



Asian Domain Name Dispute Resolution Centre

beijing

(Beijing Office)

ADMINISTRATIVE PANEL DECISION

Case No.	CN-1300696
Complainant:	BONNETERIE CEVENOLE
Respondent:	no.365 erlou
Disputed Domain Name(s):	montagut-china.com
Registrar:	GODADDY.COM, LLC

1 · Procedural History

On 25 June 2013, the Complainant submitted its Complaint to the Beijing Office of the Asian Domain Name Dispute Resolution Centre (the “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 1 July 2013, the the ADNDRC Beijing Office confirmed the receipt of the Complaint and on 16 July 2013, the ADNDRC Beijing Office requested ICANN and the Registrar by email for the provision of information at their WHOIS database in respect of the disputed domain name.

On 18 July 2013, the the ADNDRC Beijing Office received the Registrar’s confirmation of registration information of the domain name in dispute.

On 5 August 2013, the ADNDRC Beijing Office transmitted the Written Notice of the Complaint to the Respondent, which informed that the Complainant had filed a Complaint against the Respondent over the disputed domain name and the ADNDRC Beijing Office had sent the Complaint and its attachments to the Respondent through email according to the Rules and the Supplemental Rules. On the same day, the ADNDRC Beijing Office notified the Complainant that the Complaint has been confirmed and transmitted to the Respondent, and notified the ICANN and the Registrar of the commencement of the proceedings.

ADNDRC Beijing Office received no response from the Respondent at the scheduled time. On 2 September 2013, ADNDRC Beijing Office entered default based on the notification of no response received and hearing.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Ms. Xue Hong, on 9 September 2013, the Centre informed the Complainant and the Respondent of the appointment of the Panelist, and transferred the case file to the Panelist on the same day.

The Panelist should render the Decision on or before September 23, 2013.

The Panel finds that it was properly constituted and appointed in accordance with the Rules and the ADNDRC Supplemental Rules.

The language of the proceeding is English, as being the language of the Domain Name Registration and Service Agreement, pursuant to Paragraph 11(a) of the Rules, and also in consideration of the fact that there is no express agreement to the contrary by the Parties.

2. Factual background

For the Complainant

The Complainant is BONNETERIE CEVENOLE, of 1001Avenue De La Republique-07500,Guilherand-Granges,France. The authorized representative of the Complainant in this case is Yongbo Li. The Complainant owns the trademark “montagut” that has been registered in China since 1985 and used on the products such as clothes, footwear and etc.

For the Respondent

The Respondent is no.365 erlou, of Xiedongjie Guangshan, Xiamen,320123, China. According to the record in the Whois database, the disputed domain name <montagut-china.com> was registered on 16 June 2011 through the registrar,GODADDY.COM,LLC.

3. Parties' Contentions

Complainant:

(1) Based on the facts in below, the Disputed Domain Name is identical or confusingly similar to the name or/and a trademark in which the Complainant has rights on.

a. The Complainant has established the company and enjoyed the brand for decades; it has a good reputation on its business all over the world.

The Complainant is a family running company registered in France, which has initiated business in 1925 and mainly engaged in designing, manufacturing and selling clothes. It was originally a private knitting factory found by Georges Tinland. In the middle 20 century, due to the invention of "Bright Silk", the Complainant has become one of the famous worldwide companies, which has not only developed business in the Europe, but also the U.S. and Asia.

In 1979, the invention of "Bright Silk" of the Complaint was first appeared in China, and during the mid-1980s, the Complainant started the promotion in Chinese market extensively and has spent more than HK\$20,000,000,00 in the market of HK and China each year.

b. The Complainant, who owns a serious trademarks of "montagut" in China, enjoyed great popularity and is highly reputed in China.

The Complainant has been paying attention to its Chinese market since the 1971; therefore, "Montagut Far East Ltd" was set up as a sole agent of the P.R.C., HK and Macau to represent the Complainant. It is the company duly authorized by the Complainant for exclusively manufactory, marketing and selling products bearing those registered trade mark of the Complainant.

