

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE
(Beijing Office)
ADMINISTRATIVE PANEL DECISION
Case No. CN 0900313

Complainant: Ikang Healthcare Technology (Beijing) Co., Ltd.
Respondent: ikwq ikwq
Domain Name: ikwq.net
Registrar: MELBOURNE IT, LTD.

1. Procedural History

On 8 November 2009, the ADNDRC Beijing Office (the “Beijing Office”) received the complaint form from Ikang Healthcare Technology (Beijing) Co., Ltd. (the “Complainant”) pursuant to the Uniform Domain Name Dispute Resolution Policy (the “Policy”) adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) on 24-10-1999, the Rules for Uniform Domain Name Dispute Resolution Policy, approved by ICANN on October 24, 1999 (the Rules) and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the Supplemental Rules).

On 10 November 2009, the Beijing Office confirmed receipt of the Complaint. On the same day, the Beijing Office notified the Registrar, MELBOURNE IT, LTD., of the Complaint. The Registrar was requested to provide the registration information of the disputed domain name.

On 13 November 2009, the Beijing Office received confirmation from the Registrar confirming that the Respondent registered the disputed domain name with it and provide the registration information thereof. In particular, it was confirmed that the Registration Agreement was in English.

On 17 November 2009, the Beijing Office sent Transmittal of Claims to the Respondent.

On 24 November 2009, the Beijing Office sent “Notification of the Commencement of the Case Proceedings” to the Respondent notifying the claim has been Confirmed and Forwarded from the Complainant to the Respondent. The Respondent was to submit a Response within 20 days of 24 December 2009. On the same day, the Complainant, ICANN and The Registrar were also notified of the Commencement of the case proceedings.

On 15 January 2010, the Beijing Office sent “Notification of No Response Received and Hearing by Default” to the parties.

On 18 January 2010, the Beijing Office sent invitation to Mr. Anthony Wu to serve as the sole panelist in this matter.

On 18 January 2010, the Beijing Office received from Mr. Anthony Wu his confirmation that he would be available to serve as the sole panelist in this matter and that he will be able to act independently and impartially between the parties.

On the same day, the Beijing Office confirmed Mr. Anthony Wu's appointment as the Panelist and the case was transferred to him. He is to render the decision on/or before 1 February 2010.

On 1 February 2010, at the request of the Panelist, the Beijing Office extended the date of submission of the decision to on/or before 8 February 2010.

The Panel, having regard to the language of the Registration Agreement, pursuant to Paragraph 11 of the Rules for the Policy, decided to use English in rendering this decision.

2. Factual Background

For the Complainant

The Complainant is Ikang Healthcare Technology (Beijing) Co., Ltd. of 7th Floor, Haorun Mansion, No. 50 Dengshikou Street, Dongcheng District, Beijing. Its authorized representative is Jin Bingyi Attorney at law of Shanghai Runyi Law Firm of Suite 1805-1806, Tower I of The North, No.106,Zhong Jiang Road, Shanghai, 200062,

The Complainant is a healthcare management institute specialized in providing physical examination and medical services with its business covering all the country. It provides physical examination, health care, family doctor, disease management, health insurance and other all-round, individualized services to individuals and groups.

The Complainant is entitled to the following:

(1) “ikang | 爱康” trademark(trademark registration No. 4046473,validity term from 7th April 2007 to 6th April 2017.)in the approved service item (catagery38) including and limited to cable television broadcasting, message sending, electronic mail, telecommunication information, Computer aided transmission of messages and images, BBS telecommunication service, Telecommunication connection with global computer network service, Access service with global computer network(service provider),Electronic letter, Communications by computer terminals.

(2) “ikang | 爱康” trademark(trademark registration No. 4048036,validity term from 7th June 2007 to 6th June 2017.)in the approved service item(catagery42)including and limited to bio-search.

(3) “ikang | 爱康” trademark(trademark registration No. 4048037,validity term from 7th June 2007 to 6th June 2017.)in the approved service item (catagery4) including and limited to hospital, medical clinic, treat and medicine consultant, vest home, psychological expert, plastic surgery and beauty salon.

For the Respondent

The Respondent is “ikwq ikwq” of 123-125 Beijing 264000 China (as it appeared in the Registrar’s record). The disputed domain name is “ikwq.net” and was registered on 15 August 2009.

The Respondent did not respond to the Complaint.

3. Parties’ Contentions

The Complainant

The Complainant’s contentions are as follows:

The complainant is a healthcare management institute specialized in providing physical examination and medical services with its business covering all the country. It provides physical examination, health care, family doctor, disease management, health insurance and other all-round, individualized services to individuals and groups.

At the moment, the complaint has established several healthcare service center embracing physical examination and medical treatment functions together in Beijing, Shanghai, Chongqing, Guangzhou, Shenzhen, Nanjing and other cities with its members over one million. Now the complainant has become a leading healthcare management group company that enjoys high popularity and sound good will.

