

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No. HK 1100334

Complainant:	Guess?, Inc.
Respondent:	tang wei
Domain Names:	<guess-taizang.info>, <guess-shunjian.info>, <guess-hengeili.info>
Registrar:	GoDaddy.com, Inc.

1. Procedural History

The complainant in this case is Guess?, Inc., a corporation, resident in Los Angeles, California, United States of America ("Complainant").

The respondent is tang wei, giving an address at 120 hard-working Street, Hainan District, Beijing, People's Republic of China ("Respondent"). Complaint, Annex 1.

The domain names in dispute are <guess-taizang.info>, <guess-shunjian.info>, and <guess-hengeili.info>. The Registrar of the domain name is GoDaddy.com, Inc. (the "Registrar").

On 1 March 2011, pursuant to the Uniform Domain Name Dispute Resolution Policy ("the Policy"), the Rules for the Uniform Domain Name Dispute Resolution Policy ("the Rules") and Hong Kong International Arbitration Centre Supplemental Rules ("the HKIAC Supplemental Rules"), the Complainant submitted a complaint in the English language to the Hong Kong International Arbitration Centre (the "HKIAC"), an office of the Asian Domain Name Dispute Resolution Centre and elected this case to be dealt with by a one-person panel. On 8 March 2011, Hong Kong International Arbitration Centre 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 HKIAC Supplemental Rules. All correspondence to and from the HKIAC described herein was in the English language. On the same date the HKIAC sent the Registrar a request for verification. On 8 March 2011 the HKIAC sent the registrar a request for verification. On 9 March 2011, the Registrar confirmed that it was the registrar of the domain names at issue and that Respondent was the registrant of the domain names at issue.

On 22 March 2011 HKIAC notified the Respondent of the commencement of the action.

On 14 April 2011, the HKIAC notified the Complainant that the Respondent had failed to submit a Response.

Since the Respondent did not file a response in accordance with the time specified in the Rules, the HKIAC Supplemental Rules, and the Notification, the HKIAC informed Complainant and Respondent by email about the default, stating that, as Respondent did not file a response within the required time, the HKIAC would appoint the panelist to proceed to render the decision, in the absence of a response by Respondent.

On 20 April 2011 the HKIAC notified the parties that the Panel in this case had been selected, with M. Scott Donahey 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 20 April 2011, the Panel received the file from HKIAC.

2. Factual Background

For the Complainant

Complainant is a leading supplier of fashions for men, women, and children, including clothing, eye ware, handbags, belts, watches, footwear, and jewelry.

Complainant has a trademark for the mark GUESS issued by numerous trademark authorities in countries around the world, including the People's Republic of China and Hong Kong the earliest of which issued on 23 November 2006. Complaint, Annex 3. The Complainant was first established in 1981. Complainant's products are sold in 84 countries around the world, and Complainant operates 1,210 retail outlets. Complainant also operates a web site at www.guess.com, which in 2007 received 13,863,441 hits per day, including 104,806 hits from the People's Republic of China alone. Complaint, Annex 4. In the fiscal year ending 31 January 2009, Complainant spent US\$ 35.5 million in the promotion of the GUESS brand. Complaint, Annex 5. In the year 2009, Complainant had gross revenues of US\$ 2.1 billion. In 2009 Complainant had 36 free standing stores and 43 concessions in the People's Republic of China alone. Complaint, Annex 6.

On 20 December 2010, Respondent registered the domain names at issue. Complaint, Annex 1. The domain names at issue resolve to web sites at which counterfeit goods pretending to be those supplied by Complainant are offered for sale.

Complainant has not authorized Respondent to use its mark.

For the respondent

Respondent has failed to file a response in this matter.

3. Parties' Contentions

The Complainant

Complainant asserts that the domain names at issue are confusingly similar to Complainant's GUESS mark. Complainant further alleges that Respondent has no rights or legitimate interests in respect of the domain names at issue, and that Respondent's domain names have been registered in bad faith and are being used in bad faith since they have been used to resolve to a web site that offers counterfeit goods that purport to be those supplied by Complainant.

The Respondent

The respondent did not file a response within the stipulated time.

4. Findings

Paragraph 15(a) of the Uniform 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 directs that the Complainant must prove **each of** the following:

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

Identical or Confusing Similarity

The domain names at issue consist of the trademark GUESS to which Respondent has added descriptive words such as "Taizang" (a Chinese word referencing the Taizang Pagoda, which is located in Turpan of the Xinjiang Uygur Autonomous Region in China), "hengeili" (a pinyin representation of certain Chinese characters for a term popularly used on the Internet to mean "very cool"), and "shunjian" (a pinyin representation of certain Chinese characters for "in a flash" or "in the blink of an eye"). The combination in a domain name consisting of the Complainant's mark and words descriptive of the Complainant's descriptive words is confusingly similar to the Complainant's mark. A domain name is "confusingly similar to a trademark for purposes of the Policy when the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name." *Adobe Systems Incorporated v. Jeff Bluff, Online RX Sales LLC*, WIPO Case No. D2006-1475. Accordingly, the Panel finds that the domain name at issue is confusingly similar to service marks in which Complainant has rights.

Rights or Legitimate Interests of the Respondent

The consensus view of WIPO panelists concerning the burden of establishing no rights or legitimate interests in respect of the domain name is as follows:

While the overall burden of proof rests with the complainant, panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. Therefore a complainant is required to make out an initial *prima facie* case that the respondent lacks rights or legitimate interests. Once such *prima facie* case is made, respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP.

WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition ("WIPO Overview, 2.0"), Section 2.1.

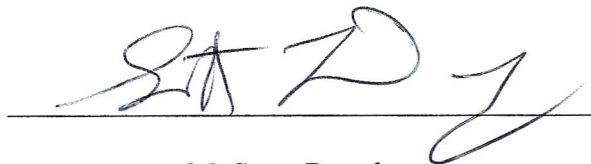
In the present case the Complainant alleges that Respondent has no rights or legitimate interests in respect of the domain name and Respondent has failed to assert any such rights. Accordingly, the panel finds that Respondent has no rights or legitimate interests in respect of the domain names at issue.

Bad Faith

The domain names at issue resolve to Web sites offering GUESS products for sale. All of these products are counterfeits, as determined by Complainant's examination of the products appearing in Respondent's web sites. Annex 15. Panels have consistently held that the use of a domain name confusingly similar to a well-known trademark in order to sell counterfeit products via the Internet is a typical case of use in bad faith. *Cartier International, N.V., Cartier International B.V. v. David Lee*, WIPO Case No. D2009-1758. Accordingly the panel finds that all the domain names at issue have been registered and are being used in bad faith.

5. Decision

For all of the foregoing reasons, the Panel decides that the domain names at issue, <guess-taizang.info> and <guess-hengeili.info>, and <guess-shunjian.info> should be transferred to Complainant.



M. Scott Donahey
Sole Panelist

DATED: 27 April 2011