

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

(Beijing Office)

ADMINISTRATIVE PANEL DECISION

Case No. CN-1000408

Complainant: ZTE Corporation

Respondent : Nikolay Zhoukov

Domain Name: zte-phone.com、 zte-mobile.com

Registrar: GoDaddy.Com, Inc.

1. Procedural History

on December 24, 2010, the Complainant submitted its Complaint to the Beijing Office of the Asian Domain Name Dispute Resolution Centre (the "ADNDRC Beijing Office"), in accordance with the Uniform Domain Name Dispute Resolution Policy (the "Policy") adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN") on August 26, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "Rules"), and ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "ADNDRC Supplemental Rules").

On December 24, 2010, the ADNDRC Beijing Office confirmed the receipt of the Complaint and transmitted by email to ICANN and the Registrar of the domain name 三 in dispute, GoDaddy.Com, Inc., a request for registration verification of the Disputed Domain Names.

On January 18, 2011, the ADNDRC Beijing Office received the Registrar's confirmation of registration information of the domain names in dispute.

On February 11, 2011, the ADNDRC Beijing Office transmitted the Complaint to the Respondent by email.

On February 22, 2011, the ADNDRC Beijing Office notified the Complainant by email that the Complaint was reviewed and forwarded to the Respondent and confirmed with the parties, ICANN 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.

The Respondent failed to submit a Response within the specified time period. On March 25, 2011, the ADNDRC Beijing Office sent the Notification of No Response Received and Hearing by Default to the parties.

On April 6, 2011, the ADNDRC Beijing Office gave notice to the potential candidate of the Panelist Mr. Chi Shaojie, 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 April 7, 2011, the ADNDRC Beijing Office received a declaration of impartiality and independence and a statement of acceptance from Mr. Chi shaojie.

On April 11, 2011, the ADNDRC Beijing Office informed by email the Parties that Mr. Chi shaojie 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 April 25, 2011.

2. Factual Background

For the Complainant

The Complainant is Shenzhen-based ZTE Corporation, domiciled in No 55, Hi-tech Road South, Shenzhen, China, claiming to be the owner of the registered trademarks with ZTE as the distinctive subject matter. The Complainant thinks itself of being entitled to the disputed domain names and initiates the proceedings requesting the panel to make an award on the transfer of the entitlement to the disputed domain names to the Complainant.

The Complainant authorizes Kangxin Partner to be its representative in the proceedings.

For the Respondent

The Respondent is known, by the registration information, as Nikolay Zhoukov, domiciled in Flat 2, 41 Step Row, Dundee DD2 1AH, United Kingdom, who makes no response in the proceedings, after being served of all documents by the ADNDRC Beijing Office in accordance with the Rules and ADNDRC supplemental Rules.

3、Parties' Contentions

The Complainant

(1) The Complainant was established in 1985, and is one of the leading providers in the field of comprehensive telecommunicating manufacture and global telecommunicating resolution. ZTE is the abbreviation of the Complainant's name in English, i.e. Zhognxing Telecommunication Equipment.

(2) The Complainant registered the trademarks with ZTE as prominent distinctive element much prior to the registration of the disputed domain names; which were recognized as well-known marks in China by Chinese Trademark Office in 2009. The disputed domain names are confusingly similar to the Complainant's registered marks ZTE, etc.

(3) To protect its legitimate right and interest in website, the Complainant registered several domain names with ZTE as the core element, prior to the registration of the disputed domain names.

(4) The Respondent is Nikolay Zhoukov who does not enjoy any legal right or interest in the disputed domain names.

(5) The Respondent registered and used the domain names in bad faith. The website led by the disputed domain names use the sign of "ZTE 中兴" selling cell phone. The Respondent and the Complainant are competitors in the same industry.

Based upon the above fundamental reasons, the Complainant thinks that all the three conditions set forth under the relevant paragraph of the Policy for the request for transfer of the disputed domain names have

been met.

The Respondent

After being served of all documents submitted by the Complainant and the procedural documents by the ADNDRC Beijing Office, the Respondent makes no response by any means.

4、 Panel's Findings

The indispensable pre-condition for the Panel to find out the disputing facts is to base itself upon the allegations and defenses by the parties, which does not exist in the trial of the present dispute due to the lack of any defense by the Respondent. In view of this, what the Panel is going to do for the fact-finding is to base itself upon the submissions and exhibits by the Complainant alone. Unless the Panel has a reason to reject any submission or evidence of the Complainant's in view of the panelist's professional sense to make judgment or personal experience, the fact to be held by the adoption of the Complainant's submitted evidences.

One of the Pre-requisites for the Respondent to register the disputed domain names through the Registrar is to accept the Policy as the binding regulations for the registration. As mentioned, the Policy applies to this dispute as the substantive criteria for making the judgment of whether the Complainant's request is to be sustained or rejected. As stipulated in the Paragraph 4(a) of the Policy, when claiming back a domain name registered by the Respondent, the Complainant must prove each and all of the following:

- (i) That the domain name of the Respondent 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 itself upon the stipulations under the Policy, what the Panel needs to do is to find out whether each and all of the above-mentioned facts can

be attested by the Complainant. If the answer is yes, the Panel makes an award in the Complainant's favor in accordance with the relevant stipulations under the Policy, the Rules and the ADNDRC Supplemental Rules. If not, the claims by the Complainant shall be rejected.

