



Asian Domain Name Dispute Resolution Centre

hong kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1901294
Complainant:	PCCW-HKT DataCom Services Limited
Respondent:	Joshua Brown
Disputed Domain Name:	<pccvglobal.com>

1. The Parties and Contested Domain Name

The Complainant is **PCCW-HKT DataCom Services Limited** whose address is situate at 39/F, PCCW Tower, Taikoo Place, 979 King's Road, Quarry Bay, Hong Kong.

The Respondent is **Joshua Brown** whose address is situate at 142 Brooklyn Rd., New York, New York, NY 10001 US.

The domain name at issue is <pccvglobal.com> (“the Disputed Domain Name”), registered by the Respondent with **PDR Ltd. d/b/a PublicDomainRegistry.com** (“the Registrar”) whose address is situate at Unit No 501, 5th floor and Unit IT Building No. 3, NESCO IT Park, Western Express Highway, Goregaon (East), Mumbai Maharashtra 400063, India.

2. Procedural History

On 3 October 2019, the Complainant filed a Complaint with Hong Kong International Arbitration Centre (“**HKIAC**”), the Hong Kong Office of Asian Domain Name Dispute Resolution Centre (“**ADNDRC**”), pursuant to the Uniform Domain Name Dispute Resolution Policy (“**Policy**”) approved by the Internet Corporation for Assigned Names and Numbers (“**ICANN**”) on 24 October 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (“**Rules**”), approved by ICANN Board of Directors on 28 September 2013 and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy effective from 31 July 2015 (“**Supplemental Rules**”).

On 4 October 2019, HKIAC transmitted by email to the Registrar a request for confirmation of the WHOIS records of the Disputed Domain Name and other related information.

On 5 October 2019, the Registrar confirmed by email that it is the registrar of the Disputed Domain Name that was registered by the Respondent for the period from 17 September 2019 to 17 September 2020; and that the Policy is applicable to the dispute relating to this domain name and the language of the Registration Agreement of the Disputed Domain Name is English and provided to HKIAC the Respondent's email address and other WHOIS information of the Disputed Domain Name.

On 23 October 2019, in accordance with Articles 2(a) and 4(a) of the Rules, HKIAC issued a Written Notice of the Complaint and formally notified the Respondent of the commencement of the proceedings in this dispute. In accordance with Article 5(a) of the Rules, the due date for the Respondent to submit a Response to the Complaint was 12 November 2019. But no Response was submitted by the Respondent. On 15 November 2019, HKIAC issued a notification of the Respondent in Default.

On 19 November 2019, HKIAC appointed Mr. Raymond HO as the sole panelist of the Panel in this matter; and transmitted the case file to the Panel on the same date. Prior to the appointment, the said sole panelist had submitted to HKIAC his Statement of Acceptance and Declaration of Impartiality and Independence in compliance with Article 7 of the Rules.

3. Factual background

The Complainant, PCCW-HKT DataCom Services Limited, headquartered in Hong Kong, is part of the PCCW-HKT group of companies ("**PCCW Group**"), which holds interests in telecommunications, media, IT solutions and other businesses in Hong Kong. The Complainant is the registered proprietor of the trademark "PCCW GLOBAL", which is registered for (inter alia) telecommunication services, provision of telecommunication access to the internet, communication by fiber optic networks, data communications services by electronic means, and telephone services. "PCCW" is the acronym of "Pacific Century Cyber Works" which is a distinctive and well-known mark used by the PCCW Group in connection with its telecommunications and other related services. The PCCW Group has a strong Internet presence through the Complainant's registered website <pccwglobal.com> and other registered websites such as <pccw.com> of the PCCW Group.

The Respondent, Joshua Brown, registered the Disputed Domain Name <pccvglobal.com> on 17 September 2019 for a duration of one year.

4. Parties' Contentions

A. Complainant's Contentions

It is the Complainant's contention that each of the conditions in Paragraph 4(a) of the Policy is present in the Complaint, namely:

- (i) The Disputed Domain Name is confusingly similar to Complainant's trademark "TVB";

- (ii) The Respondent has no rights or legitimate interests in the registration of the Disputed Domain name; and
- (iii) The Respondent has registered and used the Disputed Domain Name in bad faith.

