

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

(Beijing Office)

ADMINISTRATIVE PANEL DECISION

Case No. CN-1200550

Complainant: Lenovo (Beijing) Limited

Respondent: Zhigang Lu

Domain Name: lenovostore.com

Registrar: Melbourne IT, Ltd.

1. Procedural History

On May 15, 2012, the Complainant submitted a Complaint in English to the Beijing Office of the Asian Domain Name Dispute Resolution Center (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"), 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"), and chose to have a sole panel to hear this case.

On May 15, 2012, the ADNDRC Beijing Office confirmed the receipt of the Complaint. On May 15, 2012, the ADNDRC Beijing Office transmitted by email to ICANN and Melbourne IT, Ltd. (the Registrar of the disputed domain name) a request for verification of registration information in connection with the domain name in dispute. On May 15, 2012, Melbourne IT, Ltd transmitted by email to the ADNDRC Beijing Office its verification response confirming that, the domain name in dispute was registered under its domain registrar and the Respondent is listed as the registrant.

The ADNDRC Beijing Office sent by email the Transmittal of Claims

attached by the Complaint to the Respondent on May 17, 2012. The Respondent had not send any defense to the ADNDRC Beijing Office, but sent an email expressing that he is willing to transfer of the disputed domain name to the Complainant.

On May 18, 2012, the ADNDRC Beijing Office notified the Complainant that the Complaint had been confirmed and forwarded and the proceedings commenced on May 18, 2012. On the same day, the Notifications of Commencement of Proceedings were notified to the Respondent, ICANN and the Registrar.

On May 18, 2012, the ADNDRC Beijing Office received another emailed message from the Respondent, saying again “(it is) happy to transfer the domain name to Lenovo”, and transmitted it as Response to the Complainant.

Having received no request by the Complainant for the suspension or termination of the proceeding, the ADNDRC Beijing Office decides to proceed.

On May 22, 2012, The ADNDRC Beijing Office notified the two parties for the selection of the Panelist and asked them to rank the five candidates listed in order of preference. On May 23, 2012, The ADNDRC Beijing Office received the listing from the Complainant. The Respondent failed to submit the listing within the time limit.

On May 29, 2012, the ADNDRC Beijing Office notified the Proposed Panelist Mr. Chi Shaojie to see whether he is available to act as the Panelist in this case and if so, whether he is in a position to act independently and impartially between the parties.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Mr. Chi Shaojie, on May 29, 2012, the ADNDRC Beijing Office informed the Complainant and the Respondent of the appointment of the Panelist and the constitution of the Panel, transferred the case file to the Panel, and asked the Panel to submit a decision on or before June 12, 2012.

2. Factual Background

For the Complainant

The Complainant is Lenovo (Beijing) Limited, Its address is No. 6 Chuangye Road, Haidian District, Beijing, Its authorized representative is Zheng Hong and Zhang Jie.

For the Respondent

The Respondent is Zhigang Lu, addressed at PO Box 61359, Sunnyvale 94088 CA USA. The Respondent is the current registrant of the disputed domain name “lenovostore.com” according to the Whois information.

3. Parties’ Contentions

The Complainant

The Complainant alleges in its Complaint that:

(1)The Complainant Lenovo (Beijing) Limited, a subsidiary solely-funded by Lenovo Group, is a world-leading PC company. The Complainant has registered over 50 trademark registrations for “Lenovo” in all 45 classes, notably the following three registrations in respect of the goods “computers, computer peripheral devices, etc”:

Trademark	Reg. No.	Class	Registration Date	Expiry Date
Lenovo	3462586	9	2004-07-14	2014-07-13
Lenovo	3368147	9	2004-03-14	2014-03-13
Lenovo	3510838	9	2004-09-14	2014-09-13

The Complainant’s “Lenovo” was officially recognized by China Trademark Office (CTMO) as a well-known trademark on March 3, 2008. The registration dates of the Complainant’s Lenovo trademarks precede that of the disputed domain name i.e. December 11, 2004, so the Complainant shall have indisputably prior trademark right to “Lenovo”.

Moreover, the Complainant holds that the disputed domain name is confusingly similar to its “Lenovo” prior trademarks and the registrant who has no legitimate right to “Lenovo” had obvious bad faith in registering and using the domain name. The Complainant accordingly requests that the disputed domain name be transferred to the Complainant in accordance with the Policy and relevant rules.

