



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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Decision Submission

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Version
Decision ID DE-0800178
Case ID HK-0800207
Disputed Domain Name www.梦特娇.com
Case Administrator Dennis CAI
Submitted By Yun Zhao
Participated Panelist

Date of Decision 05-12-2008

Language Version : English

The Parties Information

Claimant (1) : BONNETERIE CEVENOLE (2): MONTAGUT FAR EAST LIMITED
Respondent ChenZhou Human Resources Network

Procedural History

On 25 September 2008, the Complainants submitted a Complaint in the Chinese 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 and reviewed the format of the complaint for compliance with the Policy, the Rules and the ADNDRC Supplemental Rules.

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, providing the contact details.

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. On 8 October 2008, the ADNDRC requested the Complainants to translate the Complaint form in English version and resubmit to the ADNDRC again. The Complainants resubmitted the Complaint in the English language on 22 October 2008.

On 23 October 2008, the ADNDRC transmitted the Complaint to the Respondent and notified the Respondent of the commencement of the action. In accordance with the Rules, the due date for the Response was 12 November 2008. The Respondent submitted the Response in the Chinese language before the deadline. On 29 October 2008, the ADNDRC requested the Respondent to resubmit the Response in the English language. The Respondent resubmitted on the same date. The ADNDRC transmitted the Response to the Complainants on 29 October 2008.

The ADNDRC appointed ZHAO Yun as the sole panelist in this matter on 4 December 2008. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the ADNDRC to ensure compliance with Rules 6 and Articles 8 and 9 of the Supplemental Rules.

On 4 December 2008, the Panel received the file from the ADNDRC and should render the Decision within 14 days, i.e., on or before 18 December 2008.

Factual Background

For Claimant

There are two Complainants in this case. The 1st Complainant is BONNETERIE CEVENOLE, a company incorporated in France. The registered address is 1001 Av. De Le Republique-07500, Guilhaud Granges, France. The 2nd Complainant is MONTAGUT FAR EAST LTD., a company incorporated in Hong Kong and owned by the shareholders of the 1st Complainant. The registered address is Units 02-05, 23A/F., K. Wah Centre, 191 Java Road, North Point.

For Respondent

The Respondent, ChenZhou Human Resources Network, is the current registrant of the disputed domain name <梦特娇.com> according to the Whois information.

Parties' Contentions

Claimant

The 1st Complainant is the registered proprietor of the registered trademarks “梦特娇”, “梦特娇”, “MONTAGUT”, “flower device” and/or the combination thereof (“the Registered Trade Marks”) in France, the PRC, Hong Kong, and elsewhere. The registered trade marks “梦特娇” and “梦特娇” have been recognized by the Trademark Office under the State Administration for Industry and Commerce of the People’s Republic of China (“CTMO”) as well-known trademarks after a series of trademark opposition proceedings in year 2004, which held that the said registered trade marks meet the requirements of well-known trademarks as stipulated under Article 14 of the Trademark Law of the People’s Republic of China. The 2nd Complainant is the sole agent and representative of the 1st Complainant in the PRC, Hong

Kong and Macau, and is the only company duly authorized by the 1st Complainant to manufacture, market and sell goods bearing the Registered Trade Marks and other trademarks of the 1st Complainant.

The Complainants and their distributors and licensees have used the Registered Trade Marks extensively in their businesses and operations. The Registered Trade Marks have not only been used on their goods, but also on their publications and documents. The Registered Trade Marks were used as early as 1960 in France, the 1980s in Hong Kong, and the mid-1980s in the PRC. The Complainants have invested a huge amount of resources in the promoting the Registered Trade Marks and their goods bearing the Registered Marks in the PRC, Hong Kong, and other countries and regions worldwide through various media. The Complainants have spent not less than HK\$20,000,000.00 each year in their marketing and promotion campaign in Hong Kong and the PRC. Since 2000, the 2nd Complainant has registered a series of “.hk” and “.cn” domain names, Chinese keywords (中國通用網址), and network real name (中國網絡實名). The Registered Trade Marks of the Complainants are well-known. As such, there are numerous attempts to take advantage of the goodwill in the Registered Trade Marks.

According to the registration information of the Disputed Domain Name from Checkdomain, the address and the name (ChenZhou Human Resources Network) of the Respondent show that the Respondent is a human resource network company in Hunan Province of the PRC. However, a search of the name “ChenZhou Human Resources Network” from Google shows no website or information related to this company name. It is doubtful whether the Respondent is a genuinely existing company or enterprise, and what business it is really operating.