At the meantime, the complainant is entitled the “ikang” trademark in the approved Category No. 38 and Category No.42 service item, thus it enjoys the earlier right of the disputed domain name here.

It is specially to be noted that the disputed domain name in this case is registered with a fake name while the website directed by this disputed domain name carries abundant of contents which damage the popularity and especially the good will of the complaint.

- Is Ikang the biggest hospital registration dealer?
- Disclose the real fact of Ikang tumor screening.
- Tell you the true story of Ikang.
- Disclose the mask of Ikang , Is tumor screening the technology outcome of Ikang?
- Ikang Appointment Card is cheating while Ikang Healthcare Company is a fraud company.
- Ugly Ikang Healthcare Company.
- Ikang Card or Robbery Card?
- The new shocking events in 2009, Ikang CEO Zhangli answered to the journalist ambiguously

Furthermore, the sentences like “it is the cheater other than none.” ,“The cheater is so malicious that it cheated patients by name of hospital, it actually absorbed the patients’ blood.” ,“Ikang obtained huge profits of more than fifteen times of the cost in according to Ikang agent price and Ikang obtained the most huge profits of more than sixty times of the cost in according to the reagent purchasing price. It is a truth universally acknowledged that some one making drug deal can get huge profits but no one actually knows how huge the profits would be .I guess these two can be compared?”, “Ikang actually played us.”, “Ikang hasn’t got the franchise practice handbook until now ” ,“Ikang is lack of systematic service guidelines and training system ,its so called guidelines have no reasonable ground.”,” It’s so cool to make money like Ikang.” and other titles, contents that spreads rumors of the complainant as well as abuses on the complainant, thus damages the popularity of the complainant can be seen at everywhere in the website

It is more serious that the complainant finds that the website directed by the disputed domain name in this case is full of contents including personal abuse and dignity assault even on its staff, such as the comments that Ikang is the most shameless that I have ever seen.

The complainant submitted the complaint form and other related documents concerning the first domain name used by “Ikang Legal Rights Safeguard Website” to China International Economic and Trade Arbitration Commission Domain Name Resolution Center. The arbitration was decided by one person expert, Arbitrator Changqing Xie.

On 24th 2009, China International Economic and Trade Arbitration Commission Domain Name Resolution Center issued China International Economic and Trade Arbitration Commission Domain Name Resolution Center No.0039 verdict, deciding that the complaint applied concerning the disputed domain name “ikang-wq.cn” is constituted and thus supported ,and the disputed domain name “ikang-wq.cn” should be cancelled.

But after the above verdict, the so-called “Ikang Legal Rights Safeguard Website” continuously applied for a new domain name as “ikang-wq.com” in ill intension so as to take it as a new connection to “Ikang Legal Rights Safeguard Website” and continuously infringed legal rights of the complainant intentionally.

After that, the complainant submitted complaint form and related documents concerning the second domain name used by “Ikang Legal Rights Safeguard Website”to Asian Domain Name Dispute Resolution Centre(Beijing Office).The arbitration was decided by one person expert , Arbitrator Guangliang Tang.

On 3rd August 2009, Asian Domain Name Dispute Resolution Centre issued CN0900271 Administrative Experts Group Verdict and held that activities of the respondent constituted direct negative influence on the popularity of the complaint. The respondent also committed that its activities did make the influence on social public. The experts group held that the respondent constituted the ill intention so it decided that the disputed domain name “ikang-wq.com” should be transferred to the complaint Ikang Healthcare Technology (Beijing)Co.,Ltd.

But after the above verdict was in its legal effect, the so-called “Ikang Legal Rights Safeguard Website” went so far as to applied for “ikwq.net”, the disputed domain name here in this case as the new connection to “Ikang Legal Rights Safeguard Website” and continuously infringed the legal rights of the complainant.

Based on the above facts, it can be fully proved that the disputed domain name in this case is similar to the name and marks whose civil right and interest is entitled to the complaint. In addition, the registration and usage of the disputed domain name by the respondent reflects its obvious ill intensions. The demands applied by the complaint shall be supported pursuant to the Uniform Policy for Domain Name Dispute Resolution.

The Complainant sought to have the domain name in question transferred to it.

The Respondent

The Respondent did not respond to the Complaint.

4. Findings

Identical or Confusing Similarity

The Panel accepts the evidence of the Complainant that by virtue of its extensive use and the registration of the mark “ikang | 爱康” in China, it has rights over the trademark of “ikang | 爱康” as detailed by the Complainant before the registration of the disputed domain name. The Complainant has the burden of proving that the disputed domain name is identical to or confusingly similar to the “ikang” mark. The Respondent’s failure to respond does not relieve this burden or its burden of proof over either of the other two elements of Paragraph 4(a) of the Policy. However, the failure to deny any of the Complainant’s allegations and evidence does entitle the Panel to take the Complainant’s allegations and evidence as true and to draw appropriate inferences.