Besides, the Complainant has registered trademark "montagut" since 1985. Others, which related to trademark montagut are registered by the Complainant as well. For instance, trademark "梦特娇", "flower device" and the combination are registered in China (by the Complainant). In addition, the Trademark Office under the State Administration for Industry and Commerce of the People's Republic of China has recognized trademarks, including "MONTAGUT", "flower device" and "梦特娇", as well-known trademarks in 2004. That is to say, those trademarks, recognized as well-known by the TRAB (the Trademark Review and Adjudication Board), answered to the requirement stipulated under article 14 of the Trademark Law of the P.R.C. As a matter of fact, the Courts of the P.R.C. have been constantly recognized that the "montagut" trademark, owned by the Complainant, is a well-known trademark in China. For example, sentence made by the Shanghai Second Intermediate people's Court in 2007 illustrated that "the Plaintiff (namely the Complainant) has been investing considerable funds in advertisement since 1986 and those advertisements have been made nationwide including the TV, newspapers and magazines. Besides, the brand montagut has been in the forefront of clothes selling market and have acquired judicial and administrative protection due to the suffering of enormous trademark infringement". Sentences made

by Beijing High People` Court in 2006 and the Changsha Intermediate People` Court in 2006, also favored the Complainant and recognized trademark “montagut” as a well-known trademark. Moreover, the Complainant had also registered “montagut.com” as its trademark to prevent the possibility of trademark infringement online.

Last but not least, those registered trademarks have been applied by the Complainant actively since 1998; an examination of the Chinese market investment can be found in those advertisement in the papers, TVs, press-releases and so on which is published in China.

c. The respondent, who registered “montagut-china.com” as its domain name, has prevented the Complainant from applying it for linking the Dispute Domain Name to its own websites.

As illustrated in above paragraphs, the Complainant is a worldwide company that is holding well-known trademarks of “montagut”. Subsequently, those trademarks have been frequently registered by those who are seeking to benefit from the business/trademark of the Complainant. In fact, the following are some previous cases showed the Complainant has been struggling in trademark infringement for years, and has been dealing with those infringers in many cases. And in each case, the disputed domain names were eventually considered identical or confusingly similar to the registered trademarks of the Complainant, and therefore result in the disputed domain name transferred. For example, a decision made by Hong Kong International Arbitration Centre on 7th July 2005 (Case No.: DCN-0500025), in which the expert panel favored the Complainant, deciding to transfer the Disputed Domain Name “montagut.cn” to the Complainant. Another decision made by ADNDRC on 17th March 2009 also favored and transferred the domain name “梦特娇.net” to the Complainant (BONNETERIE CEVENOLE & MONTAGUT FAR EAST LTD. V. Foshan Shiwan Xinkedi Ceramic Co., Ltd, ADNDRC: HK0800216). In this case, the expert panel has discovered that the Complainants enjoy prior trademark right over “梦特娇”, which is the Chinese character of “montagut”, and believed that “the trademark have been used by the Complainants for a long period of time and achieved the extensive reputation by such use, particularly in China”. Obviously, those trademarks registered by the Complainant have been running so well that have become one of the targets for those trademark infringers.

d. The Dispute Domain Name registered by the Respondent is identical to “montagut”, the registered trademark of the Complainant.

The major part “montagut-china” of the Dispute Domain Name, was simply added a common name “China” on it, is obviously identical or confusingly similar to name/trademark “montagut”, which is registered and owned by the Complainant. Since

there is no fundamental difference between the major part of the Dispute Domain Name and The Trademark, the terms “montagut-china” can not be considered dissimilar to “montagut”. In fact, it is generally acknowledged that if the trademark of the Complainant is the identical portion of the disputed domain name, to merely add another common name/word will not result in the dissimilarity of it. Accordingly, it can not controvert the fact that the Disputed Domain Name confusingly or identically similar to the registered trademark (Dun & Bradstreet International, Ltd v. Li Yang, ADNDRC: HK-1300487). There are enormous cases of WIPO that shows the same perspective as well, for instance case Oakley, Inc. V. Joel Wong/BlueHost.com-Inc, WIPO: D2010-0100.

