



Asian Domain Name Dispute Resolution Centre

hongkong

**(Hong Kong Office)**

## **ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	<b>HK-18010158</b>
<b>Complainant:</b>	<b>Rextec International Ltd.</b>
<b>Respondent:</b>	<b>Jaben Pte. Ltd.</b>
<b>Disputed Domain Name(s):</b>	<b>&lt;www.spinfit-eartip.com&gt;</b>

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### **1. The Parties and Contested Domain Name**

The Complainant is Rextec International Ltd., of 4f., No. 101, Sec. 3, Nanjing E. Rd, Zhongshan Dist, Taipei City 104, Taiwan.

The Respondent is Jaben Pte. Ltd., of 1 Coleman Street, #01-09 The Adelphi, Singapore 179803.

The disputed domain name is <www.spinfit-eartip.com>, which was registered by Respondent with NameCheap Inc., of 4600 East Washington Street, Suite 305, Phoenix, AZ 85034, USA.

### **2. Procedural History**

The Complainant filed this complaint with the Asian Domain Name Dispute Resolution Centre (ADNDRC) (Hong Kong Office) on 23 July 2018. ADNDRC acknowledged receipt of the complaint on 26 July 2018.

ADNDRC wrote to the Registrar, NameCheap Inc., on 26 July 2018 requesting that the Registrar confirms the WHOIS records of the disputed domain name. The Registrar responded and provided the details on the same date.

On 30 July 2018, the Complainant wrote to ADNDRC confirming payment of the complaint fee. On 31 July 2018 and 7 August 2018, ADNDRC wrote to the Complainant requesting that it rectifies the deficiencies on the complaint. The Complainant responded on 3 August 2018 and 7 August 2018, and the proceedings of this complaint formally commenced on 7 August 2018, and a copy of the Complaint was forwarded to the Respondent on 7 August 2018. Concurrently, a copy was also sent to the Registrar of the disputed domain name. The Respondent has been requested to provide a response within 20 calendar days as required under paragraph 5 of the Rules for Domain Name Dispute Resolution Policy, that is, on or before 27 August 2018.

ADNDRC did not receive any response. Accordingly, the ADNDRC informed the parties that no response had been received and that it would shortly appoint a single panelist.

On 3 September 2018, ADNDRC appointed Ms. Karen Law as the sole Panelist in this matter. The Panelist accepted the appointment and has submitted a statement to the ADNDRC that he is able to act independently and impartially between the parties on 4 September 2018.

On 4 September 2018, ADNDRC informed the parties that the Panelist has been confirmed and a decision for the complaint shall be issued on or before 18 September 2018.

### 3. Factual background

The Complainant’s brand “spinit” has been registered and filed in class 9 with specific goods such as earphones, eartips etc., details as follows:

Country	Registration Status	Registration Number	Registration Date
USA – Design Mark	Registered	4822395	2015/9/29
USA – Word Mark	Registered	5426486	2018/3/20
Singapore	Registered	40201605721T	2016/3/31
Taiwan	Registered	01553673	2012/12/16
Japan	Registered	5561281	2012/5/16
Korea	Registered	40-1012882	2013/12/16
China	Registered	11121902	2014/2/28
Malaysia	Registered	2017054796	2017/3/22
India	Registered	3635527	2017/9/14
European Union	Registered	13528229	2014/12/4
Australia	Registered	1856231	2017/7/3
Philippines	Registered	4-2017-009839	
Vietnam	Approved, waiting for certification.	4-2016-15375	
Hong Kong	Filing lawsuit against Jaben’s subsidiary company	30351755	
Thailand	Registration Filed	160103178	
Indonesia	Registration Filed	D1D2017012129	
Canada	Registration Filed	01846457	
New Zealand	Registration Filed	1089416	
Russia, Ukraine, Norway, Cambodia, Laos	Registration Filed	11121902	
Saudi Arabia	Registration Filed	134145	
United Arab Emirates	Registration Filed	292368	

The Complainant recently discovered the disputed domain name was registered with identical element to its brand “spinit”, and the website thereof has been using unauthorized

goods information and photographs originated from the Complainant that has led to confusion to the Complainant's clients and partners. The disputed domain name was registered through namecheap.com, and the registrant's identity has been anonymously masked over the WHOIS public records. Upon further investigations, the Complainant was able to associate the dispute domain name with the Respondent.

