



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1400577
Complainant:	DRACCO COMPANY LTD
Respondent:	NJ TECH SOLUTIONS Inc.
Disputed Domain Names:	<anipals.com>, <chiripa.com>, <cycris.com> <dinoz.com>, <dracco.com>, <draccos.com>, <filly.com>, <klixit.com> <minimodels.com>, <pearlies.com>, <totz.com>, <universalstrends.com> and <zibbs.com>.

1. The Parties and Contested Domain Names

The Complainant is **Dracco Company Ltd**, Unit 1201-05, 12/F Stelux House, No.698 Prince Edward Road East, Kowloon, Hong Kong.

The Respondent is **NJ Tech Solutions Inc.** of 1 Stafford Rd, Suite 277, Ottawa, Ontario, K2H 1B9, Canada.

The domain names at issue are <anipals.com>, <chiripa.com>, <cycris.com> <dinoz.com>, <dracco.com>, <draccos.com>, <filly.com>, <klixit.com> <minimodels.com>, <pearlies.com>, <totz.com>, <universalstrends.com> and <zibbs.com>. The domain names are registered with Enom, Inc.

2. Procedural History

The Complaint was filed with the Asian Domain Name Dispute Resolution Centre ("the Centre") on February 24, 2014. On February 25, 2014, the Centre received the appropriate case filing fee with respect to the disputed domain names that were then the subject of the Complaint and an additional domain name, <angelove.com>.

On February 24, 2014, the Centre transmitted by email to Enom, Inc a request for registrar verification in connection with the then disputed domain names, including <angelove.com>.

On February 25, 2014, 1014, Enom, Inc. transmitted by email to the Centre its response that the registrant of the <angelove.com> domain name was as follows:

Contact Type Registrant
Organization Name: WHOISGUARD
First Name: WHOISGUARD

Last Name: PROTECTED
Address 1: 11400 W. OLYMPIC BLVD. SUITE 200
Address 2:
City: LOS ANGELES
State Province: CA
Postal Code: 90064
Country: US
Phone: +1.4731901947
Fax:
Email Address: DOMAINPRIVACYREGISTER@HOTMAIL.COM

On February 25, 2014, 1014, Enom, Inc. transmitted by email to the Centre its response that the registrant of the other domain names, namely <anipals.com>, <chiripa.com>, <cycris.com> <dinoz.com>, <dracco.com>, <draccos.com>, <filly.com>, <klixit.com> <minimodels.com>, <pearlies.com>, <totz.com>, <universaltrends.com> and <zibbs.com> was as follows:

Contact Type Registrant
Organization Name: NJ TECH SOLUTIONS INC.
First Name: DOMAIN
Last Name: MANAGER
Address 1: 1 STAFFORD RD. SUITE 277
Address 2:
City: OTTAWA
State Province: ON
Postal Code: K2H 1B9
Country: CA
Phone: +1.8663974678
Fax: +1.6134824531
Email Address: WINDMUSIK@YAHOO.COM
Domain Name Expiration Date Status

Enom, Inc also advised by the same communication that the following applied with respect to locking the domain names:

Domain Name	Expiration	Date Status
angelove.com	8/27/2017	registrar-lock
anipals.com	10/12/2018	registrar-lock
chiripa.com	6/4/2015	registrar-lock
cycris.com	4/26/2017	registrar-lock
dinoz.com	7/30/2018	registrar-lock
dracco.com	5/29/2017	registrar-lock
draccos.com	10/6/2017	registrar-lock
filly.com	5/30/2022	registrar-lock
klixit.com	5/4/2018	registrar-lock
minimodels.com	3/16/2022	registrar-lock
pearlies.com	10/10/2018	registrar-lock
totz.com	9/8/2017	registrar-lock
universaltrends.com	5/13/2018	registrar-lock
zibbs.com	2/14/2019	registrar-lock

On February 26, 2014 the Complainant sent to Enom Inc. by email attachment the CTC Form and the Complaint filed with the Centre and its annexures and notified the Centre to that effect. On February 27, 2014 the Complainant sent to the Respondent by email to the email addresses set out above with respect to both <angelove.com> and the other aforesaid disputed domain names, the Complaint and its annexures and notified the Centre to that effect.

On February 27, 2014 the Centre transmitted by email to Enom, Inc. a request that, as it appeared to the Centre that the identity of the Registrant of the domain name <angelove.com> was hidden by a protective service called WHOISGUARD, Enom, INC would provide the Centre with the true identify and contact information of the Registrant of the <angelove.com> domain name.

On February 28, 2014, Enom, Inc. replied to the effect that the said domain name was not registered through Namecheap.com, was not using its WhoisGuard ID protection service and that it appeared that the WHOIS information for the said domain name had been manually entered by the registrant.