Furthermore, the common name “China” of the major part indicated to the place where the goods are selling to, to combine The Trademark and “China” will subsequently confused goods sold by the Respondent with those sold by the Complainant. In many previous cases, the expert panel have pointed out that “China” is an English expression of “中国”, which can not prevent the disputed domain name from identical or confusingly similar to registered trademark (Wal-Mart Stores, Inc v. Gao Guoliang, ADNDRC: CN-1200641) . Besides, the Respondent applied the terms “official website of Montagut” created the connection with The Trademark, which will eventually make the consumers to believe that goods they have ordered via “official website of Montagut” are original from the Complainant.

With regard to the term “.com”, an international Generic Top-Level Domain (gTLD), can not distinguish the Disputed Domain Name from a registered trademark as well. It has been widely recognized by the panel experts in either the WIPO or the ADNDRC decisions that an international Generic Top-Level Domain such as “.com” has no function of distinction. Generally, the terms “.com” will not be considered to examine the similarity of the disputed domain name. For example, decision made by ADNDRC expert panel in case ABB ASEA BROWN BOVERI LTD v. zhoukaitao, ADNDRC: CN-1300651 ; the other decision made by expert panel of WIPO in case Mediaset S.P.A. v. Antonio Esposito, S.C.A. Service Control Access, Amata International Network Co., Ltd, WIPO: D2009-0026, stood the same point of view.

(2) In terms of The Policy, The Rule and the facts in below, the Respondent shall not entitle any forms of “montagut” trademark complainant since it was neither entitled in any prior right, nor legitimate interest toward the Dispute Domain Name.

The Respondent, named no.365 erlou, could have no prior entitled to trademark “montagut” since the name no.365 erlou does not conform with the Disputed Domain Name. Besides, the Respondent has never set up any company name “montagut-china”; there is no material to verify that the name “no.365 erlou” has been applied or well-

known as “montagut-china”. Furthermore, according to internet search via China Trademark Website, the Respondent neither owned registered trademark nor under trademark application.

As a matter of fact, it should be noticed that the Respondent has registered the Disputed Domain Name without not only informing the Complainant but also acquire any authorization or agreement from the Complainant. The Complainant has indicated that 1) it has no business connection/relationship with the Respondent; and 2) it has never authorized, licensed or otherwise permitted the Respondent to apply its trademark “Montagut”; and 3) it has never agreed to authorize the Respondent to register/ apply any other name of the Registered trade marks owned by the Complainant.

(3) In accordance with The Policy, The Rules and the facts in below, it is fair to say that the Respondent has registered and applied the Disputed Domain Name in bad faith.

a. The Respondent has registered the Dispute Domain Dame after knowing the trademark “Montagut”: As illustrated earlier, “montagut”, owned and registered by the Complainant, has been declared as a well known trademark in 2004 in China. Furthermore, the Complainant has invested an enormous amount of funds for promoting its goods and brands to build up the business in China. In this case, it is unlikely that the Respondent has registered the same English character of the trademark without knowing it.

b. The Respondent has registered and applied the Disputed Domain Name in bad faith: As mentioned in the above paragraphs, the Respondent has no prior right or legitimate interest toward the Disputed Domain Name registration. However, the Respondent has not only registered it but also applied terms “Official website of montagut” on it. Moreover, the Respondent is also applying the “flower device”, which is registered trademark by the Complainant as well, on the so-called “official website of montagut”. Apart from applying a number of registered trademarks of the Complainant, those products that the Respondent are selling via the Website are mainly clothes and footwear, which is exactly the same business that the Complainant is mainly running all over the world including China. Those behaviors of the Respondent is clearly illustrated the fact that the Respondent has heard/ known the trademark/brand of the Complainant, and believing that the trademark/brand of the Complainant is so well known that the Respondent can gain considerable benefit from it. Apparently, the Respondent has registered the disputed domain name on purpose and applied it in bad faith.

c. Those products that the Respondent is selling online are counterfeit: As indicated by the Complainant, the Respondent has registered the Disputed Domain Name without informing or acquiring any authorization or agreement from the Complainant.

