



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1500772
Complainants:	1. State Leader Co., Ltd (邦領有限公司) 2. YANG, JEN-CHIEH (楊仁傑)
Respondent:	xinqian Tyndall
Disputed Domain Names:	<bbin-asia.com> and <bbin-asia.net>

1. The Parties and Contested Domain Names

The Complainant are 1. State Leader Co., Ltd (邦領有限公司) of 60 Market Square, P.O. Box 364, Belize City, Belize and 2. YANG, JEN-CHIEH (楊仁傑) of 193 Shangshan Road, Xiushan, Daya District, Taichung City, Taiwan.

The authorized representative of the Complainant is Eugene Low, Hogan Lovell, 11/F. One Pacific Place, 88 Queensway, Hong Kong.

The Respondent is xinqian Tyndall of 3796 N Yosemite St, Parkville, Fujian, 212678, China.

The domain names at issue are <bbin-asia.com> and <bbin-asia.net>. The domain names are registered with GoDaddy.com, LLC, 14455 N Hayden Road Suite 219, Scottsdale, Arizona 85260, United States of America.

2. Procedural History

On 17 July, 2015 a Complaint relating to the domain name <bbin-asia.com> and its Annexures was filed with the Asian Domain Name Dispute Resolution Centre ("the Centre"). Also on July 17, 2015, the Centre acknowledged receipt of the Complaint. The Centre received the appropriate case filing fee by bank draft on July 20, 2015.

On July 17, 2015, the Centre transmitted by email to GoDaddy.com, LLC a request for registrar verification in connection with the registrant of the disputed domain name <bbin-asia.com>. On July 18, 2015, GoDaddy.com, LLC advised the Complainant by email that the <bbin-asia.com> domain name had been placed on Registrar-Lock and on the same day by email it sent to the Centre its verification response that the registrant of the disputed domain name was the Respondent xinqian Tyndall of 3796 N Yosemite St, Parkville, Fujian, 212678, China and that its email address was dt2688801@126.com.

On July 20, 2015, the Complainant enquired of the Centre whether it was possible to add another disputed domain name registered by the Respondent. Following advice from the Centre, the Complainant filed an amended Complaint relating to the domain names <**bbin-asia.com**> and <**bbin-asia.net**> and its Annexures on July 21, 2015. On that date the Centre acknowledged receipt of the Amended Complaint and the case filing fee.

On July 21, 2015, the Centre transmitted by email to GoDaddy.com, LLC a request for registrar verification in connection with the registrant of the disputed domain name <**bbin-asia.net**>. On July 22, 2015, GoDaddy.com, LLC advised the Complainant by email that the lock on the <**bbin-asia.net**> domain name would remain pending the administrative proceeding and on the same date it sent by email to the Centre, its verification response that the registrant of the disputed domain name was the Respondent xinqian Tyndall of 3796 N Yosemite St, Parkville, Fujian, 212678, China and that its email address dt2688801@126.com.

The Centre verified that the Amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

On July 22, 2015, the Centre served the Complaint on the Respondent by forwarding to it, by email addressed to dt2688801@126.com, postmaster@bbin-asia.com and postmaster@bbin-asia.net, the Written Notice of Complaint herein together with the Complaint and the Annexures thereto. The Written Notice stated that the date of commencement of the proceedings was July 22, 2015 and that the due date by which the Respondent was required to file its Response was August 11, 2015.

No Response was filed by the due date or at all and on August 12, 2015 the Centre notified the parties of that fact.

On August 19, 2015, the Centre appointed The Honourable Neil Anthony Brown QC as Panelist in the administrative proceeding. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Centre to ensure compliance with Rule 7.

The Panel finds that the Asian Domain Name Dispute Resolution Centre has performed its obligations under Rule 2(a) of the Rules "to employ reasonably available means calculated to achieve actual notice to Respondent". Accordingly, the Panel is able to issue its decision based on the documents submitted and in accordance with the ICANN Policy, ICANN Rules, the Asian Domain Name Dispute Resolution Centre Supplemental Rules and any rules and principles of law that the Panel deems applicable, without the benefit of any Response from the Respondent.

A decision in the administrative proceeding is due to be rendered by the Panel on or before 2 September 2015.

3. Factual background

The First Complainant is a company engaged in the development and supply of gaming software in Asia. The second Complainant is its Chief Executive Officer who has been authorized by the First Complainant to hold a series of trademark registrations on its behalf including the BBIN trademark. For ease of reference, the First and Second Complainants are hereafter referred to as “the Complainant.”

The Complainant is an active participant in gaming events and exhibitions in Asia and has participated in the Global Gaming Expo Asia. As well as its trademarks, the Complainant has a website at www.bb-in.com where it promotes its online gaming products.

