



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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Decision Submission

English Print

Decision ID DE-0500037
 Case ID HK-0400055
 Disputed Domain Name www.page.com
 Case Administrator Dennis Choi
 Submitted By Ho Hyun Nahm
 Participated Panelist

Date of Decision 13-01-2005

The Parties Information

Claimant Sung Ok Cho
Respondent Korean Online Web Agency

Procedural History

On 24 November 2004, the Complainant submitted its Complaint to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (the "ADNDRC" or the "Centre"), 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"). The Complainant sought a one-person Administrative Panel. On 24 November 2004, the Centre received the required filing fee from the Complainant and confirmed the receipt of the Complaint and on the same day the Centre notified the Respondent as well as the Registrar of the domain name in dispute, Computer Services Langenbach GmbH doing business as JOKER.COM, at Po Box 458 CH-6300 Zug Switzerland of the receipt of the Complaint. On 29 November 2004 the Centre posted a copy of the Complaint to the Respondent. No Response from the Respondent has been received by the Centre within the required period of time.

Having received on 29 December 2004, a Declaration of Impartiality and Independence and a Statement of Acceptance from Mr. Nahm Ho-Hyun, on 30 December 2004, the Centre informed the Complainant and the Respondent that Mr. Nahm Ho-Hyun was appointed as the sole Panelist in this matter. On 3 January 2004, the Centre transferred the case file to the Panelist by post. The Panelist finds that the Administrative Panel was properly constituted and appointed in accordance with the Rules and the Supplemental Rules.

After the lapse of the required period of time for responding, i.e., on 21 December 2004 the Respondent expressed its intention to extend the procedure to the Centre which responded to him on the next day to the effect that given the due date for rendering the Response having been passed any late submission would be determined by the appointed panelist as to whether it should be taken into consideration. On January 7, 2005 the Respondent notified the Centre of the effect that the disputed domain name should not be transferred to the Complainant. On the same day the Centre conveyed the Respondent' s message to the Panelist.

The Panelist has not received any further requests from the Complainant or the Respondent regarding other submissions, waivers or extensions of deadlines. There is no need, as an exceptional matter, to hold any in-person hearings as necessary for deciding the Complaint, as provided for in Paragraphs 12 and 13 of the Rules.

The language of the proceeding is English, it being the language of the Domain Name Registration and Service Agreement, pursuant to Paragraph 11(a) of the Rules, and there being no express agreement to the contrary by the parties.

Factual Background

For Claimant

The Complainant is an individual having its domicile at 99-7 Dun Chon Kang Dong-gu 461161, Seoul, Korea (Republic of) doing business at Room 403 Kyungwon Plaza, 5113-9 Taepyung 1-Dong, Soojung-Gu, SungNam - Si Gyeonggi-Do, Korea.

For Respondent

The Respondent is a company with the address on the registration information of the disputed domain name being 98-5 Garak-dong office 34 Seoul, Korea.

Parties' Contentions

Claimant

The Complainant in its Complaint argues that the Complainant is the actual legal owner of the disputed domain name, as they purchased it from CHKhankang Co.Ltd in Korea on 23 September 2004 in the amount of USD50,000 through Network Solutions (a domain management company/registrar of ICANN) and that Respondent illegally got the registration of the disputed domain name and illegally changed its Registrar to joker.com (which is an authorized registrar of ICANN) by hacking into Complainant's computer system or Network Solution's system. The Complainant further contends that he was planning to open up a new website which his company developed for more than 1.5 years with this disputed domain name.

It is the Complainant's allegation that on 11 November 2004 they found out that the domain owner of the disputed domain name had been changed as of 2 November 2004 and that they have NEVER authorized any transfer or heard of the Respondent until the disputed domain name was illegally transferred.

The Complainant goes on to argue that the Respondent must have illegally obtained the registration of the disputed domain name in light of the fact that the Respondent had given the Complainant in their previous correspondences very limited information and in view of other circumstances including such fact that the address of the Respondent as indicated on the registration information of the disputed domain name is for a hotel.

The Complainant further mentions by submitting e-mail correspondences with the Respondent exchanged between the parties prior to the filing of the subject complaint that the Respondent had claimed that it had lawfully purchased the disputed domain name from the person named Sung Ok Cho who is the very Complainant. However, the Complainant alleges that he has never heard, met or spoke with the Respondent until the disputed domain name was illegally transferred.

