ADNDRC | Asian Domain Name Dispute Resolution Centre
seoul

(Seoul Office)

ADMINISTRATIVE PANEL DECISION

Case No. KR-1700157

Complainant: Samsung Electronics Co., Ltd
(Authorized Representative: Jeonghyun Kim, Hongseok Jang of Bae, Kim & Lee LLC IP Group)

Respondent: lupie jet

Disputed Domain Name(s): samsungdex.com

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1. The Parties and Disputed Domain Name

The Complainant is Samsung Electronics Co., Ltd of 129, Samsung-ro, Yeongtong-gu, Suwon-si, Gyeonggi-do, Republic of Korea. The Authorized Representative of Complainant is Jeonghyun Kim, Hongseok Jang (Bae, Kim & Lee LLC IP Group) of 343, Gangnam-daero, Seocho-gu, Seoul, Republic of Korea.

The Respondent is Iupie jet of Jiangsu Sheng 232344, Shanghai, China.

The disputed domain name is **<samsungdex.com>**, registered with TurnCommerce, Inc. d.b.a. Namebright.com of 2635 Walnut Street Denver, CO 80205, U.S.A..

2. Procedural History

The Complaint was filed with the Seoul Office of the Asian Domain Name Dispute Resolution Center (ADNDRC)["Center"] on March 10, 2017, seeking for a transfer

of the disputed domain name. On March 15, 2017, the Center sent an email to the TurnCommerce, Inc. d.b.a. Namebright.com asking for the detailed data of the registrant. On March 15, 2017, the Registrar verified that Iupie jet is the current registrant of the name and that Respondent is bound by the TurnCommerce, Inc. d.b.a. Namebright.com registration agreement and has thereby agreed to resolve domain disputes brought by third parties in accordance with ICANN's Uniform Domain Name Dispute Resolution Policy (the "Policy").

The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the Centre's Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

The proceedings commenced on March 23, 2017. In accordance with the Rules, the Centre formally notified the Respondent of the Complaint, setting a deadline of April 12, 2017 by which Respondent could file a Response to the Complaint, via e-mail to all entities and persons listed on Respondent's registration as technical, administrative, and billing contacts.

No Response was filed by the deadline. Having received no response from Respondent, the Centre transmitted to the parties a Notification of Respondent Default. On April 19, 2017, the Center appointed Ho Hyun Nahm, Esq., as the Sole Panelist in the administrative proceeding and with the consent for the appointment, impartiality and independence declared and confirmed by the Panelist, the Center, in accordance with paragraph 7 of the Rules, organized the Panel of this case in a legitimate way.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that the Centre has discharged its responsibility under Paragraph 2(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") "to employ reasonably available means calculated to achieve actual notice to

Respondent" through submission of Electronic and Written Notices, as defined in Rule 1 and Rule 2. Therefore, the Panel may issue its decision based on the documents submitted and in accordance with the ICANN Policy, ICANN Rules, the Center's Supplemental Rules and any rules and principles of law that the Panel deems applicable, without the benefit of any response from Respondent.

3. Factual background

Complainant Samsung Electronics Co., Ltd. (hereinafter referred to as 'the "Complainant") is the lawful rights holder of the mark 'SAMSUNG.'

The Respondent is not using the disputed domain name at all.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

i) The disputed domain name is identical with or similar to the trademark or service mark owned by the Complainant, which may cause confusion,

ii) The Respondent has no right or lawful interest in the disputed domain name, and

iii) The Respondent owns the disputed domain name for unlawful purposes.

B. Respondent

Repondent did not submit a Response.The Panel notes that the disputed domain name was registered on October 18, 2016. The disputed domain name is not being used.

5. Findings

Complainant established that it had rights in the mark contained in the disputed domain name. Disputed domain name is confusingly similar to Complainant's protected mark,

Respondent has no rights to or legitimate interests in the disputed domain name, and

Respondent registered and used the disputed domain name in bad faith.

6. Discussions

Paragraph 15(a) of the Rules instructs this Panel to "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 Complainant must 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 Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
(2) 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.

In view of Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory. *See Vertical Solutions Mgmt., Inc. v.*

webnet-marketing, inc., FA 95095 (FORUM July 31, 2000) (holding that the respondent's failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true); *see also Talk City, Inc. v. Robertson*, D2000-0009 (WIPO Feb. 29, 2000) ("In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.").

