



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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Decision Submission

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Version	
Decision ID	DE-0800188
Case ID	HK-0800205
Disputed Domain Name	www.迪士尼樂園.com
Case Administrator	Dennis CAI
Submitted By	Yun Zhao
Participated Panelist	

Date of Decision 31-12-2008

Language Version : English

The Parties Information

Claimant	Disney Enterprises, Inc.
Respondent	Nomi Nee Ltd

Procedural History

On 23 September 2008, the Complainants submitted a Complaint in the English language to the Hong Kong Office of the Asian Domain Name Dispute Resolution Center (the ADNDRC) and elected this case to be dealt with by a one-person panel, in accordance with the Uniform Domain Name Dispute Resolution Policy (the Policy) approved by the Internet Corporation for Assigned Names and Numbers (ICANN), the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the ADNDRC Supplemental Rules). On 29 September 2008, the ADNDRC sent to the complainants by email an acknowledgement of the receipt of the complaint. All correspondence to and from the ADNDRC described herein was in the English language.

On 29 September 2008, the ADNDRC transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On 30 September 2008, the Registrar transmitted by email to the ADNDRC its verification response, confirming that the Respondent is listed as the registrant and providing the contact details. On 2 October 2008, the ADNDRC transmitted the Complaint to the Respondent and notified the Respondent of the commencement of the action and requested the Respondent to submit a Response within 20 calendar days.

Since the Respondent failed to submit a Response within the specified period of time, the ADNDRC notified the Respondent's default on 23 October 2008. Since the Respondent did not mention the Panel selection in accordance with the time specified in the Rules, the ADNDRC Supplemental Rules, and the Notification, the ADNDRC informed the Complainants and Respondent that the ADNDRC would appoint a one-person panel to proceed to render the decision.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance, the ADNDRC notified the parties that the Panel in this case had been selected, with Dr ZHAO Yun acting as the sole panelist. The Panel determines that the appointment was made in accordance with Rules 6 and Articles 8 and 9 of the Supplemental Rules. On 30 December 2008, the Panel received the file from the ADNDRC and should render the Decision within 14 days.

Pursuant to Paragraph 11 (a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding. The language of the current disputed domain name Registration Agreement is English, thus the Panel determines English as the language of the proceedings.

Factual Background

For Claimant

The Complainant in this case is Disney Enterprises, Inc., a corporation registered in the United States. The registered address is 500 S Buena Vista Street, Burbank, CA 91521, USA.

For Respondent

The Respondent, Nomi Nee Ltd, is the current registrant of the disputed domain name <迪士尼乐园.com> according to the Whois information. The registered address is Bayview View Ltd, Toronto, ON, L513W1 Canada.

Parties' Contentions

Claimant

The Complainant, founded by Mr. Walter Disney, is now listed in NYSE. The Complainant is one of the world's top producers of movies and animation. The Complainant first opened the Disneyland theme park and resort in Los Angeles in 1955. The Complainant also operates Disneyland theme parks and resorts in Orlando, Tokyo, Paris and Hong Kong. The Complainant has started constructing a Disneyland theme park and resort in sub-urban Shanghai, China. The Complainant's Disneyland theme parks and resorts are well-known by the public over the world. The Complainant has registered numerous "DISNEYLAND" marks in English all over the world and Chinese character marks "迪士尼" and "迪士尼乐园" in Chinese-speaking countries / cities. Especially, the Complainant has registered the following relevant trademarks in China and Hong Kong (the "Trademarks"). The Complainant also registered and operated the top level domain names www.disney.com and www.disneyland.com since 1990 and 1995, respectively.

1. The Disputed Domain Name is confusingly similar to the Complainant's Trademarks

The Disputed Domain Name <迪士尼樂園.com> (English meaning: Disneyland.com in traditional Chinese characters) is both the tradename and trademark of the Complainant. "迪士尼樂園" (English meaning: Disneyland in traditional Chinese characters) is a distinctive word and Trademark with well recognized meaning. The Disputed Domain Name is identical or confusingly similar to the registered Trademarks (and service marks) of the Complainant. Although ICANN treats simplified and traditional Chinese characters as two different puny codes, under the Implementing Regulations to the PRC Trademark Law, registration for a trademark in simplified Chinese characters will cover the traditional Chinese characters, and vice versa. It is further submitted that a domain name containing the word "Disney/Disneyland" in a word string will be confusing to the public and diluting the distinctiveness of the "DISNEYLAND" and "DISNEY" trademarks.

2. The Respondent has no rights or legitimate interests in the Disputed Domain Name

The Disputed Domain Name is the distinctive tradename and trademark of the Complainant. The Respondent is not entitled to or otherwise authorized or licensed by the Complainant in whatsoever means to use the trademark in any goods or services. The Respondent will not be able to demonstrate that his conduct satisfies any of the conditions in paragraph 4(c) of the Policy.