The Complainant claimed to have previous business relationship with the Respondent.

The Respondent has not filed a response nor provided any information to this complaint.

#### **4. Parties' Contentions**

##### **A. Complainant**

The Complainant's contentions may be summarized as follows:

- i. The disputed domain name is identical or confusingly similar to the trade name and trademark of the Complainant.
- ii. The Respondent has no rights to the brand "spinit".
- iii. Given the fact that the brand "spinit" has been used or held by the Complainant for a number of years and has acquired certain degree of goodwill and reputation in the industry, as well as the previous business relationship claimed by the Complainant with the Respondent, it is unlikely that the Respondent was not aware of the Complainant's rights.

##### **B. Respondent**

The Respondent has not filed a response to this complaint.

#### **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 is 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.

Whilst the Respondent has not filed a response to this complaint, this fact has not resulted in an automatic finding against the Respondent. Despite the Respondent's default, the Panel must still satisfy itself that the Complainant has established each of the three elements required by paragraph 4(a) of the UDRP. Accordingly, the Panel has considered whether each of the three requirements under paragraph 4(a) of the UDRP has been met.

The Panel's findings are as follows:

## **A) Identical / Confusingly Similar**

The disputed domain name consists of the elements “spinfiteartip”, “eartip” and “.com”. It is a well-accepted principle that TLD suffixes such as “.com”, “.net”, etc are ignored for the purposes of comparison and thus the Panel has not considered this suffix when comparing the disputed domain name to the Complainant’s prior and legitimate rights.

The Complainant has adduced sufficient evidence to demonstrate that it has a collection of trademark “spinfiteartip” across the globe. The earliest of these registrations and applications have a registration date back to 2012 and also claiming first use in 2011. Each of the registrations claimed goods relating to earphones, eartips, headphones, ear pieces, and related products in class 09.

The Complainant has also adduced evidence showing its previous business relationship with the Respondent. Based on the agreement provided by the Complainant, the Complainant previously appointed the Respondent as a licensee and distributor of its products from 2015 to 2017. It is unclear whether the license and distribution was related to the “spinfiteartip” branded products, and the Complainant adduced very limited evidence showing its use of the “spinfiteartip” trademark. Upon a cursory search over the Internet, it was found that the Complainant should have hosted a website located at: <https://www.spinfiteartip.com> claiming first use and launch of its “spinfiteartip” branded products in 2010.

On the basis of the evidence adduced, the Panel finds that the Complainant has rights over the trademark “spinfiteartip”, at least in relation to earphones, eartips, headphones, ear pieces.

In comparing the disputed domain name with the Complainant’s prior rights over the “spinfiteartip” brand, whilst they are not exactly identical, the Panel holds that the disputed domain name is confusingly or substantially similar to the Complainant’s prior trademark rights.

In making such an assessment, the Panel considered the visual, aural and conceptual similarities between the Complainant’s prior trademark rights and the disputed domain name. The Panel also evaluated these criteria from the perspective of an average consumer.

In the Panel’s view, the “spinfiteartip” element of the disputed domain name is likely to be regarded by consumers as the distinctive and dominant element. It is identical to the prior trademark registered by the Complainant and it is placed at the beginning of the disputed domain name - where it is most prominent.

The Panel also finds that the “eartip” element of the disputed domain name is highly relevant since the Complainant has a reputation in relation to products such as earphones, eartips, headphones and ear pieces. Accordingly, it is the Panel’s view that the combination of the “spinfiteartip” and “eartip” elements taken together in the disputed domain name increase the likelihood of consumer confusion and deception.

For the reasons noted above, the Panel finds that the disputed domain name is confusingly and substantially similar to the Complainant’s prior trademark and therefore,

the first element under paragraph 4(a) under UDRP has been satisfied.

### **B) Rights and Legitimate Interests**

Based on the evidence placed before the Panel, the Panel has found that the Respondent has no rights or legitimate interests in the disputed domain name.

