end patented products with self-owned intellectual properties, set up and improved an independent science & technology R&D center, a mass production base and domestic and international marketing and operating system. The Complainant claimed that its “RUYAN” series of unique high-tech products achieved a new breakthrough in the field of “healthy smoke-controlling”, were the pioneering “healthy smoke-controlling” products nationwide and even worldwide, and, at present, and the social promotion of the products was called a “revolution in healthy smoke-controlling” by the WHO and specialists of various countries. In order to protect its intellectual property rights, the Complainant said that the “RUYAN” series of products had applied for patent in 2003 and were then registered in various countries and regions of the world.

The Complainant also asserted that it was setting up worldwide marketing channels and scientific logistics operation system so that it might do a better work for the public of the world in constructing a scientific and healthy life environment and providing a high-quality healthy life.

The Complainant provided details to show that the series of trademarks “Ruyan” and “如烟” trademarks had been registered for many categories goods in China, and in over 50 countries and regions. The Complainant believed that, since its launch in 2004, the series products of “Ruyan” and “如烟” were highly appreciated by the WHO and attracted worldwide attention of people in all circles who wished to control and reduce the harmfulness of smoking. With the official website of Reuters introducing the series smoke-controlling products of “如烟” brands and hundreds of mainstream news media in the world, such as CNN, Sydney Morning Herald, etc., reproducing a relevant news report of Reuters, the Complainant believed that these smoke-controlling products invented by Chinese independently became the focus of smoke-controlling field this year. Also, the Complainant stated that, within a short period, the products had conquered the consumers of the whole China, including Hong Kong, Macau and Taiwan, and the European countries, such as England, Austria, Italia, German, Holland, Denmark and Turkey, etc., as well as various countries of the world, such as Israel, Australia, New Zealand and Korea, etc.. To support this, the Complainant listed out in detail various recognitions, awards, honours, reports, etc., that its “Ruyan” and “如烟” had managed to achieve since 2004.

The Complainant submitted that the disputed domain names <ruyanchina.com> and <ruyan.offerchina.com> were similar with the Complainant’s trademarks and they had the likelihood of confusion, and that, by comparing the disputed domain names with the Complainant’s trademarks “Ruyan” and “如烟”, the similarity was obvious. The Complainant remarked that the disputed domain names consisted of two parts --- “china” and “ruyan” --- or three parts --- “offer”, “china” and “ruyan”, with “china” being the nation name and the word “offer” having a definite meaning. The Complainant noted that these corresponding parts therefore lost their originality and distinctiveness, leaving the “ruyan” part as the distinct part in the disputed domain names. The Complainant believed that this distinct part was completely the same as the Complainant’s trademark “Ruyan”, the Pinyin of the Chinese characters “如烟” and, hence, the relevant public would very possible take the disputed domain names as the Complainant’s domain name for providing its products and services by mistake. The Complainant further submitted that “Ruyan” and the corresponding Chinese characters “如烟” were the main trademarks of the Complainant, and were known well by public through a long period of use and propaganda.

The Complainant also submitted that the Respondent, “chen yongmei”, did not have any legal right and benefit on the disputed domain names and its main part “ruyan”.

Furthermore, the Complainant said that the websites directed to by the disputed domain names were selling the so-called “RUYAN E-Cigarette” products, with the word “RUYAN” shown prominently on the advertising pictures for each product. The Complainant opined that “E-Cigarette” was only an English presentation mode of electrical cigarette and that, in fact, “Ruyan” was the brand of products being sold. The Complainant pointed out that the Respondent, “chen yongmei”, as one nature person of China, had no relationship with the Complainant, with no business contact, and absolutely could not obtain any legal right or benefit under the condition that the Complainant and its brands had achieved so high publicity.