A) Identical and/or Confusingly Similar

Complainant uses the SAMSUNG mark in connection with its business of providing investment strategies and vehicles to its retail, institutional, and high net worth clients around the world. Complainant has registered the SAMSUNG mark with the KIPO (Korean Intellectual Property Office) (*e.g.*, Reg. No. 410,197,426 covering classes of services 35, 38, 41, 42 registered Oct.7, 2014; Reg. No. 410,025,163 covering class of servies 45 registered Oct.26, 2015; Reg. No. 410,024,777 covering class of servies 42 registered Sep.24, 2003), which establishes rights in the mark. The general consensus is that KIPO or USPTO registrations are sufficient in conferring rights in a mark under Policy ¶ 4(a)(i). *See T-Mobile USA, Inc. dba MetroPCS v. Ryan G Foo / PPA Media Services*, FA 1627542 (FORUM Aug. 9, 2015) (finding that Complainant has rights in the METROPCS mark through its registration with the United States Patent and Trademark Office). Therefore, the Panel deems Complainant's evidence of a KIPO registration for the SAMSUNG mark sufficient in establishing rights under Policy ¶ 4(a)(i).

Next, Complainant argues that Respondent's **<samsungdex.com>** domain name is confusingly similar to the SAMSUNG mark under Policy ¶ 4(a)(i). Complainant contends that Respondent's domain only differs from the SAMSUNG mark by adding top-level domain and a suffix 'dex,' which perpetuate a confusing similarity. Panels have agreed that merely adding a generic term to a complainant's mark can still make the domain name confusingly similar. *See Microsoft Corporation v. Thong Tran Thanh*, FA 1653187 (FORUM Jan. 21, 2016) (determining that confusing similarity exists where a disputed domain name contains a complainant's entire mark and differs only by the addition of a generic or descriptive phrase and top-level domain, the differences between the domain name and its contained trademark are insufficient to differentiate one from

the other for the purposes of the Policy). Consequently the Panel agrees that Respondent's **<samsungdex.com>** is confusingly similar to the SAMSUNG mark pursuant to Policy ¶ 4(a)(i).

B) Rights or Legitimate Interests

Complainant must first make a prima facie case that Respondent lacks rights and legitimate interests in the disputed domain name under Policy ¶ 4(a)(ii), and then the burden shifts to Respondent to show it does have rights or legitimate interests. See Hanna-Barbera Prods., Inc. v. Entm't Commentaries, FA 741828 (Forum Aug. 18, 2006) (holding that the complainant must first make a prima facie case that the respondent lacks rights and legitimate interests in the disputed domain name under UDRP ¶ 4(a)(ii) before the burden shifts to the respondent to show that it does have rights or legitimate interests in a domain name); see also AOL LLC v. Gerberg, FA 780200 (Forum Sept. 25, 2006) ("Complainant must first make a prima facie showing that Respondent does not have rights or legitimate interest in the subject domain names, which burden is light. If Complainant satisfies its burden, then the burden shifts to Respondent to show that it does have rights or legitimate interests in the subject domain names.").

The Complainant avers that the Respondent is an entity completely unrelated to the Complainant, and has not been granted any authorization by the Complainant who is the proper rights holder of the Complainant's mark. The Complainant further asserts that the disputed domain name as well as the website to which the disputed domain name is being resolved has not been used at all since its registration, and the Respondent is not using the disputed domain name in good faith to provide goods or services. Therefore, the Respondent has no lawful rights and interests in the registration and possession of the disputed domain name.

Complainant contends Respondent has no rights or legitimate interests in **<samsungdex.com>**. In support of this assertion, Complainant claims that Respondent is not commonly known by the disputed domain name and Complainant has not licensed or permitted to use the SAMSUNG mark in any respect. Where a response is lacking, WHOIS information can support a finding that the respondent is not commonly known

by the disputed domain name. *See Chevron Intellectual Property LLC v. Fred Wallace*, FA1506001626022 (FORUM July 27, 2015) (finding that the respondent was not commonly known by the< chevron-europe.com> domain name under Policy ¶ 4(c)(ii), as the WHOIS information named "Fred Wallace" as registrant of the disputed domain name). The WHOIS information of record identifies Respondent as "Iupie jet." In addition, failure to establish authorization approval for a Respondent to use Complainant's mark can be evidence of a lack of rights or legitimate interests in a confusingly similar domain name. *See IndyMac Bank F.S.B. v. Eshback*, FA 830934 (FORUM Dec. 7, 2006) (finding that the respondent failed to establish rights and legitimate interests in the< emitmortgage.com> domain name as the respondent was not authorized to register domain names featuring the complainant's mark and failed to submit evidence that it is commonly known by the domain name).