Since its inception, the Complainant has been devoting itself to providing its global users with advanced high-tech products and premier services. The Complainant boasts a wide range of products, including personal computers, servers, notebooks, printers, digital products, hand-held devices, etc. From 1996 onward the Complainant’s Lenovo computers have been taking the leading position in China in terms of market share for over 10 consecutive years. The Complainant ranked the 6th among all China listed companies according to Fortune 2002 ratings, with the brand value amounting to RMB19.8 billion. In 2003, the Complainant has been assuming the No.1 position among all the Best-Managed Companies in Asia.

On April 28, 2003 the Complainant held a press release announcing to the world the replacement of “Legend” with “Lenovo” trademark. As a world-famous company, such a move of the Complainant attracted worldwide attention as well as extensive media coverage including reports from those mainstream portal websites such as People, Sina, Sohu, Netease and Xinhuanet, which made the “Lenovo” trademark shortly known to the public.

The remarkable achievements of the Complainant have been highly acknowledged by statesmen such as Chinese president Hu Jintao and former Chinese vice premier Wu Yi, renowned entrepreneurs like Microsoft CEO Steve Ballmer, and the famous economist Prof. Wu Jinglian who all thought highly of the Complainant and its unparalleled contributions to the whole society during their visits to Lenovo. In the meanwhile, the Complainant and its Lenovo products were awarded by many domestic and international government organizations and media.

For instances, Lenovo computers were awarded “China’s Well-known Products” by PRC General Administration of Quality Supervision, Inspection and Quarantine. Lenovo KaiTian Series was awarded “2000-2005 China Most Valuable Desktop PC” by China Center for International Industry Development. In 2005, Lenovo computers were awarded “Reaer’s Best Choice” by the magazine MicroComputer.

(2)The Complainant’s “Lenovo” trademark enjoys extremely prestigious fame thanks to sustaining and years of use, registrations and promotion around the world. The Complainant has been investing a considerable amount of resources and manpower in promoting its Lenovo brand. For example:

- ▶Lenovo became China’s first global partner of the International Olympic Committee (IOC) in 2004
- ▶As a global sponsor of the IOC, Lenovo Group rendered equipment, financial and technical supports to 2006 Torino Olympic Winter Games
- ▶ The Complainant sponsored 2008 Beijing Olympic Games, through which its Lenovo brand became much better known to the whole world
- ▶ The Complainant became the senior sponsor of 2010 Shanghai Expo

(3)The domain name at issue is confusingly similar to the Complainant’s well-known trademark “Lenovo”.

With respect to the disputed domain names, “.com” is a generic Top-Level Domain and does not play any distinctive role; “store”, a commonly used English word, is a place where merchandise is offered for sale, thus lacking distinctiveness as well. So, “lenovo” is the only distinctive word in the domain name at dispute, which is totally identical with the Complainant’s prior “Lenovo” well-known trademark. Today when the online shopping and sales become increasingly popular with the public, the disputed domain name is quite likely to mislead the public to believe that the website “www.lenovostore.com” must be an official website of the Complainant distributing its computer products, or it is closely related to the Complainant. In this event, it is safe to conclude that the domain name at issue will cause confusion among the public and is

confusingly similar to the Complainant's "Lenovo" trademark. Its use and registration will inevitably harm the legitimate rights and interests of the Complainant.

(4)The Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant has never authorized nor licensed the Respondent to use Lenovo trademark, so the Respondent has no rights or interests to the domain name at issue.

(5)The Respondent had obvious bad faith in registering and using the disputed domain name.

"Lenovo" is a highly creative trademark coined by the Complainant, among which "le-" was originated from the Complainant's previous trademark "Legend", "-novo" as a Latin suffix means "innovation" which is the essence of the Complainant and its Lenovo brand. On account of long-term use, registrations and promotion, "Lenovo" has acquired extremely high fame and reputation around the world before the registration date of the disputed domain name. Given the extremely high fame of "lenovo" trademark, the public have solely associated "Lenovo" with the Complainant. It is by no means accidental that the disputed domain contains such a highly distinctive word "lenovo" coined by the Complainant and its famous brand "Lenovo". The Respondent must have known the Complainant's "Lenovo" well-known trademark, so the registration of the disputed domain name itself suffices to prove the bad faith of the Respondent.