The Respondent registered the disputed domain names on May 24, 2015. They now resolve to two websites that appear to be similar to each other, each of which also appears to have copied the contents of the Complainant’s website.

4. Parties’ Contentions

A. Complainant

The Complainant’s contentions are as follows:

1. The Complainant claims rights in its registered BBIN trademark.
2. The disputed domain names are confusingly similar to the BBIN trademark.
3. That is so because the domain names incorporate the BBIN trademark and the word “asia” which is a generic word describing one of the principal regions in which the Complainant conducts its business. Accordingly, internet users would assume that the domain name was a domain name of the Complainant related to the Complainant and its business in Asia and used for the sale of its goods and services. That submission is supported by the fact that the websites to which the domain names resolve are almost an entire reproduction of the Complainant’s official website.
4. The disputed domain names were registered by the Respondent on May 24, 2015.
5. The Respondent has no rights or legitimate interests in the disputed domain names.
6. The disputed domain names were registered and are being used in bad faith.

B. Respondent

The Respondent failed to file a Response in this proceeding.

5. Findings and Discussion of the Issues

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 names 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 names; and

- iii. Respondent's domain names have been registered and are being used in bad faith.

A) Identical / Confusingly Similar

The first question that arises is whether the Complainant has a trademark on which it can rely. The Complainant has adduced evidence that the Panel accepts to the effect that the Complainant has trademark rights on which it can rely with respect to the disputed domain names.

The Complainant claims registered trademark rights in a series of registered trademarks for BBIN including: Trademark registered No. 302035890 for BBIN registered with the Hong Kong trademark authority on September 20, 2011 and several other registered trademarks for BBIN registered with the trademark authorities in China, Taiwan, Japan and Singapore, collectively referred to hereafter as "the BBIN trademark."

Accordingly, the Complainant has proved that it has a trademark on which it may rely, namely the BBIN trademark.

The second question that arises is whether the disputed domain names may be said to be identical or confusingly similar to the BBIN trademark. The Panel finds that the disputed domain names are confusingly similar to the BBIN trademark as, in making this comparison, the gTLD suffixes ".com" and ".net" are to be ignored and as the objective internet user would naturally assume that domain names incorporating a trademark and adding only the word "asia", one of the principal regions in which the Complainant conducts its business under the name BBIN, are confusingly similar so to the BBIN trademark.

The Complainant has therefore established the first of the three elements that it must establish.

B) Rights and Legitimate Interests

It is now well established that the Complainant must first make a *prima facie* case that Respondent lacks rights and legitimate interests in the disputed domain names under paragraph 4(a) (ii) of the Policy and then the onus of proof shifts to the Respondent to show it does have such rights or legitimate interests. There are many decisions to that effect, one of the most notable of which is *Hanna-Barbera Prods., Inc. v. Entm't Commentaries*, FA 741828 (Nat. Arb. Forum Aug. 18, 2006) where it was held that a complainant must first make a *prima facie* case that the respondent lacks rights and legitimate interests in the disputed domain name under paragraph 4(a)(ii) of the UDRP before the onus of proof shifts to the respondent to show that it does have rights or legitimate interests in the domain name).

Having regard to the evidentiary case presented on behalf of the Complainant, the Panel finds that the Complainant has made out a *prima facie* case that arises from the following considerations:

- (a) The Respondent has chosen to take the Complainant's BBIN trademark and to use it in its domain names making only the addition of the word "asia" to the trademark;
- (b) The unchallenged evidence is that the Respondent had no authority to register the domain names and to use them as it has done, namely to cause them to resolve to websites that are almost

an entire reproduction of the Complainant's official website in circumstances where it must be assumed that this was being done for financial gain;

(c) The Respondent has engaged in these activities without the consent or approval of the Complainant;

(d) The Complainant owns legitimate rights to the BBIN trademark;

(e) There is no relationship between the Complainant and the Respondent whatsoever. The Respondent is neither affiliated with nor licensed by the Complainant to register the disputed domain names;

(f) The Respondent's name "xinqian Tyndall" has no correlation with the disputed domain names whatsoever;

(g) A search at the China Trade Marks Office's online database , evidence of which is provided by the Complainant at Annex 1 to the Complaint, did not reveal any trade mark applications or registrations for the BBIN trademark by the Respondent.

All of these matters go to make out the *prima facie* case against the Respondent and, the onus of proof having been reversed, it is then up to the Respondent to rebut that case. As the Respondent has not filed a Response or attempted by any other means to rebut the *prima facie* case against it, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names.

Complainant has thus made out the second of the three elements that it must establish.

C) Bad Faith

It is clear that to establish bad faith for the purposes of the Policy, the Complainant must show that the disputed domain names were registered in bad faith and have been used in bad faith.

