



Asian Domain Name Dispute Resolution Centre
a charitable institution limited by guarantee registered in Hong Kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1300477
Complainant:	STANDARD INNOVATION CORPORATION
Respondent :	fisk SA

1. The Parties and Contested Domain Name

The Complainant is STANDARD INNOVATION CORPORATION, of 1130 Morrison Drive, Suite 330, Ottawa, Ontario K2H 9N6, Canada.

The Respondent is fisk SA, of 388, 23/F, tianfenf waizai, Hong Kong, NA 999077HK.

The domain name at issue is **we-vibe-iii.com**, registered by Respondent with Tucows Domains Inc., of 96 Mowat Avenue, Toronto, Ontario, M6K 3M1, Canada.

2. Procedural History

The Complainant filed a Complaint pursuant to the Uniform Domain Name Dispute Resolution Policy (“the Policy”) adopted by the Internet Corporation for Assigned Names and Numbers (“ICANN”) an Internet Corporation For Assigned Names And Numbers (“ICANN”) on 24th October 1999 to the Hong Kong office of the Asian Domain Name Dispute Resolution Center (“ADNDRC”) on the 9th January 2013 concerning the disputed domain name to be determined in accordance with the Rules for Uniformed Domain Name Dispute Resolution Policy (“the Rules”).

The formal date of commencement of the Administrative Proceeding in accordance with the Rules is 28th January 2013.

The Hong Kong office of the ADNDRC notified Respondent on the same day, 28th January 2013, that a Complaint had been submitted and that Respondent was required to submit a Response within twenty (20) days from 28th January 2013, that is to say 17th February 2013 in accordance with Article 5 of the Rules.

No Response having been submitted in accordance with the Rules or at all, the Hong Kong office of ADNDRC appointed Jeffrey Elkinson to act as sole Panelist on the 6th March 2013 and notified Complainant and Respondent that the case file would be transferred to the Panelist for consideration and a Decision.

The Panel confirms that it received the appointment and the case file on the 6th March 2013.

3. Factual background

The Complainant is the owner of the trademark in China, Canada and the European Union, WE-VIBE and device, which was registered as early as 8th February 2007 and has used its website, we-vibe.com to promote its WE-VIBE products throughout the world. The Complainant had entered into the business market with its products in 2004, which products are referred to as “a family of sexual wellness products.” Complainant has a range of these products which focus on high quality design and utilizing environmentally conscious materials and process use. Complainant is a global organization, which is evidenced by its distribution partners operating in North America and Europe, which are its substantial markets but it also distributes worldwide, including Russia, Hong Kong, Central America and South Africa. Complainant says that its products are used by over 2 million people, are available on every continent and in over 50 countries and usually sold through drug stores, luxury boutiques and adult stores. The trademarks that Complainant holds in respect of WE-VIBE are for its adult marital and sexual aids, namely massagers, vibrators and stimulators and accessories for those items. The product has been extensively reviewed and commented on in the media and is clearly a renowned and popular product.

As regards the Respondent, there is scant evidence. The administrative contact and technical contact described in the registration is SA, fisk with an email address of fisk237462@gmail.com. A phone number was also provided by Respondent when registering the domain name but it is unclear as to whether this is an operating number.

4. Parties' Contentions

A. Complainant

Complainant points out that the website to which the disputed domain name resolves contains Complainant's products but also on the bottom left of the website is a “domain for sale” sign. The only products available on the website are Complainant's and when one seeks to follow the link to purchase Complainant's product, it directs the user to an Australian website selling diverse adult products, of which Complainant's is only one. Complainant's position is that it has never authorized Respondent to use its WE-VIBE registration in any form and that Respondent is acting in bad faith in using the disputed domain name by seeking to mislead consumers into believing that it is the official website of Complainant, having placed information and photographs advertising Complainant's products on the disputed domain name website.

B. Respondent

The Respondent did not provide any Response or participate in any way.

5. Findings

Respondent has chosen not to participate having been required to submit a Response to the Complaint within twenty (20) days from the 28th January 2013 pursuant to Article 5 of the Rules. Accordingly, the Panel proceeds to decide the dispute based upon the Complaint and the available evidence.

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of the three findings must be made in order for a Complainant to prevail:

- i. Respondent's domain name must be identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- ii. Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. Respondent's domain name has been registered and is being used in bad faith.

A) Identical / Confusingly Similar

The disputed domain name is indeed confusingly similar to that of Complainant as it uses the same words, "WE-VIBE" but adds in "-iii" at the end and keeps it as a .com address. Whilst it is not identical in every regard, it is so close to certainly be confusingly similar. The fact that it resolves to WE-VIBE products lends to the confusion. It is well accepted that a small variation made by a Respondent to a disputed domain name does not avoid confusing similarity – see **Telstra Corporation Limited v Nuclear Marshmallows – WIPO Case No. D2000-0003**. In all the circumstances, I have no difficulty in finding that the domain name is confusingly similar.

B) Rights and Legitimate Interests

I am satisfied by the submissions of Complainant that Respondent has no rights or legitimate interests in respect of the disputed domain name. It is clear as to the extent and duration of Complainant's rights as regards the trademark, "WE-VIBE and device" and there has been no licensing or permissions given to Respondent to make use of this. When one proceeds to the disputed domain name website, it is evident that there has been copying of Complainant's media promotions of its products and each web page within the domain has a prominent sign "domain for sale." Further, Respondent has set up the website so that any attempts to purchase the product brings the customer to an apparently unrelated online vendor who sells many products from many manufacturers. I find that Respondent can have no right or legitimate interests in respect of the domain name where all Respondent is doing is advertising Complainant's products with a not so subtle advertisement that the domain is for sale.

C) Bad Faith

The Policy provides at paragraph 4(b) certain circumstances that can be evidence of the registration and use of a domain name in bad faith. At paragraph 4(b)(ii) it states:

“(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, and ...

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, internet users to your website or other online 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.”

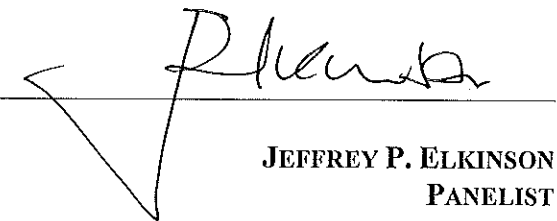
I am satisfied that the circumstances set out in (i) and (iv) exist and so establish bad faith on the part of Respondent.

6. Decision

For the reasons set out above, the Panel finds that the disputed domain name registered by Respondent is confusingly similar to Complainant's registered trademark, WE-VIBE and device, and that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that the disputed domain name was registered and used in bad faith by the Respondent.

As a consequence of these findings, the Panel directs that the disputed domain name **we-vibe-iii.com** be transferred to the Complainant, Standard Innovation Corporation.

Dated this 8th day of March, 2013



JEFFREY P. ELKINSON
PANELIST