Identity or Confusing Similarity

Pursuant to Paragraph 4(a) (i) of the Policy, the Complainant must prove that the domain names at issue are identical or confusingly similar to a trademark or service mark to which it has rights. To meet the requirement, the Complainant submits trademark registration certificates to prove the fact that it is entitled to the trademarks ZTE and ZTE 中兴 both being registered much earlier than the registration of the disputed domain names. Taking these two exhibits, the Panel holds that the Complainant has rights to the marks with the capital letters ZTE being the core sign of the marks. The identifying parts of the disputed domain names are "zte-phone" and "zte-mobile". In consideration of the following reasoning, the Panel holds that the domain names of the Respondent are confusingly similar to the trademarks in which the Complainant has rights.

(1) As stipulated under the relevant paragraph of the Policy, the first finding is WHETHER THE DISPUTED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO THE COMPLAINANT'S REGISTERED TRADEMARK. Thus, what the Panel needs to do is to compare the domain names at issue with the registered trademarks of the Complainant. As is known to the domain name registrants and web users, the part of ".com" in the registered domain names has no much significance in identifying who the registrant is. Thus, the identifying part of the disputed domain names are "zte-phone" and "zte-mobile", which are to be used to compare with the Complainant's registered trademarks "ZTE" and "ZTE 中兴".

(2) Whoever he or she is, if he or she knows English, he or she knows the meaning of the word "phone" or "mobile" in the identifying parts of the disputed domain names. Obviously, the two are simple English words with specific meanings which normally do not disclose who the registrant is. Therefore, the most prominent part of the two disputed domain names

are the letters “zte” which obviously catches the web users’ eyes.

(3) What is “zte”? The Complainant says it is the trade name for short used by the Complainant in its business activities. The Complainant’s registered company name is “中兴通讯股份有限公司” in Chinese and ZTE Corporation in English. The letter “z” is the first letter of the phonetic spelling of its Chinese name “zhongxing 中兴”; the letter “t” represents the word “telecommunication”; the letter “e” stands for the word “equipment”. It sounds logical and reasonable. What is more, there is no objection by the Respondent who makes no interpretation of the letters “zte” in a different way. Let alone the Complainant proves that the web site led by the disputed domain names uses the sign “zte 中兴”, meaning that the Respondent thinks the letters “zte” equals to the Chinese characters 中兴 which is the trade name of the Complainant ever since its foundation.

(4) As is known to the public, the Complainant is a leading producer of tele-equipment in China and some other countries, which makes and sells mobile phone sets and other tele-communication equipment throughout the world. Hundreds and thousands users use zte mobile phones not only for phone connection but also for inter-net surfing. The simple question is, what the zte mobile phone users think of while coming across the domain names “zte-phone.com” or “zte-mobile.com” ? The answer could be nothing but the domain names may have certain connections to the Complainant.

(5) Talking about the likelihood of confusion, it needs to point out that “zte” is not only the registered trademark of the Complainant but also the trade name of it, which enhances the potentiality of getting confused by the consumers of the Complainant with the Respondent.

In view of above reasoning, the Panel holds that the disputed domain names are confusingly similar to the Complainant’s registered trademarks, thus the Complainant meets the first requirement set forth under Paragraph 4(a)(i) of the Policy.

Rights or Legitimate Interests of the Respondent

Pursuant to Paragraph 4(a)(ii), the second requirement for the Complainant to meet in terms of the request for transfer of the disputed

domain names is to prove that the Respondent does not have any right to or legitimate interest in the domain names. Reading the expression of the stipulation, it seems to be the Complainant who takes the burden of proof to establish the fact that the Respondent does NOT have any right or legitimate interest in the disputed domain names. Nevertheless, since the Complainant claims that it is entitled to the disputed domain names and the Respondent has nothing to do with the names except registered and used them in bad faith, it can hardly submit any evidence to prove something it does not think existing. Thus, the Panel normally pays attention to whatever the Respondent claims with regard to the rights or legitimate interests in the disputed domain names. The Policy gives the chance to the Respondent to make argument on this issue by stipulating several could-be circumstances. Unfortunately, the Respondent makes no argument to say it does have any right or legitimate interest in the domain names at issue. The act of only registering the Disputed Domain Name does not automatically endow any legal rights or interests with the Respondent. Under the circumstances, how could the Panel hold that it is the Respondent who is entitled to the disputed domain names?

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 has to establish the fact of bad faith on the part of the Respondent as set forth in the Paragraph 4(a)(iii) of the Policy. Under the Paragraph 4(b) of the Policy, the following circumstances, in particular, shall be considered evidence of the registration and use of a domain name in bad faith: "(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 submits that the Respondent uses the disputed domain names in a web site which bears the sign "ZTE

中兴” and makes introduction on the ZTE products. The Panel tried to enter the web site led by the disputed domain names and found out what the Complainant said. The Respondent does not argue against and prove what the Complainant’s submission is not true. Thus, the Panel cannot but holds that the Respondent registered and uses the disputed domain names in bad faith; and comes to the conclusion that the Complainant meets the requirement set forth under Paragraph 4(a)(iii) of the Policy.

Based upon all the above findings, the Panel rules that the Complaint fulfills each and all of the conditions provided in Paragraph 4(a)(i)(ii) (iii) of the Policy.

5. 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:

- (1) That the disputed domain names “zte-phone.com” and “zte-mobile.com” are confusingly similar to the trademarks “ZTE” or “ZTE 中兴” to which the Complainant is entitled, and
- (2) That the Respondent has no rights to or legitimate interests in the disputed domain names; and
- (3) That the domain names were registered and subsequently used by the Respondent in bad faith.

As such the Panel rules that the disputed domain names “zte-phone.com” and “zte-mobile.com” should be transferred to the Complainant ZTE Corporation.



Chi Shaojie

Sole Panelist

Dated: April 25, 2011