Summarised below are the Complainant's contentions:

- (i) The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights:

As shown in Annex 2 of the Complaint, the Complainant is the owner of "PCCW GLOBAL" trademarks. The Complainant submits that when comparing the Disputed Domain Name to Complainant's trademarks, the relevant comparison should be made as between the second-level portion of the Disputed Domain Name, i.e. "pccvglobal" and the Complainant's trademarks "PCCW GLOBAL": Gardline Surveys Ltd. v. Domain Fin. Ltd., FA 0153545

It is the Complainant's case that the Disputed Domain Name is a purposeful misspelling of Complainant's trademark "PCCW GLOBAL" and its domain name <pccwglobal.com>; and as such it must be considered as confusingly similar to the Complainant's trademark. The Disputed Domain Name differs from Complainant's trademark by two letters. It is clear that the letter "w" from PCCW was replaced by two letters "vv", thereby making the Disputed Domain Name confusingly similar to Complainant's trademark "PCCW GLOBAL" in sight. In other words, the Complainant contends, the two successive letters "vv" are visually similar to the letter "w", thus making the Disputed Domain Name <pccvglobal.com> visually similar to Complainant's "PCCW GLOBAL" trademark and the Complainant's primary domain name <pccwglobal.com>.

It is also the Complainant's contention that as the Disputed Domain Name differs from Complainant's trademark by two letters, Respondent's domain must be considered a prototypical example of typo-squatting – which intentionally takes advantage of internet users that inadvertently type an incorrect address – often a misspelling of the Complainant's trademark – when seeking to access the trademark owner's website. In other words, it is a case of confusing similarity by design by a deliberate misspelling a trademark and registered it as a domain name to confuse internet users: WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0") at paragraph 1.9.

Based on the foregoing submissions, it is the Complainant's case that the Disputed Domain Name is clearly confusingly similar to Complainant's trademark "PCCW GLOBAL".

- (ii) The Respondent has no rights or legitimate interests in respect of the domain name:

Based upon the WHOIS data provided by the Registrar, it is clear that the Respondent is not commonly known by the Disputed Domain Name, which evinces a lack of rights or legitimate interests. Furthermore, the Complainant avers that the Complainant has not licensed, authorized, or permitted Respondent to register domain names incorporating Complainant's "PCCW GLOBAL" trademark: Sportswear Company S.P.A. v. Tang Hong, D2014-1875.

The Complainant refers to Annex 9 “Fraudulent Domain Name used in Phishing Scheme” attached to the Complaint. This shows a record of emails exchanged in September 2019 connecting the Disputed Domain Name to a phishing scheme used to obtain personal account information from customers or business partners of the Complainant. The Complainant submits that such a use of the Disputed Domain Name, presumably for commercial gain, and with devious, nefarious motives, cannot be regarded as a bona fide offering of goods or services; or a legitimate noncommercial or fair use: WIPO Overview 3.0 at paragraph 2.13.1.

Furthermore, as part of Respondent's phishing scheme described above, the Complainant points out that the Respondent has sent emails from the Disputed Domain Name to Complainant's business partners, fraudulently attempting to create the impression that such emails originated from Complainant itself. In these emails, Respondent impersonated as Complainant's executive employee to attempt to solicit payment from Complainant's business partner. By sending emails from the Disputed Domain Name, the Respondent was attempting to pass itself off as the Complainant's employee as part of a spear phishing scheme, which provides additional evidence of Respondent's lack of legitimate interests or rights in the Disputed Domain Name: Syngenta Participations AG v. Guillaume Texier, Gobain Ltd., D2017-1147 and also Emerson Electric Co. v. golden humble / golden globals, FA 1787128.

As shown on Annex 4 to the Complaint, the Respondent is using the Disputed DomainName to redirect internet users to a website that resolves to a blank page with no content. The Complainant contends that Respondent has failed to make use of this Disputed Domain Name's website and has not demonstrated any attempt to make legitimate use of the domain name and website, which evinces a lack of rights or legitimate interests in the Disputed Domain Name: Nenê f/k/a Maybyner Rodney Hilario v. Master, Host, FA 0924563

It was pointed out that the Respondent only registered the Disputed Domain Name on September 17, 2019, which was significantly after Complainant registered its trademark “PCCW GLOBAL”; and after the Complainant registered its <pccwglobal.com> domain name on September 16, 2005.

