

IN THE MATTER OF

The Uniform Domain Name Dispute Resolution Policy, approved by the Internet Corporation for Assigned Names and Numbers (ICANN) on 24 October 1999 (the "Policy");

The Rules for Uniform Domain Name Dispute Resolution Policy, approved by ICANN on 30 October 2009 (the "Rules"); and

The Asian Domain Name Dispute Resolution Centre ("ADNDRC") Supplemental Rules to the ICANN for the Policy and the Rules as effected on 28 February 2002 (the "Supplemental Rules").

Complainant: Blizzard Entertainment Inc.

Respondent: Zhou Liang

Case Number: HK-1100329

Contested Domain Name: worldoflordcraft.com

Panel Member: Peter Bullock

1. Parties and Contested Domain Name

The Complainant is Blizzard Entertainment Inc. with a registered address at 16215 Alton Parkway, Irvine, California, 92618, United States. The Respondent is an individual named Zhou Liang who, on obtaining the contested domain name, listed an address at Room 405, No.A16 Long 621 SiPing Road, Shanghai 200092, China. The contested domain name is "worldoflordcraft.com" which was created on 15 January 2010.

2. Procedural History

A complaint in this matter was filed with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (the "ADNDRC") dated 11 January 2010. The ADNDRC notified the registrar of the disputed domain name of the proceedings by email on 14 January 2011.

On 15 January 2011, the registrar notified the ADNDRC that the proper respondent to the dispute is the Respondent. Accordingly, the ADNDRC notified the Complainant on 25 January 2011 of the correct respondent to the dispute and requested the Complainant to correct and re-file its complaint form. The Complainant filed the corrected form on 27 January 2011. Subsequently, on 10 February 2011, the ADNDRC requested the Complainant to file the complaint form in the updated new version, in respect of which the Complainant filed accordingly on 11 February 2011.

A notification of commencement of proceedings (along with a PDF copy of the complaint) was sent to the Respondent on 16 February 2011, and seven separate emails were sent to the Respondent attaching the complaint evidence on the same day. A response and response evidence from the Respondent was received by the ADNDRC Hong Kong office within the prescribed deadline (8 March 2011). The response and response evidence was then served upon the Complainant on 11 March 2011.

On 15 March 2011, the Complainant applied to the ADNDRC to submit additional documents for the Panel's consideration. This material is dealt with in the Discussion and Findings section below.

On 21 March 2011, the Hong Kong office of the ADNDRC informed the parties by email that the Panelist had been appointed.

3. Factual Background

3.1 For Complainant

The Complainant is a company that mainly engages in research, development, production and sales of video games (which includes online games). Also, the Complainant is a leading video game publisher and is an indirect subsidiary of Vivendi SA. In 2004, the Complainant launched its popular online video game "World of Warcraft", which was introduced through the company's "Warcraft" series that the Complainant launched in 1994.

The Complainant registered "World of Warcraft" as its trade mark in various jurisdictions including the People's Republic of China ("China"), Hong Kong, and the United States. The Complainant has obtained registration of the "World of Warcraft" trade mark in these countries in International Classes 9, 14, 16, 18, 20, 21, 22, 25, 28, 30, 32, 38, 40, and 41.

3.2 For Respondent

The Respondent is an individual. The Respondent registered the disputed domain name with the registrar Name.com on 15 January 2010.

4. Parties' Contentions

4.1 For Complainant

The Complainant contends that:

- The domain name "worldoflordcraft.com" is confusingly similar to the trade mark applied for or registered by the Complainant.
- The Respondent has no rights or legitimate interests in respect of the disputed domain name on the grounds that the Respondent (i) does not hold any trade mark rights in respect to the disputed domain name; (ii) has not been licensed or authorized by the Complainant to use the disputed domain name or the trade mark "World of Warcraft"; (iii) is not making a legitimate non-commercial or fair use of the disputed domain name; and (iv) has been hiding his/her true identity.
- The Respondent has used the disputed domain name in bad faith due to (i) the registering of the disputed domain name with knowledge of the Complainant's fame and reputation in its "World of Warcraft" trade mark; (ii) the use of the disputed domain name to provide for an unlicensed and unauthorized online game that is similar to the online "World of Warcraft" game that was developed by the Complainant; and (iii) the hiding of the Respondent's true identity which shows that the Respondent is aware that he/she has no legitimate interest in the disputed domain name.