Moreover, the Respondent registered the disputed domain name but failed to activate the website "www.lenovostore.com", which will inevitably prevent the Complainant from using the domain name at issue which contains the Complainant's own well-known trademark. Evidently the Respondent would take free ride of the high fame of the Complainant's trademark "Lenovo" and daydreamed to reap illegal high profits through transferring the domain name to the Complainant. So the Respondent had

obvious bad faith in registering the disputed domain name.

In the light of the above facts, the Complainant requested that the disputed domain name be transferred to the Complainant pursuant to the Policy and relevant rules.

For the Respondent

The Respondent makes no defense against any of the allegations by the Complainant, but expressing its willingness to make free transfer of the disputed domain name to the Complainant.

4. Panel's Findings

It is significant for the parties to understand the legal nature of the current proceeding which is totally different from that of arbitration or litigation. Though the proceeding is known as administrative proceeding, it is really NOT the proceeding by a government agency. The jurisdiction by the Panel over the current dispute on the domain name registered by the Respondent comes from the authorization by the organization for the administration of domain name registration and maintenance. Anyone intends to register a domain name needs to sign a registration agreement with the administrative authority which makes no substantive examination on the registration application, but stipulates in the registration agreement that whenever a claim against the registration is submitted, the registrant is obliged to be a procedural party which has rights to make arguments against the claim, but subject to an award made by a Panel constituted in conformity with the stipulated procedural rules. As it is, the current proceeding is a part of the whole proceeding for the registration and maintenance of domain names. As such, the fundamental feature of the Panel's making a judgment on the entitlement to the disputed domain name is to decide which party should be the rightful holder of the disputed domain name, so as to be in conformity with the basic requirements set forth under the Policy and to help keep the good operative order for the running of the internet, and to be beneficiary to the protection of common interests of the web-users.

It is characteristic in the current dispute that the Respondent made no defense against any of the charges and requests by the Complainant, but sending emails addressed to the ADNDRC Beijing Office and the authorized representatives of the Complainant's to express its happiness and willingness to give back the disputed domain name to the Complainant. Nevertheless, the Complainant, knowing the expression by the Respondent, makes no requirement to the Panel to suspend or terminate the proceeding initiated by it, but asking the Panel to continue. As such, the Panel decides to proceed with the substantive issues at dispute and a final decision as well.

One of the prerequisites for the Respondent to register the disputed domain name 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 three basic 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 claim 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 name at issue is identical OR confusingly similar to a trademark or service mark to which it has rights. As stipulated in the Policy, the Complainant needs to prove either the IDENTITY or the CONFUSING SIMILARITY. To meet the requirement, the Complainant submits trademark certificates to prove that it is entitled to the trademarks “Lenovo” which were registered earlier than the disputed domain name and are currently valid. Taking the relevant exhibits by the Complainant, the Panel holds the fact.

The disputed domain name is “lenovostore.com” and its identifying part is “lenovostore”. It is obvious that the disputed domain name is NOT identical to the registered trademark of the Complainant’s. Hence, what the Panel is going to hold is whether the two are confusingly similar. From the Latin linguistic perspective, “lenovostore” may be visually divided into two parts of “lenovo” and “store”. The former is identical to the Complainant’s registered mark “Lenovo”; and the latter is the same as the English word “store”. The question is which part is more eye-catching to the web-users. The answer is the former, due to the reason that any change of the former will create apparent difference to the web-users, e.g. “applestore”, “TVstore”, “vegestore”, etc., meaning that the web-users may hardly link “applestore”, “TVstore” or “vegestore”, with the Complainant; while any change of the latter can hardly reduce web-users’ linkage of the changed words with the Complainant, e.g. “lenovoshop”, “lenovostation”, “lenovoweb”, or even “lenovovege”, etc.