The Panel adopts the view of the Panelist in *Alta Vista Company v. Geoffrey Fairbairn*, WIPO Case No. D2000-0849 that: Confusingly similar turns on the inherent distinctiveness of the trademark, the extent of use of the trademark, the extent of time the trademark has been in use, the nature of the wares, services and business, the similarity in sound, appearance and idea suggested by the trademark and the domain name, among other factors.

The distinctive part of the disputed domain name is “ikwq” which is not identical to the trademark “ikang” of the Complainant . In the circumstances, it is necessary to consider whether the disputed domain name is confusingly similar or not to the trademark “ikang”.

The disputed domain name composes of “ik” and “wq”, whereas the trademark composes of “ik” and “ang”. That is “ang” in the trademark is replaced by “wq”. However, as mentioned above, in the Panel’s view one has to compare the disputed domain name as a whole with the trademark and consider the similarity in sound, appearance and idea suggested by the trademark and the domain name. Having regard to the sound and the appearance of the disputed domain name, the Panel is of the view that the disputed domain name is confusingly similar to the trademark of the Complainant.

The Panel is supported in this view by the fact that the web site which the disputed domain name actually pointed to contained specific references to the Complainant. Apart from making criticism of the Complainant, the website was also directed to customers of, entities related to and staff (past or present) of the Complainant to ask them join in discussion on the website. It would not serve the purpose of the Respondent in doing so if there was not at least some degree of confusing similarity between "ikang" and "ikwq".

The Panel is satisfied that the domain name in dispute is identical or confusingly similar to the "ikang" trademarks and the requirements of Paragraph 4(a)(i) are met with.

Rights or Legitimate Interests of the Respondent

Paragraph 4(c) of the Policy requires the Complainant to prove that the Respondent has no right or legitimate interest in the disputed domain name. However, it is the consensus view among Panelists that if the Complainant makes out a prima facie case that the Respondent has no rights or legitimate interests, and the Respondent fails to show one of the three circumstances under Paragraph 4(c) of the Policy, then the Respondent may lack a legitimate interest in the domain name.

The Panels finds that the Complainant has made out a prima facie case. The Complainant clearly has a reputation over its trademark and the Respondent ought to have known of the trademark at the time when he registered the disputed domain name. As a matter of fact, the website to where the disputed domain name pointed was primarily for the purpose of making criticism of the Complainant. The Respondent clearly knew of the Complainant and its trademark. The Complainant did not authorize the Respondent to use the mark. The burden of going forward with the evidence shifts to the Respondent.

The Respondent would have to demonstrate his legitimate interest according to Paragraph 4(c) of the Policy. The Respondent is uniquely in the position of adducing evidence on his rights or legitimate interests in the disputed domain name. The Respondent has elected not to respond, and this Panel may therefore treat Complainant's assertions as true and the evidence adduced as uncontested. In particular, the Panel accepts the Complainant assertion that the content of the website shows that the Respondent has ill intention towards the Complainant and the use could not be in good faith and for non-commercial purpose. Under the circumstances, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant meets with the requirements under Paragraph 4(a) (ii).

Bad Faith

It is provided under Paragraph 4 (b) of the Policy that:

"For the purposes of Paragraph 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 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 your website or location or of a product or service on your website or location.”

The onus of proof is on the Complainant to satisfy the Panel that one of the circumstances exists or otherwise there is bad faith in the registration and use of the domain name in dispute.

It is the contention of the Complainant that the content of the website to which the disputed domain name pointed to sought to damage the popularity and good will of the Complainant, including personal abuses and assaults on its staff, is ill intended. The Respondent did not respond to the assertion.

Having considered the content, the Panel has no reason to disagree with this contention. The Panel also finds that the ill intention was there when the disputed domain name was registered. The purpose of the registration was to continue the operation of the previous website with similar contents which were pointed to by other disputed domain names that had since been dealt with by other Panels and ordered their transfer out of the respondents concerned and became unavailable for the purpose.

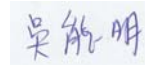
Having regard to the above, the Panel is satisfied that on the evidence adduced by the Complainant that both the registration and use of the dispute domain name by the Respondent are malicious and were done in bad faith within the terms of Paragraph 4(a)(iii). The finding of bad faith is supported by the fact that the Respondent did not use a true name and an incomplete address. The registration name of “ikwq ikwq” is clearly a fake name.

As a result, the requirements under Paragraph 4(a)(iii) are directly met with by the evidence. There is no need to consider whether the circumstance is also caught by any of the circumstance as set out in the sub-paragraphs of Paragraph 4 (b).

5. Decision

It is the finding of the Panel that the Complainant proves all requirements of Paragraph 4(a) of the Policy. In paragraph 9 of the complaint, Complainant sought to have the domain name in question transferred to it. Having regard to circumstances of the case, the Panel believes that it is appropriate to transfer the domain name “ikwq.net” to the Complainant, Ikang Healthcare Technology (Beijing) Co., Ltd.

The Panelist:

Handwritten signature in blue ink, appearing to be the Chinese characters '吴能明' (Wu Nengming).

Dated: 8 February 2010