

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

(Beijing Office)

ADMINISTRATIVE PANEL DECISION

Case No. CN-1000338

Complainant: Thule AB, Malmö, Sweden

Respondent: beijingtuolechedingjiaxitongzhuanmaidian

Domain Name: bjthule.com

Registrar: WEB COMMERCE COMMUNICATIONS LIMITED DBA WEBNIC. CC

1. Procedural History

A Complaint, made pursuant to the Uniform Domain Name Dispute Resolution Policy (“Policy”) implemented by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on 24 October 1999, and under ICANN Rules for Policy and Asia Domain Name Dispute Resolution Center (“ADNDRC”) Supplemental Rules for Policy, was received by the ADNDRC Beijing Office on February 25, 2010. On the same day, the ADNDRC Beijing Office requested the Registrar and ICANN by email for the provision of information at their WHOIS database in respect of the Disputed Domain Name, and such registration information was confirmed by the Registrar on March 23, 2010.

On April 7, 2010, the ADNDRC Beijing Office transmitted the Claims to the Respondent by email.

On April 28, 2010, the ADNDRC Beijing Office notified the Complainant by email that the Complaint was reviewed and forwarded to the Respondent and confirmed with the parties and Registrar by email that the captioned case was formally commenced. The ADNDRC Beijing Office also requested the Respondent to file a Response within 20 calendar days scheduled time.

On May 24, 2010, the ADNDRC Beijing Office confirmed the Response from the Respondent. On the same day, the ADNDRC Beijing Office transmitted the Response to the Complainant.

On May 27, 2010, the ADNDRC Beijing Office issued the Notification for Selection of Panelist to the Parties.

On June 24, 2010, the ADNDRC Beijing Office gave notice to the potential candidate of the Panelist Dr. Lulin Gao, requesting him to confirm whether he would accept the appointment as a Panelist for this case, and if so, whether he could maintain impartiality and independence between the parties in this case.

On June 28, 2010, the ADNDRC Beijing Office received a declaration of impartiality and independence and a statement of acceptance from Dr. Lulin Gao.

On June 29, 2010, the ADNDRC Beijing Office informed by email the Parties that Dr. Lulin Gao would be the sole Panelist of this case and transferred the files of this case to the Panel formally on the same day. The Panel should render the Decision within 14 days, i.e. on or before July 13, 2010.

On July 12, 2010, the ADNDRC Beijing Office informed by email the Parties that upon the request of the Panel, the ADNDRC Beijing Office decides to extend the time period of rendering the decision to July 20, 2010.

2. Factual Background

For the Complainant

The Complainant of this case is Thule AB, Malmö, Sweden. Its address is BOX69, SE-330 33 HILLERSTORP, SWEDEN. Its authorized representative is Thule (Shanghai) Co., Ltd.

For the Respondent

The Respondent of this case is beijingtuolechedingjiaxitongzhuanmaidian with the address at Room 2003, Peking International Trade Building, West No.16 Fengguan Road, Fengtai District, Peking, CN100071.

The Respondent registered the Disputed Domain Name on November 20, 2008.

3. Parties' Contentions

The Complainant

The Complainant's contentions are as follows:

At the beginning of 2008, the Respondent registered the domain name. The Respondent not

only use the disputed domain name without permission and authorization to build the THULE-related sites, but also use brand identity and product pictures containing “THULE” or “thule” on such website, and do THULE product network sales and after-network sales service on the website without permission and authorization in the name of Beijing Special Store, which has seriously affected the company image of Thule AB, Malmö, Sweden.

The Complainant enjoys the exclusive right of registered trademark to the main part of “bjthule.com”—“thule”. The respondent's domain name and the complainant's trademark are similar that can lead to confusion.

The Respondent is irrelevant with the main part of the disputed domain name “bjthule.com”. The Respondent doesn't have trademark rights and other related civil rights of “thule” either. Therefore, the Respondent is not entitled to have the rights and legitimate interests of the disputed domain name.

The Respondent registers and uses the disputed domain name with commercial and malicious purpose, which makes network clients who intends to search for “thule” commodity confuse and think by mistake that the disputed domain name website is authorized by the Complainant. Even after visiting the website, the consumers may still think by mistake that the Respondent is the legitimate company in Beijing that has relationship with the Complainant. This not only increases the click rate and awareness of the disputed domain name website, but also increases the Respondent's business opportunities.

The Complainant has registered and used “www.thule.com” and “www.thulediscovery.com” that have a high degree of brand awareness in the industry. The Respondent's above-mentioned actions not only undermine the complainant's normal business operations, but also constitute unfair competition with the Complainant.

The Complainant believes that the disputed domain name is confusingly similar to its trademark THULE. The Respondent does not enjoy the corresponding rights or legitimate interests over the disputed domain name. The registration of the disputed domain name is malicious and infringes upon the legitimate interests of the public and the Complainant.

The Complainant files the complaint specially to the Asian Domain Name Dispute Resolution Center, and requests a ruling that cancel the disputed domain name “bjthule.com”.

The Respondent

The Respondent responds to the Complainant's contentions as follows:

(1) It is obvious untrue that the Respondent sets up and operates the disputed domain name www.bjthule.com without permission of the Complainant, since the Respondent sets up this website after signing the distribution contract with the Complainant and the Complainant is not only aware of this website at the beginning but also very supportive of us setting up this website.

(2) The purpose of the site www.bjthule.com is to sell Thule products, since the Respondent is Thule's distributor and only sell the Complainant's products on this website. The website greatly improves Thule's brand image in China.