On February 28, 2014, the Centre advised the Complainant that as the disputed domain names were registered by two different registrants, one for <angelove.com> and the second for the other domain names, the Complainant was obliged to revise and resubmit the Complaint against one domain name holder, which the Complaint thereupon did on February 28, 2014 by filing a Revised Complaint omitting <angelove.com> from the proceeding and confining the Revised Complaint to the other disputed domain names.

On March 3, 2014 the Centre advised the Complainant that it had received the Revised Complaint.

The Centre verified that the Revised Complaint filed with it on February 28, 2014 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 March 6, 2014, the Complainant sent to the Respondent by email to the email address set out above with respect to the disputed domain names other than <angelove.com>, the Revised Complaint and its annexures and notified the Centre to that effect.

On March 7, 2014 the Centre forwarded to the Respondent and to Enom. Inc. the Revised Complaint and the annexures thereto, together with the required Written Notice of Complaint by which it gave notice that the formal date for the commencement of the administrative proceeding was March 7, 2014 and that the date by which the Respondent was required to file a Response was March 27, 2014.

A Response was not received by the Centre within the required period of time or at all.

On April 7, 2014, 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 the 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 Respondent.

3. Factual background

The Complainant is a company incorporated pursuant to the laws of Hong Kong and is engaged in the manufacture of a variety of goods for children and teenagers, licensing products to others and designing on-line games and apps. The Complainant alleges that it was for several years the registrant of the disputed domain names which it used in its business until, without its consent, the registration of the domain names was transferred into the name of the Respondent on or about February 7, 2014 although the Respondent appeared to have registered the disputed domain names in its own name on various dates between February 6-18, 2014. It also appears that little is known about the details of how the transfers were effected other than that it was the result of an illegal hacking activity on or about 6 February 2014.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

1. The Complainant was the registrant of the disputed domain names that had been registered with the registrar Go Daddy.com for several years until February 7, 2014, has never consented to their sale or transfer and has never had the intention to sell or transfer them.
2. The disputed domain names were hijacked by unknown hackers and have been illegally transferred into the name of the Respondent. It appears that the Respondent became the registrant of the disputed domain names between February 6 and February 18, 2014 as the result of an illegal hacking activity on or about 6 February 2014.
3. The Complainant immediately reported the hijacking and illegal transfer of the domain names into the name of the Respondent to the Hong Kong Police for investigation and the offences are now being investigated.
4. The illegally transferred domain names are various trademarks, trade names and/or product names of the Complainant and were clearly selected by the perpetrators from

a larger number of domain names. The Complainant submits that this indicates that the perpetrators knew the value of the domain names they were stealing.

5. The disputed domain names are identical to the Complainant's various trademarks, trade names and product names on which they are clearly based.

6. The Respondent has no rights or legitimate interests in any of the disputed domain names as they have been stolen and transferred with no right or entitlement to do so.

7. Whoever was responsible for the hijacking was able to effect a transfer of the domain names to the Respondent by some technical process, but the Complainant never consented to that transfer taking place.

8. The disputed domain names were registered and are being used in bad faith. The facts of the matter bring the case squarely within the terms of paragraphs 4(b) (iii) and (iv) of the Policy. The domain names are now parked without active use and some are purported to be for sale.

9. As a result of the transfer of the disputed domain names into the name of the Respondent, the Complainant has suffered loss of business and revenue that it would otherwise have earned from operating online games.

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 name 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 name; and
- iii. Respondent's domain name has been registered and is 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 each of the disputed domain names.

Some of the trademarks relied on are registered trademarks and some are unregistered trademarks that the Complainant uses in its business.

The Complainant is able to rely on the unregistered trademarks as it is now well established that if a Complainant has a common law or unregistered trademark, that is sufficient for the purposes of a UDRP proceeding as the Policy only requires a Complainant to have a trademark, irrespective of whether it is registered or unregistered.

Some of the registered trademarks are in the name of Home Focus Developments Limited and the Complainant has adduced evidence which the Panel accepts that this company is incorporated in the British Virgin Islands. The Panel accepts that the company has a relationship with the Complainant that confers trademark rights on the Complainant. Accordingly, in this decision the Complainant's trademark rights arise from the registration of the relevant trademark by the Complainant itself or by Home Focus Developments Limited.

With respect to the registered trademarks and their relationship to the disputed domain names, the Panel makes the following findings.

