



(Seoul Office)

ADMINISTRATIVE PANEL DECISION

Case No.	KR-1400093
Complainant:	WAPOP Co. Ltd.
Respondent:	21562719 Ont Ltd
Disputed Domain Name(s):	Wapop.com

1. The Parties and Contested Domain Name

The Complainant is WAPOP Co. Ltd., of 216 Neung-dong, Gwangjin-gu, Seoul, Korea, represented by Kim Il-kyu

The Respondent is 21562719 Ont Ltd., of 160-2 County Ct Blvd, Suite 438 L6W 4V1 Brampton, ON Canada, represented by Kan Singh

The domain name at issue is Wapop.com, registered by Respondent with FABULOUS.COM PTY Ltd., of Level 1, 91 Bridge Street Fortitude Valley QLD 4006 Australia.

2. Procedural History

The Complaint was filed with the Seoul Office of the Asian Domain Name Dispute Resolution Center ("ADNDRC")["Center"] on March 13 2014, seeking for a transfer of the domain name in dispute.

On March 21 2014, the Center sent an email asking for the detailed data of the registrant or the Respondent to the registration organization, and the registration organization, on March 21 2014, responded with the detailed data checked, including checking over the registrant.

On March 21 2014, the Center examined whether the Complaint meets formal requirements set out in The Uniform Domain Name Dispute Resolution Policy (the "Policy"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the ADNDRC Supplemental Rules(the "Supplemental Rules").

On March 21 2014, the Center sent to the Respondent the "Complaint Transmission Cover" along with the Complaint via email as well as via registered mail. When, the Center informed the Respondent of a due date, April 10 2014, for the submission of its Response.

On April 10 2014, the Respondent submitted the Response.

On April 24 2014, the Center appointed Mr. Lee, Doug-Jay to the Sole Panelist of this case, 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.

By Administrative Panel Order No. 1 dated 30 April, 2014, the Panel noted:

1. within 7 days of the date of issue of this Order, the Complainant file any additional submissions on which it relies, such submissions to be limited to matters raised in the Response;
2. the respondent be allowed a further 7 days from receipt of the Complainant's additional submissions to reply to those additional submissions.

On May 6 2014, the Complainant submitted additional submissions.

On May 7 2014, the Center forwarded to the Respondent a copy of the Complainant's additional submissions. No response was filed until May 14 2014.

3. Factual Background

- i The Complainant, one of the subsidiaries of Eland Corporation, is using "wapop" as the name for a Korean Wave culture concert it offers to foreign tourists visiting Korea. The concert includes popular Korean TV series (or film) and live performances by K-Pop artists in its program. The Complainant launched a VIP premiere of the concerned concert in Seoul, Korea on October 1, 2013 and staged its first performance on January 29, 2014. The concert is held every Saturday in Seoul unless otherwise noted.

The Complainant was incorporated under the laws of the Republic of Korea on February 18, 2003 and changed its name to "WAPOP Co., Ltd." on January 29, 2014. The Complainant filed to register "WAPOP" with the Korean Intellectual Property Office in Int'l Class 41 on July 4, 2012 and filed additional applications for the same in Classes 35 and 39 on June 17, 2013 and in multiple Int'l Classes on August 28, 2013. Two of the filed marks were registered on September 9, 2013 and others were subsequently registered or are pending registration. Eland Corporation, which is the parent company of the Complainant, registered the domain name "wapop.co.kr" on March 13, 2014 and owns it to this day.

- ii. The Respondent is a wholesale domain name holder and had the domain name in dispute ("the Domain Name") parked after registering it on August 7, 2007. It sells its domain names through a third party broker.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

- i. The Complainant has used "wapop" as the name for a performance organized by them since 2012 and the performance is widely recognized in Korea and Southeast Asia under that name. The Complainant also registered "wapop" with

the Korean Intellectual property Office for goods and services in numerous classes.

- ii. The Complainant negotiated the transfer of the Domain Name with Mr. Robert Hoddenbagh, who acted the Respondent's agent. During the negotiation process, Mr. Hoddenbagh expressly communicated that the owner of the Domain Name was willing to sell the Domain Name for a "mid five figure price." The Complainant responded that it was not able to pay a sum in excess of \$10,000 and added that if the domain name owner wanted a sum in the range of \$40,000~60,000, it would be obliged to withdraw from further negotiation and proceed to use another domain name. It is very obvious that the Respondent wants to make a large profit off of the Domain Name and is not further responding. All this is very unfair.

B. Respondent

The Respondent's contentions may be summarized as follows:

- i. The Respondent registered the Domain Name on August 7, 2007 without having any knowledge of the Complainant's business or its trademark. This means that the Respondent could not have possibly targeted the Complainant or its trademark at the time of registering the Domain Name.
- ii. The Respondent legitimately registered the Domain Name and hires a third party broker when selling its domain names. Mr. Robert Hoddenbagh who negotiated the transfer of the Domain Name with the Complainant is such third party broker.

5. Findings

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of 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 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 distinctive main part of the Respondent's domain name, i.e, 'wapop,' and the Complainant's registered mark 'wapop' are identical.

B) Rights and Legitimate Interests

At the time of registering the Domain Name, the Respondent did not have rights or legitimate interests in the Domain Name. The Respondent registered the Domain Name, believing that it was available for registration by anyone.

C) Bad faith

- i. Based on the information in Factual Background above, the Panel recognizes that the Complainant decided to use ‘wapop’ as a trademark or for its business in June through July 2012; commenced to use it for its business on January 29, 2012 at the earliest; and acquired trademark registration for it on September 9, 2013. The Respondent registered the Domain Name on August 7, 2007 which is at least more than five years earlier than the above dates. That is, the Respondent cannot be regarded as having targeted the Complainant or its wapop business or trademark at the time of registering the Domain Name as more than five years were to pass before they came into being. Accordingly, the Domain Name cannot be regarded as having been filed and registered in bad faith.
- ii. According to the submissions of both parties, the Respondent is a wholesale domain name holder and had the Domain Name simply parked after registering it. Once the Complainant contacted the Respondent for possible transfer of the Domain Name to the Complainant, the Respondent used Mr. Robert Hoddenbagh to conduct negotiation on its behalf. Mr. Hoddenbagh asked for a “mid five figure price” in compensation. The Complainant responded that it wanted to cap the compensation at \$10,000; otherwise, it would proceed to use another domain name. The Complainant received no further response from the Respondent. It is difficult to assert that the Respondent registered the Domain Name in bad faith just because it has used the Domain Name in the aforesaid manner. Even should it be the case that Mr. Robert Hoddenbagh is indeed an agent of the Respondent, or should it seem unfair that the Respondent is demanding such a hefty sum as a ‘mid five figure price’ in compensation and dropped its correspondence with the Complainant, these cannot be the grounds for concluding that the Domain Name was registered and being used in bad faith. Furthermore, it is quite possible that once the Complainant replied that it was not able to pay a sum in excess of \$10,000, the Respondent lost its interest in further negotiation or strategically decided to wait and see whether the Complainant come forth a higher compensation. Under the circumstances, it is difficult to regard such non-response of the Complainant as being unfair.

6. Decision

For the foregoing reasons, the Complaint is denied.

Lee, Doug-Jay
Panelist

Dated: May 16 2014