With regard to the issue of “confusion”, the Panel is of the opinion that when talking on the issue, attention should be focused on the “Potentiality” instead of “Reality”, i.e. what the Complainant needs to prove is the POSSIBLE confusion by the consumers. For those buyers of the Complainant’s lenovo-branded goods, the most eye-catching component in the identifying part of the disputed domain name is “lenovo”. As it is, the Panel in a position to be HARDLY hold that the

disputed domain name COULD NOT cause confusion to the web-users who are interested in the Complainant's goods; and further rules that the disputed domain name is confusingly similar to the Complainant's registered trademark, and 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 the transfer of the disputed domain name is to prove that the Respondent does not have any right to or legitimate interest in the domain name at issue. Reading the expression of the stipulation, it seems to be the Complainant who shall take the burden of proof to establish the fact that the Respondent does NOT have rights or legitimate interests in connection to the disputed domain name. Nevertheless, since the Complainant claims that it is entitled to the disputed domain names and the Respondent has nothing to do with the name except for registering it in bad faith, it can hardly submit any evidence to prove something it does not think existing. Probably for this reason, the Panel pays more attention to whatever the Respondent claims with regard to the rights or legitimate interests in respect to the disputed domain name. The Policy gives the chance to the Respondent to make argument on this issue by stipulating several could-be circumstances in the relevant article of the Policy. Unfortunately, the Respondent makes no argument to say it does have certain rights or legitimate interests in regard to the domain name at issue. Under the circumstances, how could the Panel hold that it is the Respondent who is entitled to the disputed domain name?

On the other side, the Complainant submitted enough exhibits to certify that it innovated and created the distinctive mark "Lenovo" which meaning can hardly be identified by common folks, though the Complainant states and the Panel believes that "Lenovo" is composed of "Le" that is from its former name and brand "Legend", and "novo" which is a Spanish word meaning "new", "novel" ect.,. Since the Complainant

has been extensively using the mark in its business activities, the high valued good-will has been cultivated with the word “Lenovo”; i.e. when consumers see the word “Lenovo”, they think of nothing but the Complainant and its products. On the other side, when web-users see the disputed domain name, how could they think of the Respondent who has no historical, cultural, economical or any other heritage with the word “Lenovo”? Based upon comprehensive analyses of all the relevant evidences by the Complainant, the Panel has sufficient reason to ascertain that it is none other than the Complainant who has rights and legitimate interests in connection to the disputed domain name; and further holds that the Complainant meets the second requirement set forth under Paragraph 4(a)(ii).

Bad Faith

The Complainant has yet 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: “..... (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;” The Complainant submits that the Respondent did not activate the website using the disputed domain name; and obviously its main purpose for the registration is to prevent the Complainant from reflecting its mark in a domain name like the disputed one. Generally speaking, to register a domain name is to use it; and “register only” is normally regarded as squatting which is illegal if trespassing upon other’s right or legitimate interest.

Furthermore, the logical thinking of the Panel is when a party registers a domain name which is NOT created by the party with its distinctive feature known in the real world, but identical or confusingly similar to a mark or logo or sign to which the other party is entitled with high market

value, the intention of the registration is clear, namely taking illegal advantages by causing confusion to the consumers. On the other hand, if the registrant is NOT intentionally to take advantage of other's mark or logo or sign, it should create a distinctive domain name to make web-users easily tell the name from others. What is more, if someone registers a domain name in bad faith, it is hard for him to make use of the registered subject matter in good-faith, otherwise the ill-intention of the registrant would not be realized. The conduct of "register only" is sort of passive form of ill-use. That seems to be underlying the stipulation under item (ii) of Paragraph 4(b) of the Policy. This fundamental logic further supports the holding of bad-faith fact in the foregoing paragraph. In view of this, the Panel holds that the Complainant meets the requirement set forth under Paragraph 4(a)(iii) of the Policy.

Based upon all the above findings, the Panel comes to the final conclusion 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:

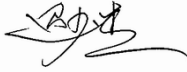
That the disputed domain name "lenovostore.com" is confusingly similar to the trademark "Lenovo" to which the Complainant has rights; and

That the Respondent has no rights to or legitimate interests in the disputed domain name; and

That the domain name was registered and used by the Respondent in bad faith.

As such, the Panel rules that the disputed domain name "lenovostore.com" shall be transferred to the Complainant Lenovo (Beijing) Limited.

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Sole Panelist: 

Dated: June 6, 2012