The Respondent registered the Disputed Domain Name with ICANN through AsiaRegister International Limited. The dominant part of the Disputed Domain Name is identical to “梦特娇” of the Registered Trade Marks owed by the Complainants. Further, the three Chinese characters “梦特娇” of the dominant part of the Disputed Domain Name are not the company name of the Respondent, nor are related to the Respondent in any manner. The Respondent registered the Disputed Domain Name without notifying the Complainants and without the prior consent or authorization of the Complainants. The Complainants have no business relationship with the Respondent, and have never authorized, licensed or otherwise permitted the Respondent to use the “梦特娇” Mark or any other name/mark of the Registered Trade Marks owed by the Complainants for the purpose of registration of domain name or any other purposes. There is no evidence of any use of the Disputed Domain Name by the Respondent after the registration.

(1) The Disputed Domain Name is identical or confusingly similar to the name or a trade mark in which the Complainant has rights

The 1st Complainant has registered and legitimately owned the Registered Trade Marks in the PRC, Hong Kong, Macau, and many other countries and regions throughout the world. The 2nd Complainant has been authorized and licensed by the 1st Complainant to use the Registered Trade Marks and to manufacture, market, and sell goods bearing the Registered Trade Marks. The sole or dominant part, “梦特娇”, of the Disputed Domain Name, is identical or confusingly similar to “梦特娇” Mark or other marks of the Registered Trade Marks which contain the word “梦特娇” registered and owed by the Complainants in the PRC, Hong Kong, Macau, and elsewhere, and is identical to the first three characters of the Chinese company name of the 2nd Complainant. Further, the Complainants have been registering and using domain names, keywords, and network real names containing the dominant part of the characters “梦特娇” through which their goods are promoted, and have been using the “梦特娇” Mark or other related marks extensively in their advertisements, and the characters “梦特娇” is identical to the dominant part of the Disputed Domain Name.

(2) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name or the dominant part thereof

The Complainants have prior rights and legitimate interests in the Registered Trade Marks (including the simplified Chinese word mark “梦特娇”) and a series of related registered domain names. The Respondent is not in anyway related to the Complainants, and the Complainants have never authorized, licensed or otherwise permitted the Respondent to use the Registered Trade Marks for the purpose of registration of domain name or any other purposes. The information and the name (ChenZhou Human Resources Network) of the Respondent show that the Respondent is a human resource network company in Hunan Province of the PRC, and is in no way related to the Complainants or the Registered Trade Marks. There is no reason why the Respondent might have any rights or legitimate interests in registering or using the Disputed Domain Name.

(3) Respondent has registered and used the Disputed Domain Name in bad faith

The “Montagut” / “梦特娇” names have high reputation throughout the world including the PRC. The Complainants commenced business in the PRC in the mid-1980s, and have spent huge sum of money each year in promoting their products and brands. The Complainants have registered the Registered Trade Marks in the PRC, Hong Kong, Macau and many other countries and regions throughout the world, and their registered trade marks “梦特娇” and “梦特娇” have been recognized by the CTMO as well-known trademarks in year 2004 in accordance with Article 14 of the Trademark Law of the People’s Republic of China. As an enterprise in the PRC, it is most unlikely that the Respondent is unaware of the name of the Complainants and their Registered Trade Marks. The Disputed Domain Name is in no way related, either directly or indirectly, to the enterprise name of the Respondent. The Respondent’s motive in registering the Disputed Domain Name is very suspicious. The distinctive part of the Disputed Domain Name registered by the Respondent is identical to the company name of the 1st Complainant and the distinctive part of the Registered Trade Marks owed by the Complainants. Further, the Respondent registered the Disputed Domain Name without notifying the Complainants and without the prior consent or authorization of the Complainants.

The “Montagut” / “梦特娇” names have high reputation throughout the world including the PRC, and these names are the respective English and Chinese company names of the 2nd Complainant. The Registered Trade Marks are unique marks of high distinctiveness, and are not ordinary words. Therefore the use of the word “梦特娇” (the simplified Chinese version of the Chinese characters “梦特娇”) by the Respondent as the sole or dominant part of the Disputed Domain Name is likely to cause confusion, and to mislead the public into associating the Respondent and/or the Disputed Domain Name with the Complainants, thereby causing damage to the Complainants. The Respondent has not used the Disputed Domain Name ever since registration. It is obvious that the registration of the Disputed Domain Name by the Respondent is not for legitimate commercial use.