The Complainant also asserted that the Respondent had bad faith in the registration and use of the disputed domain names. According to the Complainant,

- (a) “Ruyan” and the corresponding “如烟” were not original and common wordings; and they were created as a brand name from the combination of the health idea of “real smoking feeling with similar appearance, lighting cigarette, blinking and smokes”. This would be high and new technology, and these trademarks, being possessed exclusively by the Complainant and its associated enterprise, had very strong distinctiveness and originality. The Complainant did not believe that it could be a coincidence that the Respondent registered the disputed domain names, which were very similar with the trademarks and believed that these actions of translating, copying and imitating other’s trademarks had constituted an infringement to trademark rights.
- (b) The series of products with the trademarks “Ruyan” and “如烟” were known long by the public since 2004 and should be considered as well-known by China consumers, and even by the worldwide consumers. The Respondent being a Chinese citizen and selling similarly smoking products, it was absolutely impossible that he did not know about the Complainant and the series of trademarks “Ruyan” and “如烟”. The Complainant stress that, from the websites directed to by the disputed domain names, the wording “RUYAN” and the pictures showing various series of products similar to the Complainant’s products could be seen everywhere. Thus, the Complainant submitted that all these indicate the Respondent’s bad faith in applying registration of the disputed domain names.
- (c) The Complainant asserted that, with the Respondent having no prior legal rights over “RUYAN” and knowledge about these trademarks and their high degree of publicity, the Respondent registered the disputed domain names for causing confusion and mistake of public, and getting the illegal benefits which could not have been obtained otherwise. The Complainant saw this as a typical business free-riding, with an unfair competition purpose. In particular, with the wording “RUYAN” marked prominently in the contents of the websites and a series of likewise products as those produced and sold by the Complainant being shown in photos, including the V8 series, it disclosed the Respondent’s bad faith and unfair competition purpose clearly.

Pursuant to the relevant provisions of the rules and based on the above reasons, the Complainant requested the Panel to adjudicate the transfer of the disputed domain names to the Complainant.

Respondent

The Respondent asked the Panel to dismiss the complaint. The Respondent explained that “Offerchina.com”, being an electronic product exchange platform, allowed users to register for free their own names as sub-domain names. The Respondent asserted that the <ruyan.offerchina.com> was one of the sub-domain names of the product supplier, directing to “ruyan” products. The Respondent remarked that, if the Complainant believed that such a sub-domain name was confusing, the Complainant could have asked the Respondent to delete it. The Respondent further stated that that <ruyan.offerchina.com> sub-domain name had been deleted. The Respondent said, in any case, there were no justifications for transferring the sub-domain name <ruyan.offerchina.com> or the domain name <offerchina.com> to the Complainant.

As to the disputed domain name <ruyanchina.com>, the Respondent said that the website had clearly expressed that this was the online website and there was no bad faith registration or use of it.

Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles that the Panel is to use in determining the dispute, stating that the Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

Paragraph 4 (a) of the Policy requires that the Complainant shall prove all of the following three elements in order to obtain an order that a domain name should be cancelled or transferred:

- (1) the domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (2) the Respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered and is being used in bad faith.

Identical / Confusingly Similar

The Complainant submits that it has rights under the exclusive license contract between the Complainant and Shenyang SBT Technology & Development Co. Ltd. in relation to the “Ruyan” and “如烟” trademarks. These trademarks had been registered in various categories of products worldwide including Hong Kong and China. In this regard, the Complainant has attached the supporting documents in the complaint. On the other hand, the Respondent did not dispute the rights of the Complainant over the marks/names of “Ruyan” and “如烟” in the response.

In the circumstances, the Panel finds that the Complainant has succeeded in establishing the necessary rights over the “Ruyan” and “如烟” marks/names as required under Paragraph 4(a) of the Policy.