(3) The Disputed domain name "bjthule.com" may not cause confusion, as other Thule distributors also register and operate similar websites, i.e., <http://www.sz-thule.com/>, <http://www.thule-dl.com/>, <http://www.thuleshop.com.cn/>, <http://www.huiyu-thule.com.cn/>.

(4) The Respondent uses this website to sell Thule products and promotion Thule brand, so it is obvious that the Respondent uses this website with good intention not what the Complainant stated "malicious purpose".

(5) The Respondent has never stated anywhere that the website is Thule's official site and the high visit volume and popularity of this site is due to hard work of the Respondent.

(6) The Complainant broke the contract before its expiration time and stopped supplying us with goods, but the Respondent has plenty of storage of complainant's products. So the Respondent has to use this website to clear all the storage and were forced to sell the products at 15% discount due to shortage, but the Complainant stated irresponsibly on its official website that the products the Respondent sold are fake.

The Respondent further conducts a detailed analysis on the above contentions.

4. Panel's Findings

As stipulated in the Paragraph 4(a) of the Policy, when claiming a domain name registered by Respondent, the Complainant must prove each of the followings:

- (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 is being 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 the answer is 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 Complainant's claims shall be rejected.

Identical or Confusing Similarity

Pursuant to Paragraph 4(a)(i) of the Policy, the Complainant must prove that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has right to. In order to meet this requirement, the Complainant provided evidence certifying its entitlement to the registered trademark "THULE" (Reg. No. 914965) in China, which was registered in 1996, and remains valid after renewal. Just as demonstrated by the Complainant's exhibits, the Complainant's trademark was registered before the registration date of the Disputed Domain Name (November 20, 2008) in terms of "carrying stents installed on the car; etc.". Thus, the Panel is of the view that the Complainant enjoys the prior trademark right to "THULE".

As such, what the panel needs to do is to make a conclusion on the identity or confusing similarity between the Complainant's registered trademark "THULE" and the Disputed Domain Name "bjthule.com". The panel notices that, the identifying part of the Disputed Domain Name contains "thule", which is the same as the Complainant's registered trademark, except for the lowercase/capital letters that nearly has no influence on distinguishing different domain names. "bj" generally refers to the abbreviation for "beijing", which is not distinctive enough to differentiate the Disputed Domain Name from Complainant's registered trademark.

Therefore, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's registered trademark, and the Complainant has satisfied the first condition under Paragraph 4(a) of the Policy.

Rights or Legitimate Interests of the Respondent

The Panel makes the decision based on the evidence provided by both parties and in case that either party fails to meet its burden of proof, such party shall undertake the risk of the possible unfavorable result against it. The Complainant claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Panel finds that the Complainant has already fulfilled the burden of proof required by the second condition under

Paragraph 4(a) of the Policy, thus the burden of proof regarding “rights or legitimate interests” is generally on the party making the defense in the dispute resolution of a domain name, the Respondent.

The Panel considers that, 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.

The Respondent argues that it is a distributor of the Complainant. It registered the Disputed Domain Name and set up the website www.bjthule.com with the permission of the Complainant, and the Complainant is very supportive on such acts. In addition, the products it sold are all the Complainant’s products.

After reviewing the evidence provided by the Parties, the Panel finds that, first, THULE (Shanghai) Co., Ltd. Authorized Distributor Agreement (“Agreement”) between the Complainant and the Respondent was concluded and took effect on December 9, 2008, which is later than the creation date of the Disputed Domain Name, November 20, 2008. Second, there is no clause in the Agreement stating that the Respondent is authorized by the Complainant to register the Disputed Domain Name. Furthermore, although the Respondent argues that it proposed registering the Disputed Domain Name before the Agreement, the evidence shows that such issue was first mentioned in the letter dated November 26, 2008 from the Respondent to the Complainant, which is later than the creation date of the Disputed Domain Name too. Given that, although the Respondent claims that the establishment and use of the Disputed domain name are under the authorization of the Complainant, there is no other evidence from the Respondent demonstrating that it has rights or any legitimate interests on the Disputed Domain Name, nor it has obtained express authorization from the Complainant that it can register the Disputed Domain Name. Therefore the Panel cannot draw the conclusion that the Respondent has rights or any legitimate interests in respect of the Disputed Domain Name and nothing so far could lead the Panel to conclude otherwise.

In view of the foregoing, the Panel comes to the conclusion that the Respondent has no rights or any legitimate interests in respect of the Disputed Domain Name. Accordingly, the Complainant has satisfied the second condition under Paragraph 4(a) of 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) 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.

As the Panel above concludes that there is no evidence proving that the Disputed Domain Name was registered by the Respondent with the Complainant's authorization; Second, the evidence shows that the Complainant has terminated the distributor agreement with the Respondent and the Respondent is no longer the distributor of the Complainant. The use of the Disputed Domain Name may cause confusion between the Complainant and the Respondent, and make the Respondent in competition with the Complainant. Particularly, after the cessation of goods supply from the Complainant, the Respondent continues selling the competing products from the website at the Disputed Domain Name, and offering such products with 15% discount, which may disturb the normal business order of the Complainant. These findings, together with the finding above mentioned that the Respondent has no rights or any legitimate interests in the Disputed Domain Name, lead the Panel to conclude that the Disputed Domain Name has been registered and used by the Respondent in bad faith.

In light of all of the above circumstances, the Panel concludes that the Complainant has satisfied the third condition under Paragraph 4(a) of the Policy.

5. Decision

For all the forgoing reasons, the Panel has decided that the Complainant has proved sufficiently the three elements of Paragraph 4(a) of the Policy. Accordingly, the Panel supports the Complaint that the Disputed Domain Name should be cancelled.

Panelist: 高长麟

Dated: July 20, 2010