The Panel finds that Respondent is not commonly known by the disputed domain name. The Panel is of the view that failure to establish authorization approval for a Respondent to use Complainant's mark can be evidence of a lack of rights or legitimate interests in a confusingly similar domain name. *See IndyMac Bank F.S.B. v. Eshback*, FA 830934 (FORUM Dec. 7, 2006) (finding that the respondent failed to establish rights and legitimate interests in the< emitmortgage.com> domain name as the respondent was not authorized to register domain names featuring the complainant's mark and failed to submit evidence that it is commonly known by the domain name). The Panel finds that Respondent is not commonly known by the disputed domain name.

The Panel notes that the disputed domain name remains inactive as a passive holding landing site can evince a lack of a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. *See Bloomberg L.P. v. SC Media Servs. & Info. SRL*, FA 296583 (FORUM Sept. 2, 2004) ("Respondent is wholly appropriating Complainant's mark and is not using the <bloomberg.ro> domain name in connection with an active website. The Panel finds that the [failure to make an active use] of a domain name that is identical to Complainant's mark is not a *bona fide* offering of goods or services pursuant to Policy ¶ 4(c)(i) and it is not a legitimate noncommercial or fair use of the domain name pursuant to Policy ¶ 4(c)(iii)."). Respondent's disputed domain

name redirect users to a website that states "**samsungdex.com is comming soon**" and similar content indicating that the disputed domain name lacks content. Accordingly, the Panel agrees with Complainant's assertions and finds that the disputed domain name is not a *bona fide* offering of goods or services pursuant to Policy ¶ 4(c)(i) nor are they a legitimate noncommercial or fair use of the domain names pursuant to Policy ¶ 4(c)(iii).").

C) Registration and Use in Bad Faith

The Complainant contends that the registration of the disputed domain name, followed by a passive holding of the disputed domain name, constitutes 'use in bad faith.' The Panel agrees that the passive holding of a domain name does not necessarily circumvent a finding that the domain name is being used in bad faith within the requirements of paragraph 4(a)(iii) of the Policy. See *Telstra Corporation Limited v. Nuclear Marshmallows,* WIPO Case No. D2000-0003 (finding that in considering whether the passive holding of a domain name, following a bad faith registration of it, satisfies the requirements of paragraph 4(a)(iii), the panel must give close attention to all the circumstances of the respondent's behavior, and a remedy can be obtained under the Policy only if those circumstances show that the respondent's passive holding amounts to acting in bad faith.)

The particular circumstances of this case that the Panel has considered are:

i) After the Complainant's group company first started its business under the name of Samsung Sanghoe in Daegu in March 1938, it was then incorporated in June 1941 and changed its company name to Samsung Corporation in January 1951. In addition, Samsung Electronics Industries, the predecessor of the Complainant, was established on January 13, 1969, which was listed on the stock exchange in 1975 and came to have the present trade name of the Complainant in February 1984. Since then, the Complainant's group company has grown into a global conglomerate company, which comprises numerous affiliated businesses with the Complainant;

ii) The Complainant's mark 'SAMSUNG,' which is the company name/trademark of the Complainant's group company, has been widely used all over the world for a long period of time as the mark to represent not only the Complainant but also goods and services of each of its subsidiary companies, and thus it is a worldwidely well-known mark;

iii) WIPO's UDRP previous cases have also recognized the facts that the mark 'SAMSUNG' is well-known mark around the world and the Complainant is the lawful rights holder of the mark 'SAMSUNG,' and have issued numerous decisions that ordered the cancellation or transfer of the domain names combining 'SAMSUNG' and other marks; and

iv) Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the disputed domain name.

Taking into account all of the above, the Panel concludes that Respondent's passive holding of the disputed domain name constitutes bad faith under Policy, paragraph 4(a)(iii) and that Respondent is using the disputed domain name in bad faith.

The Complainant additionally asserts that in light of the reputation of the Complainant's SAMSUNG mark, it is unlikely that the Respondent with no rights or lawful interest in the disputed domain name coincidentally registered the disputed domain name that is confusingly similar to the Complainant's mark without the knowledge of the Complainant's mark, and thus it is clear that the Respondent registered the disputed domain name for the unlawful purposes, such as unjust enrichment by taking advantage of the reputation and fame of the Complainant's mark.

The Panel infers from the notoriety of Complainant's mark and the manner of use of the disputed domain name (passive holding) by Respondent that Respondent registered disputed domain name **<samsungdex.com>** with actual knowledge of

Complainant and its rights to the Complainant's SAMSUNG mark, and thus demonstrating bad faith under Policy ¶ 4(a)(iii).

7. Decision

Having established all three elements required under the ICANN Policy, the Panel concludes that relief shall be **GRANTED**.

Accordingly, it is Ordered that the **<samsungdex.com>** domain name be **TRANSFERRED** from Respondent to Complainant.

Ho Hyun Nahm, Esq.
Sole Panelist

Dated: May 3, 2017