(iii) The disputed domain name has been registered and is being used in bad faith:

The Complainant contends that by registering a domain name with a two-letter typo of Complainant's PCCW GLOBAL trademark, the Respondent has created a domain name that is confusingly similar to Complainant's trademark, as well as its <pccwglobal.com> domain. Here, the Respondent has used the Disputed Domain as part of a phishing scheme to solicit sensitive financial information from Complainant's business partners. Specifically, the Respondent has used the Disputed Domain Name to send emails to Complainant's business partners seeking payment on fraudulent invoices as shown in Annex 9 to the Complaint. The emails in question were specifically designed to appear as though they were coming from one of Complainant's executive level employees. This fraud is only enhanced by the composition of the domain name. The Complainant uses the

domain "@pccwglobal.com" for email as shown in Annex 7 to the Complaint. By registering a domain that is visually similar to Complainant's PCCW GLOBAL trademark and <pccwglobal.com> domain, and then using that domain as part of an email phishing scheme, the Complainant submits that the Respondent clearly had knowledge of the Complainant's brand and business. It is therefore "not possible to conceive of a plausible situation in which the Respondent would have been unaware of" the Complainant's brands at the time the Disputed Domain Name was registered.

The Complainant submits that typo-squatting itself has been taken as evidence of bad faith registration and use. The Disputed Domain Name is a purposeful misspelling of Complainant's PCCW GLOBAL trademark as well as its <pccwglobal.com> domain name. The composition of Respondent's domain name is such that anyone encountering the domain name, or in this case receiving emails sent from the domain name, would not notice that the "w" was replaced by "vv". In other words, the Disputed Domain Name is a typo-squatted version of Complainant's primary domain and has intentionally been designed to closely mimic Complainant's primary domain. The Complainant submits that by registering a domain name to take advantage of traffic generated by typing errors committed by users, as here, is evidence of bad faith registration and use: WIPO Overview 3.0 at paragraph 3.1.4.

As shown in Annex 4 to the Complaint, the Disputed Domain Name currently resolves to an inactive site and is not being used. The Complainant submits that passively holding a domain name can constitute a factor in finding bad faith registration and use: Alitalia-Linee Aeree Italiane S.p.A v. Colour Digital, D2000-1260 and also DCI S.A. v. Link Commercial Corp., D2000-1232.

The Disputed Domain Name can only be taken as intending to cause confusion among internet users as to the source of the Disputed Domain Name, and thus, the Disputed Domain Name must be considered as having been registered and used in bad faith: Jupiters Limited v. Aaron Hall, D2000-0574 and Telstra Corp. Ltd. v. Nuclear Marshmallows, D2000-0003.

The Complainant refers to Annex 11, and says that in addition to the Disputed Domain Name, the Respondent currently holds registrations for several other domain names that misappropriate the trademarks of well-known brands and businesses. The Complainant submits that this fact demonstrates that the Respondent is engaging in a pattern of cybersquatting/typo-squatting, which is evidence of bad faith registration and use of the Disputed Domain Name: Yale University v. Domain Holding Corp. AS and Eric Keller, D2013-1404.

Finally, the Complainant submits that on balance of the facts set forth above, it is more likely than not that the Respondent knew of and targeted Complainant's trademark, and Respondent should be found to have registered and used the Disputed Domain Name in bad faith: Tudor Games, Inc. v. Domain Hostmaster, Customer ID No. 09382953107339 dba Whois Privacy Services Pty Ltd / Domain Administrator, Vertical Axis Inc., D2014-1754.

Based on these grounds, the Complainant requests that the Disputed Domain Name be ordered to be transferred to the Complainant.

B. Respondent's Contentions

The Respondent did not submit any Response to the Complaint.

5. Discussion and Findings of the Panel

Preliminary issues

Article 14 (a) of the Rules provides that “in the event that a Party, in the absence of exceptional circumstances, does not comply with any of the time periods established by these Rules ..., the Panel shall proceed to a decision on the complaint”. The Panel is satisfied on the record that the written notification of the Complaint was duly served on the Respondent by HKIAC.

Based on the confirmation given by the Registrar, the Panel accepts that the language of the proceedings is English pursuant to Article 11(a) of the Rules.

In accordance with Article 15(a) of the Rules, the Panel shall decide the case “on the basis of the statements and documents submitted and in accordance with the Policy, [the] Rules and any rules and principles of law that it deems applicable”.

Substantial issues

The 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.

A) Identical / Confusingly Similar

Evidence submitted in the Complaint shows that the Complainant is the proprietor of the trademarks “PCCW GLOBAL”, registered respectively in the US (Registration No. 3529691 since 2008-11-11), the EU (Registration No. 005570304 since 2008-09-10) and Hong Kong (Registration No. 00781236 since 2006-12-15).