Such acts of the Respondent have prevented the Complainants from registering domain names related to their Registered Trade Marks. The registration of the Disputed Domain Name by the Respondent has hindered the Complainants from registering its own domain name in relation to their Registered Trade Marks, and has caused damage to the interests of the Complainants. Even if the Respondent intends to link the Disputed Domain Name to its website or other website, given the fact that the distinctive part of the Disputed Domain Name is identical to the “梦特娇” mark of the Complainants which was held to be a well-known trademark in the PRC, the Respondent will take advantage of the reputation of the Registered Trade Marks to attract visitors and to increase the hitting rate of their websites, and to mislead the Complainants’ consumers into believing that the goods listed on the Respondent’s websites are associated with the Complainants.

In accordance with Paragraph 4(b)(i) of the Policy, the Complainants request the Panel to issue a decision to transfer the Disputed Domain Name to the 2nd Complainant.

Respondent

The Respondent is not a company as claimed by the Complainant and did not register the domain name in bad faith. The Respondent is in a small city in Hunan Province and has never heard of the trademark. The domain name was registered on 28 July 2004, earlier than the time when the trademark was declared well-known on 18 November 2004. The Respondent had not registered the trademarks or service marks and has never associated with the domain name registration fees in addition to the proceedings. There is no damage to the Complainant in the normal course of business. The Respondent did not use the domain name for commercial interests. There is no evidence concerning the bad faith of the Respondent.

The Respondent is entitled to legal rights and interests in the domain name. The Complainant’s wife name is “montagut” and the Respondent registered the domain name as a personal non-commercial website, but the Respondent has no time to finish the website. The Respondent has been holding the domain name for four years and three months.

The Complainants are brother shareholders. The 1st Complainant requested that the domain name transfer to the 2nd Complainant. In accordance with “first come, first served” principle, the CNNIC published its domain name dispute resolution policy and protect domain name within two years.

The Respondent requests the Panel to dismiss the Complaint.

Findings

The Respondent submits that the Complaint was not brought within the two-year period as defined in the CNIC Domain Name Dispute Resolution Policy. The Panel must clarify that this time limitation does not apply in the UDRP procedures. Thus, the Complainants are entitled to bring the dispute for administrative proceedings in this case.

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 Complainants claim that it is the legal owner of the trademark registrations for the "梦特娇". The evidence submitted by the Complainants sufficiently shows that the Complainants registered the trademark "梦特娇" in China in 1991. The Panel thus finds that the Complainant enjoys the trademark rights in the "梦特娇". The main parts of the disputed domain name is "梦特娇". 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 <梦特娇.com> is identical to the Complainant's trademark "梦特娇". The Panel therefore holds that the Complaint fulfills the condition provided in Paragraph 4 (a)(i) of the Policy.

Rights and Legitimate Interests

The Complainants contend that the Respondent does not have rights to or legitimate interests in the Disputed Domain Names. The Respondent has no relationship with or permission from the Complainants for the use of the service marks. The Complainants' 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 Panel is not convinced by the contentions raised by the Respondent. The Respondent did not automatically obtain rights or legitimate interests solely from the act of registering the disputed domain name. The respondent states that he registered the domain name to develop a website for his wife, who has the same name as to the main part of the domain name. He has failed to produce any evidence to substantiate his statement. The mere allegation of possible future use without any evidence of demonstrable preparations is not sufficient under the Policy. The Respondent is not commonly known by the domain name. Neither is he making a legitimate noncommercial use or fair use of the 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 Complainants have been using the trademark "梦特娇" since 1980s. They registered the trademark in China in 1991 and have been continuously using the mark for his business since then. Since years of consistent use and promotion, "梦特娇" has become well-known in China and this has been confirmed by the Trademark Office in China in 2004. The Panel is not convinced by the mere statement that the Respondent is not aware of the trademark "梦特娇" before the Complaint. The trademark "梦特娇" is not a common term in China and the Respondent's conduct of registering the term as the main part of the disputed domain name cannot be reasonably explained by coincidence or inadvertence. This entitles the Panel to infer that the Respondent should be aware of the existence of the Complainant and the marks.

Since the registration, the Respondent has not been actively using the disputed domain names. It has been held that the lack of active use of the domain name does not as such present a finding of bad faith. The Panel may examine all the circumstances of the case to determine whether the Respondent is acting in bad faith. Examples of circumstances include the Complainant having a well-know trademark.

The above circumstance has further led to the assumption that the Respondent registered the disputed domain name to hinder the Complainant from registering it. The action of registering the disputed domain name per se has constituted bad faith.

In conclusion, the Panel finds 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.梦特娇.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 disputed domain names <梦特娇.com> should be TRANSFERRED from the Respondent to the 2nd Complainant.

ZHAO Yun
Sole Panelist

DATED: 5 December 2008