That case may be made out if there are facts coming within the provisions of paragraph 4(b) of the Policy. That paragraph sets out a series of circumstances that are to be taken as evidence of the registration and use of a domain name in bad faith, namely:

“... (i) circumstances indicating that Respondent has registered or has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to Complainant who is the owner of the trademark or service mark or to a competitor of Complainant, for valuable consideration in excess of Respondent's documented out-of-pocket costs directly related to the disputed domain name; or

(ii) Respondent has registered the disputed domain name in order to prevent Complainant from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or

(iii) Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location."

However, those criteria are not exclusive and Complainants in UDRP proceedings may also rely on conduct that is bad faith within the generally accepted meaning of that expression and frequently do so.

Having regard to those principles, the Panel finds that the disputed domain names were registered and used in bad faith. That is so for the following reasons.

First, the Complainant submits that the disputed domain names were registered on 24 May 2015 which was shortly after the Global Gaming Expo Asia 2015 which took place during 19 to 21 May 2015 and in which the Complainant took an active part. By that time the Complainant had acquired rights and a substantial goodwill in the BBIN trademark. The Panel agrees with the submission that this shows bad faith registration, as the contemporaneous nature of the dates immediately raises the inference that the Respondent saw the presence of the Complainant at the Expo and decided to register the domain names and to use them to the Complainant's disadvantage and the Respondent's advantage. If the Respondent maintains that such an inference cannot be drawn, it was always open to it to file a Response and present its evidence and arguments to that effect, but it has failed to do so. The Panel is therefore entitled to draw the inference just expressed.

Secondly, the Complainant submits that the Respondent's websites are blatant copies of the Complainant's official website and that this is strong evidence that:

- (i) The Respondent was clearly aware of the Complainant, its website and the BBIN mark, and the associated goodwill, but then set out blatantly to misappropriate the Complainants' intellectual property; and that
- (ii) The disputed domain names have been registered primarily for the purpose of disrupting the business of a competitor; and by using the disputed domain names, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's Website, by creating a likelihood of confusion with the Complainants' mark. This is evidence of "bad faith" under Paragraph 4(b)(iii) and (iv) of the Uniform Domain Name Dispute Resolution Policy.

The Panel has examined the websites and compared them and finds that the Complainant's submission is correct. Comparing the Complainant's official website and the two websites to which the disputed domain names resolve, it is apparent that the Respondent has copied the Complainant, pretended that it is the Complainant, sought to create confusion and by that means disrupt the Complainant's business and sought to create a situation by this subterfuge by which it can make financial gain. These facts bring the case squarely within the provisions of paragraphs 4(b) (iii) and 4(b) (iv) of the Policy.

Thirdly, the Complainant also submits that through its legal representatives, it sent a cease and desist letter to the Respondent on July 8, 2015 in respect of one of the Disputed Domain Names (**bbin-asia.com**). A copy of the letter and delivery confirmation is provided as Annex J to the Complaint. To date, neither the Complainants nor their legal representatives have received any response from the Respondent. The Respondent's websites remain active to date and continue to

be used in bad faith by blatantly copying the Complainants' official website. The Panel agrees with that submission and finds that it is supported by the evidence adduced.

Fourthly, the Complainant submits that according to the WHOIS, the Respondent's address is "3796 N Yosemite St, Parkview, Fujian, 212678, China", that this is highly likely to be a fake address as there is not known to be a "N Yosemite St" in the Fujian province or anywhere in Mainland China and that it shows the Respondent's bad faith in registering and using the disputed domain names under a fake address in order to evade service of legal proceedings. The Panel agrees with this submission and finds that it is supported by the evidence adduced.

In summary, the Panel finds that Respondent registered the disputed domain names in bad faith because it must have known at all times that it had no right to register them because of the existence of the prominent BBIN trademark and the Complainant's prominent business conducted under that name. It is no exaggeration to say that the Respondent has acted dishonestly and had no right to obtain and use the domain names in the way it has done or in any other way and has not attempted in a Response to explain its actions.

Moreover, apart from the specific provisions of the Policy, the Panel finds that having regard to the totality of the evidence, in view of Respondent's acquisition of the disputed domain names and using them in the manner described, the Respondent registered and used the disputed domain names in bad faith within the generally accepted meaning of that expression.

Complainant has thus made out the third of the three elements that it must establish.

6. Decision

Having established all three elements required under the Policy, the Panel concludes that relief should be granted. Accordingly, it is ordered that the disputed domain names, <**bbin-asia.com**> and <**bbin-asia.net**> be TRANSFERRED from the Respondent to the Complainant.

The Honourable Neil Anthony Brown QC

Dated: August 20, 2015