Accordingly, those products sold on the Website come from the Respondent rather than the Complainant. However, on each product of the Website, there are description of “montagut male T shirt” and “ montagut male footwear” and so on. Obviously, the description is trying to sell products which do not come from the Complainant.

d. Those products sold by the Respondent can mislead the consumers and damage the business of the Complainant: Since there is no connection between the Complainant and the Respondent, the fact that the Respondent is applying the registered trademark of the Complainant can mislead the consumers of the Complainant and eventually bring damage to the business of the Complainant. There are similar cases with regard to apply registered trademark to the disputed domain name for selling counterfeits, and those usually involved famous fashion company. Ultimately, those infringers received punishment by decision of WIPO expert panel in this respect. See case Calvin Klein Trademark Trust and Calvin Klein, Inc. v. Rhythm, WIPO: D2001-1295, and case Fendi Adele S.r.l. v. Mark O’Flynn, WIPO:D2000-1226.

e. Finally, there is ADNDRC case showing that the Respondent has the record of registering domain name of others registered trademark in bad faith, and therefore being complained by other entity. In case Caterpillar Inc. v.no.365 erlou, ADNDRC: D2011-2213, the disputed domain name registered by the Respondent has been transferred to the Complainant eventually.

In accordance with Paragraph 4(b)(i) of the policy, the Complainant requests the Panel to issue a decision to transfer the Disputed Domain Name to the Complainant.

Respondent:

The Respondent did not reply to the Complainant’s contentions.

4. Findings

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- (i) Respondent’s domain name must be identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) Respondent’s domain name has been registered and is being used in bad faith.

A) Identity / Confusingly Similarity

Pursuant to the Policy, paragraph 4(a)(i), a complainant must prove that the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. In line with such requirement, a complainant must prove its trademark rights and the similarity between the disputed domain name and its trademark.

The Panel notes that the Complainant has registered the trademarks “montagut” since 1985 in China. The disputed domain name is <montagut-china.com>. Apart from the generic top-level domain suffix “.com”, the disputed domain name consists of “montagut-china”, which can easily be read as “montagut” and “china”. The Panel finds that addition of a generic term “china” to “montagut” that is identical with the Complainant’s registered trademark cannot make the disputed domain name distinct from the Complainant’s mark. The component, “china”, primarily refers to the country of China, where the Complainant’s trademark “montagut” has been registered and used for almost 30 years. Attaching “china” to “montagut” is highly likely confusing with the Complainant’s trademark that has been registered and used in China.

The Panel therefore finds that the disputed domain name <montagut-china.com> is confusingly similar to the Complainant’s registered trademarks “montagut”. Accordingly, the Complainant has proven the first element required by paragraph 4(a) of the Policy.

B) Rights and Legitimate Interests

The Complainant asserts that the Respondent has no rights or legitimate interests in the disputed domain name <montagut-china.com> and, as stated above, the Respondent did not provide any information or evidence to the Panel to assert or explain the basis for any rights or legitimate interests it may have in the disputed domain name.

It is apparent from the Complaint that there is no connection between the Respondent and the Complainant or its business. Paragraph 4(c) of the Policy lists a number of circumstances which can be taken to demonstrate a respondent’s rights or legitimate interests in a domain name. However, there is no evidence before the Panel that any of the situations described in paragraph 4(c) of the Policy apply here. To the contrary, the lack of a Response leads the Panel to draw a negative inference.

Therefore, and also in light of the Panel’s findings below, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name <montagut-china.com>. Accordingly, the Complainant has proven the second element required by paragraph 4(a) of the Policy.

C) Bad Faith

The Complainant contended that the Respondent had registered and is using the disputed domain names in bad faith. The Respondent did not respond.

Through visiting the website at the disputed domain names, "www.montagut-china.com", the Panel finds that the website states it "Official website of montagut", uses the Complainant's other trademarks such as "flower device", and sells the counterfeit clothes and footwear products marked with "montagut".

Since the disputed domain names were registered and are fully controlled by the Respondent, the Respondent is responsible for any use of them. The Panel finds that the current use of the disputed domain names is highly likely to attract and confuse the consumers with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of the disputed domain names' website or of the products on the website. Therefore, the registration and use of the disputed domain names constitute the evidence of bad faith specified in paragraph 4(b)(iv) of the Policy.

Therefore, the Complaint successfully proves the third element required by paragraph 4(a) of the Policy.

5. Decision

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <montagut-china.com> be transferred to the Complainant BONNETERIE CEVENOLE.

Sole Panelist: 

Dated: 23 September 2013