4.2 For Respondent

The Respondent contends that:

- The domain name "worldoflordcraft.com" is not confusingly similar to the Complainant's trade marks.
- The Respondent has legitimate interests in the disputed domain name on the grounds that the Respondent (i) has come to be known by the domain name and his/her use of the disputed domain name precedes this dispute; (ii) has acquired common law rights to use the "World of Lordcraft" mark as it is not registered and thus the Respondent does not need to seek the Complainant's permission to use it; (iii) denies using the disputed domain name to divert the Complainant's consumers to its website or disrupt the Complainant's business; and (iv) denies that anonymity is evidence of a lack of legitimate interest in the disputed domain name.
- The Respondent has not used the disputed domain name in bad faith due to (i) the Complainant's failure to establish any one of the four indicia of bad faith; and (ii) the Complainant's arguments in relation to bad faith being without merit.

5. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must show each of the following to succeed in its complaint:

- (i) the domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- (ii) why the Respondent (domain name holder) should be considered as having no rights or legitimate interests in respect of the domain name that is the subject of the Complaint; and
- (iii) why the domain name should be considered as having been registered and being used in bad faith.

(1) Identical / Confusingly Similar

The Complainant asserts that the striking similarity of the disputed domain name with its own registered trade mark and registered domain name would confuse the public into thinking that the disputed domain name is associated with the Complainant. The Respondent, on the other hand, contends that there is no similarity between the domain names "worldofwarcraft.com" and "worldoflordcraft.com" for reasons such as the Complainant's trade mark was not used, and that there would be no confusion between the two domain names merely because the word "war" from the original trade mark was replaced with the word "lord" whilst the words "world", "of" and "craft" remain.

Excluding as we should the "www" and ".com" elements (*Driver and Vehicle Licensing Agency – v- DVL Automation, Inc*, WIPO Case No. D2002-0913) and the incidence of stylised designs (*FMV Opinions, Inc –v- the Fair Market Valuation Experts* WIPO Case No. D2002-0372), we are left to compare "worldofwarcraft" with "worldoflordcraft".

The Respondent has taken a wholly semantic approach to deconstructing the Disputed Domain, arguing that the sole point of difference, namely "world" and "war", assumes the greatest, and determinative significance. The Respondent also suggests that, outside the world of dedicated gamers, the difference is sufficiently great to avoid confusion to the general public, and that hardcore gamers will not be confused because of the notoriety of worldofwarcraft. Both sides point to Internet forum comment in support of their respective positions.

The Panel rejects, in this instance, the semantic approach to interpretation. With a domain as complex and evocative as "worldofwarcraft", both sophisticated and unsophisticated users of the Internet risk confusion when faced with "worldoflordcraft". The Panel's empirical research with a sophisticated group of middle-aged non-gamers corroborated this view.

The Panel places very little store by the forum comment relied up on by both parties. Such material is capable of manipulation by interested parties.

In respect of the claim head of confusing similarity, the Panel ignores the current content of the web site pertaining to the Disputed Domain, following (*Winston –v- Katherman*, WIPO Case No. D2008-1267).

The Respondent also asserts that confusion due to mistake is not likely because an Internet user would not type "lord" instead of "war" by mistake. However, there are many ways in which confusion can occur (or be induced) on the Internet which do not require full domain names to be typed. The Panel is also unconvinced by the fact that there are other, perhaps more self-explanatory domain names which are not claimed within these proceedings as being confusingly similar (e.g. worldofpapercraft.com).

Based on the Panel's findings, the Panel finds the disputed domain name to be confusingly similar to the Complainant's registered trade mark "World of Warcraft".

(2) Rights and Legitimate Interests

The consensus view with regard to this element of a complaint is that the Complainant is required to make out a *prima facie* case to show the Respondent's lack of right or legitimate interest in the disputed domain name. Once such a case is made, the burden shifts to the Respondent to prove his/her rights or legitimate interest in the domain name. Where the Respondent is unsuccessful in proving his/her interests, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy (*Croatia Airlines d.d. v. Modern Empire Internet Ltd* (WIPO Case D2003-0455)).