The Complainant keeps arguing that the Respondent had represented and warranted to the Registrar joker.com that (a) the statements in the Registration Agreement are complete and accurate; (b) to the Respondent's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party, etc. and thus it is the Respondent's "responsibility to determine whether the disputed domain name registration infringes on or violates someone else's rights," and that the Respondent is in direct breach of those warranties. The Complainant's contention is summarized that (i) the disputed domain name is identical to the Complainant's domain name because it was illegally transferred; (ii) the disputed domain name is his and the Respondent has no lawful rights or legitimate interests to it thereof because the Complainant did not transfer or authorize the transfer of the disputed domain name; (iii) the Respondent had used the disputed domain in bad faith because it did not lawfully purchase it from the Complainant, the rightful and lawful owner, and the Complainant did not authorize any transfer of the disputed domain name to any third party.

The Complainant, therefore, requests the disputed domain name be transferred from the Respondent to the Complainant.

Respondent

The Respondent in its communication to the Centre explains that it has contacted Network Solutions and it has learned that the Complainant has tried to get into the account at Netsol that belongs to the Respondent's company and they refused him.

The Respondent further contends that this is the same account from where the disputed domain name was transferred from to joker.com. The Respondent further alleges that it paid over \$150,000 for the disputed domain name to Sung Ok Cho the very Complainant by saying that all emails for transfer from the seller to the Respondent and from Netsol to joker.com was done through and confirmed through the Respondent's email woopage@yahoo.com and that the seller

of the disputed domain name confirmed transfer of all accounts to the Respondent through his email khw75@histudio.net after he received confirmation of payment from the Respondent. The Respondent mentions that he may submit copies of bank transfers as soon as he confirms with their bank's legal staff.

The Respondent, therefore, requests the disputed domain name should not be transferred to the Complainant.

Findings

Identical / Confusingly Similar

It is both customary and useful in cases such as this to refer to the three (3) criteria set out Paragraph 4a of the Policy, which a Complainant must meet in order to be successful in a dispute under the Policy and the Rules. These criteria are: (i) the domain name which is the subject of the dispute is identical or confusingly similar to a trademark or servicemark in which the complainant has rights; and(ii) the registered holder of the disputed domain name has no rights or legitimate interests in respect of the domain name; and(iii) the disputed domain name has been registered and is being used in bad faith.

The Panel will now deal with the evidence presented in this proceeding in the context of each of these three (3) criteria.

Paragraph 4(a)(i) of the Policy requires the Complainant to satisfy the Panel that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. That is, the Complainant has the burden of proving two (2) things-firstly, the identical or confusingly similar nature of the disputed domain name to the mark in which the Complainant claims it has rights; and secondly, the Complainant must demonstrate that it does indeed have rights in the mark relied upon.

The first point may be established by comparison of the domain name and the claimed mark. In the present case, the Complainant lays claim to rights by the fact that he bought the disputed domain name. However, the Panel finds that no evidence has been presented by the Complainant that the Complainant has any registered trademark or service mark relevant to the disputed domain name.

It is also recognized that the Complainant has failed to demonstrate that it does indeed have rights in the mark relied upon.

The Panel further finds that such evidence as copies of the e-mail correspondences as submitted by the Complainant is not sufficient to prove that the Complainant is the rightful owner of the disputed domain name.

The Panel also finds that the copies of the e-mail correspondence as submitted by the Complainant are not considered as being unchallenged evidence proving that the Respondent has illegally registered the disputed domain name.

In conclusion, the Panel therefore concludes that the Complainant does not meet the requirement of Paragraph 4(a)(i) of the Policy.

Having reached the foregoing conclusion, it is not necessary for the Panel to consider whether or not the Respondent has no rights or legitimate interests in respect of the disputed domain name (see Paragraphs 4(a)(ii) and 4(c) of the Policy) or whether the Respondent was or is acting in bad faith in regard to its use of the disputed domain name (see Paragraphs 4(a)(iii) and 4(b) of the Policy).

Rights and Legitimate Interests

Not applicable

Bad Faith

Not applicable

Status

www.page.com

Complaint Rejected

Decision

In conclusion, the Complainant fails to satisfy the requirements of Paragraph 4(a)(i) of the Policy and accordingly, pursuant to Paragraph 15 of the Rule, the Panel decides that the Complaint should be dismissed.

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