By comparing the Disputed Domain Name <pccvvglobal.com> with Complainant's registered “PCCW GLOBAL” trademark, the Panel finds that the Disputed Domain Name is confusingly similar to the “PCCW GLOBAL” trademark in that it incorporates the Complainant's trademark in its entirety as a distinct component of the domain name but with the letter “w” substituted by the letters “vv”. The Panel agrees with the Complainant contention that the two successive letters “vv” are visually similar to the letter “w”, thus making the Disputed Domain Name <pccvvglobal.com> visually similar

to Complainant's PCCW GLOBAL trademark as well as the Complainant's domain name <pccwglobal.com>. It is well-established that top-level domain is a required element of every domain name and it does not form part of the comparison for the purposes of Paragraph 4(a)(i) of the Policy. The Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's registered trademark "PCCW GLOBAL" in which Complainant has rights

The Panel therefore concludes that Paragraph 4(a)(i) of the Policy has been satisfied by the Complainant.

B) Rights or Legitimate Interests

The Panel is of the view that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the Disputed Domain Name.

The Complainant has not authorized the Respondent to use its registered trademark "PCCW GLOBAL" nor to register the Disputed Domain Name; there is no evidence of the Respondent is commonly known by the Disputed Domain Name.

There is no evidence of a bona fide offering of goods or services under the Disputed Domain Name. Rather there is clear evidence that the Respondent has used the Disputed Domain Name <pccvglobal.com> as a phishing site to trick the users into thinking that it was the legitimate site of the Complainant <pccwglobal.com>. Upon a notification of the phishing activities involving the site of the Disputed Domain Name, the Registrar suspended the Disputed Domain Name on 20 September 2019, three days after its registration.

As stated in paragraph 2.1 of the WIPO Overview 3.0, once a complainant establishes a *prima facie* case in respect of the lack of rights or legitimate interests of a respondent, the respondent then carries the burden of demonstrating that it has rights or legitimate interests in the disputed domain name. Where the respondent fails to do so, a complainant is deemed to have satisfied Paragraph 4(a)(ii) of the Policy.

In the present case, the Respondent did not respond to the Complaint.

Paragraph 4(c) of the Policy provides that any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate the Respondent's rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii):

- (i) before any notice to the Respondent of the dispute, the Respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) the Respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the Respondent has acquired no trademark or service mark rights; or

(iii) the Respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Complainant's assertions and evidence in support of its case that the Respondent has no rights or legitimate interests in the Disputed Domain Name has not been rebutted by the Respondent. The Panel finds none of the circumstances as set out in Paragraph 4(c) is present.

The Panel therefore concludes that the Complainant has established Paragraph 4(a)(ii) of the Policy.

C) Registration and Use in Bad Faith

Paragraph 4(b) of the Policy provides that for the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that the Respondent has registered or the Respondent has 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 the Respondent's documented out-of-pocket costs directly related to the domain name; or

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

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

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

Based on the evidence tendered in the Complaint, the Panel finds that other than using the Disputed Domain Name as a phishing site, it resolved to an inactive website with the DNS error (the host name of the page ... does not exist) as shown on a screenshot of the Disputed Domain Name at Annex 4 to the Complaint.

The Panel finds evidence in support of the contention that the Complainant's trademark "PCCW GLOBAL" is well-known in the telecommunication businesses not just in Hong Kong but worldwide.

On the totality of all evidence in the present case, the Panel has no difficulty in concluding that:

- (a) The Respondent has intentionally chosen the Disputed Domain Name for typo-squatting with full knowledge of Complainant's businesses and its trademark "PCCW GLOBAL";
- (b) The Respondent has used the Disputed Domain Name as a phishing site to fraudulently obtained personal information by creating a likelihood of confusion with the Complainant's "PCCW GLOBAL" trademark as to the source of the site.
- (c) As shown in Annex 11 to the Complaint, the Respondent has also registered <hivestraeming.com>; <huawiei.com>; <singingrnachine.com>; and <sipi-rnmetals.com> that are respectively confusingly similar to the brands of Peerialism AB, re: "HIVE STREAMING"; Huawei Technologies Co. Ltd., re: "HUAWEI"; The Singing Machine Company, Inc., re: "SINGING MACHINE" and Sipi Metals Corp., re: "SIPi". This factual evidence clearly demonstrates a pattern of cybersquatting or typo-squatting by the Respondent.

Based on the above findings, the Panel concludes that circumstances (ii) and (iv) of Paragraph 4(b) of the Policy are present; and accordingly, evidence of bad faith registration and use of the Disputed Domain Name is established in this case.

The Panel therefore finds that the Complainant has established Paragraph 4(a)(iii) of the Policy.

6. Decision

For all the foregoing reasons, in accordance with Paragraph 4(a) of the Policy and Article 15 of the Rules, the Panel orders that the Disputed Domain Name <pccvvglobal.com> be transferred to the Complainant.



Raymond HO
Sole Panelist of the Panel
27 November 2019