3. The Respondent registered and is using the Disputed Domain Name in bad faith

The Respondent has deliberately registered the Disputed Domain Name which is identical to the Complainant's famous trademark "迪士尼樂園", with an intention of causing confusion to the public that the Respondent and/or the Respondent's website is related to or authorized by the Complainant and/or the Complainant's website and diverting the traffic of the web-users from the Chinese speaking countries/cities. The Respondent, who is situated in Canada, should be well aware of the Complainant and its group of companies which are well-known in America. Further, given the substantial fame of the Complainant and its Disneyland theme parks and resorts throughout the world, it is most unlikely that the Respondent is unaware of the Complainant's rights in the "迪士尼樂園" trademark. It cannot be a mere co-incidence that the Respondent has chosen the Disputed Domain Name, which is identical to the Complainant's Mark, as his domain name. If one looks at the contents of www. 迪士尼樂園.com, it has been parked without any material contents.

As a result, the members of the public in the Chinese-speaking countries/cities will likely be confused into believing that the Respondent and/or the Respondent's website is related to or authorized by the Complainant and/or the Complainant's website. As mentioned above, due to extensive use and advertisement of the Complainant's Disneyland theme parks and resorts, the public will associate the Disputed Domain Name exclusively with the Complainant's business.

Finally, the Respondent has committed bad faith under the provision of paragraph 4(b)(iv). Given the distinctiveness and fame of the "迪士尼樂園" mark and its English equivalent "DISNEYLAND" marks, there is no plausible explanation for the Respondent's registration of the Disputed Domain Name other than to trade upon the goodwill the Complainant has developed in its Trademarks.

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 failed to submit a Response within the specified period of time.

Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: “A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.”

Paragraph 4 (a) of the Policy requires that the Complainant should prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- 1) the domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- 2) the Respondent has no rights or legitimate interests in respect of the domain name; and
- 3) the domain name has been registered and is being used in bad faith.

Identical / Confusingly Similar

The Complainant, first established in 1955, is one of the top movies and animation producers worldwide. The evidence submitted by the Complainant shows that the Complainant has registered the trademark “迪士尼樂園” in China and Hong Kong. The Panel finds that the Complainant enjoys the indisputable prior rights and interests in the trademark “迪士尼樂園”. The Policy does not require the registration of trademarks in all jurisdictions for the protection of such rights.

The disputed domain name is “迪士尼樂園.com”. As the suffix “.com” only indicates that the domain name is registered under this gTLD and is not distinctive, the Panel has no problem in finding that the disputed domain name <迪士尼樂園.com> is identical to the Complainant’s trademark “迪士尼樂園”.

The Panel therefore holds that the Complaint fulfills the condition provided in Paragraph 4 (a)(i) of the Policy

Rights and Legitimate Interests

The Complainant contends that the Respondent does not have rights to or legitimate interests in the disputed domain name. The Complainant’s assertion is sufficient to establish a prima facie case under Policy 4 (a)(ii), thereby shifting the burden to the Respondent to present evidence of its rights or legitimate interests. The Respondent failed to file a Response and did not dispute the above contention. The Respondent has thus failed to show that the Respondent has any rights or legitimate interests in respect of the Disputed Domain Name.

The Panel therefore finds that the Complaint fulfills the condition provided in Paragraph 4(a)(ii) of the Policy.

Bad Faith

Under Paragraph 4 (b) of the Policy, the following are relevant examples a Panel may take as evidence of registration and use 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 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 website 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 website or location or of a product or service on your website or location.

The Complainant has been continuously using the trademark “迪士尼樂園” in China and Hong Kong since its registration. “迪士尼樂園” is not a name commonly used in trade. Through years of use and promotion, the Complainant’s trademark “迪士尼樂園” has achieved a strong reputation. It is indeed one of the well-known movies and animation producers worldwide. As such, the public has come to recognize and associate the Complainant’s trademark “迪士尼樂園” as originating from the Complainant and no other. The fact that the website of the disputed domain name contains the trademark “迪士尼樂園” is obvious to all that the Respondent is aware of the existence of the Complainant and its trademark. The action of registering the disputed domain name per se has constituted bad faith. Actually, it is impossible to conceive of any plausible active use of the disputed domain name by the Respondent that would not be illegitimate.

The Panel concludes that the Respondent has registered and used the domain name in bad faith. Accordingly, the Panel finds that the Complaint satisfies the condition provided in Paragraph 4 (a) (iii) of the Policy.

Status

www.迪士尼樂園.com Domain Name Transfer

Decision

Having established all three elements required under the ICANN Policy, the Panel concludes that relief should be granted. Accordingly, it is ordered that the <迪士尼樂園.com> domain name should be TRANSFERRED from the Respondent to the Complainant.

ZHAO Yun
Sole Panelist

DATED: 30 December 2008