In the disputed domain name <ruyanchina.com>, the Panel accepts that the “.com” part is the generic top level domain name for company and that the part “china” in “ruyanchina” is in a format that bears a geographic descriptive meaning. The left-over part of “ruyan” is the same as the Complainant’s “Ruyan” mark/name and is also, phonetically, the same as or confusingly similar to the Chinese Pinyin of the Complainant’s “如烟” mark/name. In the premises, the Panel finds that the Complainant has successfully established that the disputed domain name <ruyanchina.com> is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

As to the disputed domain name <ruyan.offerchina.com>, the Panel is informed that it has been deleted by the Respondent. Again, the Panel accepts that the “.com” part is the generic top level domain name for company. The secondary level domain name is “offerchina”. The word “offer” is one of general usage and, when combined with “china” in this format, stands for not a mere geographic descriptive meaning. Also, the Panel considers that it is of vital importance here that the part “ruyan” appears in third-level sub-domain in this disputed domain name. The Panel believes that a third level sub-domain name means quite differently to internet users, when compared with a second level sub-domain name. In all the circumstances, judging from the disputed domain name <ruyan.offerchina.com> as a whole, the Panel finds that the Complainant has not succeeded in establishing that the disputed domain name <ruyan.offerchina.com> is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The Panel understands that the Complainant may feel that the use of the disputed domain name <ruyan.offerchina.com> improperly is an infringement of intellectual property or other legitimate rights of the Complainant, but notes that these are matters outside the scope of the operation of the Policy.

As the Panel finds that the Complainant has succeeded proving the element in Paragraph 4(a)(1) of the Policy only as regards <ruyanchina.com>, the Panel will not proceed to consider the other elements in Paragraphs 4(a)(2)&(3) as regards <ruyan.offerchina.com>.

Rights and Legitimate Interests

So far as <ruyanchina.com> is concerned, the Complainant submits that the Respondent has no such rights or legitimate interests necessary under the Policy. To this, the Respondent does not deny (at least expressly) or provide evidence to the contrary. From the name of the Respondent, the Panel does not see any rights of the Respondent over the disputed domain name <ruyanchina.com> or its prominent parts, i.e. “ruyanchina” or “ruyan”. Also, taking also into account that neither “ruyanchina” or “ruyan” is in the daily use of language, that the Respondent did not explain why it has rights to register this disputed domain name, and that the Complainant has trademark rights over the “Ruyan” and “如烟” marks/names, the Panel finds that the Complainant has succeeded in proving the element in Paragraph 4(a)(2) of the Policy as regards <ruyanchina.com>.

Bad Faith

Under Paragraph 4 (b) of the Policy, the following are relevant examples a Panel may take as evidence of registration and use in bad faith:

- (i) Circumstances indicating that the Respondent has registered or 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 the Respondent’s documented out-of-pocket costs directly related to the domain name; or
- (ii) The Respondent has 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) The Respondent has registered the domain name primarily for the purpose disrupting the business of a competitor; or
- (iv) By using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to its website 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 its website or location or of a product or service on its website or location.

The Panel notices that, from the printouts of the websites, the products offered to be sold were primarily of or very similar to the “Ruyan” brands. Given the Complainant’s rights over the “Ruyan” and “如烟” marks/names, it seems clear to the Panel that the Respondent was well aware of the Complainant’s rights in this regard when registering and using this disputed domain name. By doing this, the Panel finds that the registration and use of the disputed domain name was and is with bad faith and believes the purpose is for using the domain name to attract, for commercial gain, internet users to its website, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of its website or of a product or service on its website.

Therefore, the Panel also finds that the Complainant has succeeded in proving the element in Paragraph 4(a)(3) of the Policy as regards <ruyanchina.com>.

Status

www.ruyanchina.com	Domain Name Transfer
www.ruyan.offerchina.com	Complaint Rejected

Decision

Having established all three elements required under the Policy in respect of the disputed domain name <ruyanchina.com>, the Panel concludes that relief should be granted. Accordingly, it is ordered that disputed domain name <ruyanchina.com> shall be transferred from the Respondent to the Complainant.

As regards the disputed domain name <ruyan.offerchina.com>, since the Complainant cannot establish all the three elements required under the Policy, the Panel decides that the complaint against this disputed domain name <ruyan.offerchina.com> shall fail and be dismissed.

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