This finding is based on the following:

- (a) There has been no evidence submitted by the Respondent to show the reasons or justification for the choice of a domain name in which the element “spinit” constitutes the distinctive and dominant part of the disputed domain name.
- (b) The website linked to the disputed domain name contained contents referring to the Complainant’s “spinit” branded products. There is no *prima facie* evidence showing that the use made by the Respondent is legitimate and distinctive of its own products or services, nor any evidence whatsoever to show what legitimate interest the Respondent may have in the disputed domain name.
- (c) In contrast, the Complainant has adduced sufficient credible evidence to substantiate its claim that it has a reputation across the globe and has built up sufficient rights and interest in the trademark “spinit”.

While the Panel notes that the overall burden of proving this element rests with the Complainant, it also recognizes the well-established principle that once the Complainant has established a *prima facie* case that the Respondent lacks sufficient legitimate rights and interests, the burden then shifts to the Respondent.

In this case, the Panel finds that the Complainant has adduced a sufficient *prima facie* case whereas the Respondent has failed to adduce any evidence whatsoever.

Accordingly, the Panel finds that the Complainant has established the second element of paragraph 4(a) under UDRP.

### **C) Bad Faith**

To establish bad faith, the Complainant may refer to the circumstances outlined in paragraph 4(b) of UDRP. Nonetheless, the circumstances outlined in paragraph 4(b) are not exhaustive and the Panel may take into account other circumstances which demonstrate bad faith.

In this case, the disputed domain name was registered on 21 October 2014, and the copyright notice on the website hosted under the disputed domain name was dated 2015. The website has been highly associated or affiliated with the Respondent although the WHOIS records have been anonymously masked. The Complainant claimed that the website under the disputed domain name has maliciously directed potential customers to the Respondent’s businesses all over the world in an attempt to confuse or deceive consumers.

Further, the Complainant has adduced a copy of the agreement showing the previous

business relationship between the Complainant and the Respondent, in which the Respondent was appointed as a licensee and distributor. The Complainant claimed that the Respondent previously had a distribution relationship with the Complainant which was terminated in 2015. Since then, the Respondent is no longer an authorized distributor of the “spinfitt” branded products. Despite the termination of the relationship, the Complainant claimed that the Respondent has continued to sell illegitimate products under the brand “spinfitt” without the Complainant’s consent nor authorization.

In some circumstances, knowledge on the part of the Respondent of the Complainant’s prior rights may be an indicator of bad faith. In this case, the Complainant purported to notify the Respondent of its prior rights during the previous business relationship, and upon termination of the relationship, the Respondent should be well aware that it should cease any use nor distribution of the “spinfitt” branded products.

The concept of knowledge or constructive knowledge will generally only apply where the Complainant’s prior rights or trademark is “well-known”. In this case, the Complainant has established that its “spinfitt” mark has acquired certain reputation in relation to earphones, eartips, headphones and ear pieces. The Panel doubts however, based on the evidence before it, whether the reputation of the mark has risen to the level of “well-known status”. The evidence submitted does not support such a finding. Indeed, a review of the USPTO trademark records shows that the Complainant claimed its first use of the “spinfitt” in 2011, and such a finding goes against a conclusion that the Complainant’s trademark should have acquired certain legitimate use or reputation, and that the Respondent must have had knowledge of the Complainant’s trademark and therefore the registration of the disputed domain name must have been made in bad faith.

As noted above, establishment of this element under UDRP has been a finely balanced matter. Nevertheless, considering all of the matters raised above, the evidence and arguments submitted by the Complainant, and the complete failure of the Respondent to make any submissions whatsoever, the Panel finds that the third element of UDRP paragraph 4(a) has been made out and that the Respondent has registered the disputed domain name in bad faith.

## **6. Decision**

For the reasons outlined above, the Panel finds that the Complainant has satisfied all three elements of paragraph 4(a) under UDRP. Accordingly, the Panel orders that the disputed domain name be transferred to the Complainant.

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Karen Law  
Sole Panelist

Dated: 18 September 2018