Paragraph 4(c) of the Policy sets out the way in which the Respondent can prove he/she had rights or legitimate interests in the disputed domain name:

"Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii):

(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) you (as an individual, business, or other organisation) have been commonly known by the domain name, even if you have acquired no trade mark or service mark rights; or

(iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue." (Policy, para. 4(c)).

In the Respondent's response, the contention that the use of the disputed domain name was to provide *bona fide* services is unconvincing. It is the view of the Panel that the Respondent has been using the disputed domain name for illegitimate commercial gain. The disputed domain name offers an online video game that features many qualities that are similar to the game produced by the Complainant. In consideration of the length of time that the Complainant's trade mark has been registered and the success the trade mark has generated, it can be inferred that the Respondent is using the disputed domain name to benefit financially by using a domain name confusingly similar to the Complainant's trade mark to misleadingly attract general internet users to a game that is similar to that of the Complainant.

It is notable that the Respondent has no trade mark registrations (pending or complete) in respect of "worldoflordcraft". The Respondent asserts that *"it indisputably has acquired common law rights to use the mark through continuous use of the name and domain since*

March 2010". The Panel does not accept this assertion. The Respondent has demonstrated no trade mark rights in this connection.

After careful consideration, the Panel finds the Respondent to have no right or legitimate interest in respect to the disputed domain name.

(3) Bad Faith

Paragraph 4(b) of the Policy provides for the following instances to be evidence of the Respondent's registration and use of a domain name 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 trade mark 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 trade mark 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 of 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 web site 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 web site or location or of a product or service on your web site or location."

The Respondent has admitted its knowledge of the existence of the Complainant's trade mark and its successes in the video gaming industry. As the Respondent has created a website to host an online video game similar to the Complainant's and had used a domain name that is confusingly similar to the Complainant's trade mark, the Panel is of the view that the Respondent did so with the aim of intentionally attempting to attract general internet users to its website for the purpose of commercial gain. The use of the confusingly similar disputed domain name for a website that hosts an online video game that prima facie infringes the Complainant's rights to the "World of Warcraft" game imputes bad faith on the part of the Respondent.

It should be noted that the Panel's conclusion as to evidence of the Respondent's bad faith was based on the complaint and response forms filed by the parties. That said, the Panel had enough information to arrive at the conclusion on the issue of bad faith without the use of the additional documents filed by the Complainant. Nonetheless, having reviewed the additional documents given, the Panel finds the evidence from the documents to confirm that the Respondent registered and used the disputed domain name in bad faith in accordance with the Policy, para 4(b)(iv).

The additional documents provided by the Complainant include a Cease and Desist Letter that was sent to the Respondent's company by the Complainant on 3 June 2010. In the letter, the Complainant contested that two of the Respondent company's websites have grossly infringed the Complainant's intellectual property rights due to the similarity of websites' content to the Complainant's trade mark and "World of Warcraft" game. The disputed domain name was one of the two websites that were mentioned in the letter. As a result of the letter, the company shut down one of the two websites (leaving the disputed domain name in operation) and provided an undertaking promising never to infringe the Complainant's intellectual property rights at the demand of the Complainant.

From this evidence, it is apparent that the Respondent's company has had a history of riding on the materials of the Complainant's intellectual property rights.

6. Decision

In light of all the foregoing findings and in accordance with Paragraphs 4(a) of the Policy, the Panel holds that the disputed domain name "worldoflordcraft.com" is confusingly similar to the Complainant's registered trade mark "World of Warcraft"; the Respondent has no right or legitimate interest with regard to the disputed domain name; and the disputed domain name was registered and subsequently used in bad faith by the Respondent.

Finally, the Panel decides that the domain name "worldoflordcraft.com" be transferred to the Complainant.

Dated: April 4, 2011.

Hong Kong

A handwritten signature in black ink, appearing to read "Peter Bullock", is written above a solid horizontal line.

Peter Bullock