The Complainant has established that it has the following registered trademarks on which it can rely in so far as the proceeding relates to the corresponding domain name:

- (a) Trademark No 1527816, filed on November 26, 2012 with IP Australia for ANIPALS. The Complainant also has rights in the European Community Office for Harmonization in the Internal Market trademarks for ANIPALS, being registrations No. 010448471, dated March 23, 2012 and 010551885, dated July 24, 2012.
- (b) Trademarks No. 008856973 dated January 2, 2012 with the European Community Office for Harmonization in the Internal Market for CHIRIPA , 008856981 dated February 13, 2012 for CHIRIPA and 011437654 dated April 16, 2013 for CHIRIPA.
- (c) Trademarks No. 009917899 dated August 22, 2011 with the European Community Office for Harmonization in the Internal Market for CYRIS.
- (d) Numerous international trademarks registered with the relevant authorities for DRACCO.
- (e) Trademarks No. 003849346 dated September 18, 2008 with the European Community Office for Harmonization in the Internal Market for DRACCO.
- (f) Trademarks No. 004352209 dated May 17, 2006 with the European Community Office for Harmonization in the Internal Market for DRACCO.
- (g) Trademarks No. 004863999 dated January 17, 2007 with the European Community Office for Harmonization in the Internal Market for FILLY.
- (h) Numerous international trademarks registered with the relevant authorities for MINI MODELS.
- (i) Trademarks No. 009747536 dated December 22, 2011 with the European Community Office for Harmonization in the Internal Market for PEARLIES.
- (j) Chinese trademarks of various dates for TOTZ.
- (k) Trademarks No. 010376631 dated May 8, 2012 with the European Community Office for Harmonization in the Internal Market for ZIBBS.

The registered trademarks particularized above correspond to the following disputed domain names: <anipals.com>, <chiripa.com>, <cycris.com>, <dracco.com>, <draccos.com>, <filly.com>, <minimodels.com>, <pearlies.com>, <totz.com> and <zibbs.com>.The

Complainant thus has registered trademarks on which it can rely in the proceeding in so far as it concerns those domain names.

With respect to the domain names <**dinoz.com**>, <**klixit.com**> and <**universaltrends.com**> the Complainant does not have registered trademarks on which it can rely. However, further evidence has been adduced by the Complainant relating to the use in its business of its trade names and product names as unregistered or common law trademark that relate to the disputed domain names not matched by a registered trademark. The Panel accepts, on the submissions of the Complainant, verified in the Complaint by the authorized representative of the Complainant that those trade names and product names are used by the Complainant. As such, the Panel accepts that they are generally known as the source of goods and services of the Complaint and that they thus qualify as trademarks and are so used.

Accordingly, in the case of each of the disputed domain names, the Complainant has proved that it has a trademark on which it may rely.

The second question that arises is whether the respective disputed domain names may be said to be identical or confusingly similar to the corresponding mark. The Panel finds that each of those domain names is identical to the corresponding mark as, in making this comparison, the gTLD suffix “.com” is to be ignored.

In any case it is clear law that if, as in the present case, a trade mark is embedded as a whole in a domain name, the domain name is to be taken as identical or confusingly similar to the trademark that has been taken and used in that manner.

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 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 substantial 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 trademarks and to use them in its respective domain names which have been illegally transferred to the Respondent, clearly at the behest of the Respondent and without any alteration at all being made to the trademark;

(b) The domain names are now parked without active use and some are purported to be for sale;

(c) By that means the Respondent has continued to maintain that it is the owner of the domain names, which is patently false;

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

(e) It is alleged that the perpetrator of the illegal transfers is in breach of Section 17, obtaining property by deception and /or Section 24, handling stolen goods, of the Theft Ordinance (Cap 210) of the Laws of Hong Kong.

These matters go to make out the *prima facie* case against the Respondent and 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 name was registered in bad faith and has 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.

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 facts come squarely within paragraph 4(b)(iii) of the Policy, the first criterion relied on by the Complainant. It is clear from the evidence that the Respondent has acted dishonestly, had no right to acquire the domain names and has not attempted in a Response to explain its actions. It is a reasonable inference that the primary purpose of the whole exercise was to direct internet traffic to the Respondent itself which by definition is to disrupt the business of the Complainant. The case is therefore a clear application of paragraph 4(b) (iii).

In this regard as in others, the Panel agrees with the observations of the distinguished three member panel in *Titi Tudorancea v. Patrick Larouche* ADNDRC Case No. CN-1300669 on a very similar fact situation to that in the present case, also involving as it did the illegal transfer of a domain name followed by attempted blackmail:

“This situation constitutes exactly the type of bad faith use of the disputed domain name as identified in the Policy...”.

Indeed, that decision also provides a usefully analogous case in several respects, illustrating that the UDRP is an appropriate mechanism to use in cases of the illegal transfer of domain names and that panelists will act swiftly on returning them to the rightful registrants when a case is made out to that effect as in the present case.

Secondly, the facts also come within paragraph 4(b) (iv) of the Policy for it is clear from the evidence that the Respondent created the confusion contemplated by the paragraph and for commercial gain, being the benefit the Respondent hoped to derive from damaging the Complainant’s business, directing internet traffic to itself and probably forcing the Complainant to buy the domain names from the Respondent.

In addition, apart from applying the specific criteria in paragraph 4(b) and having regard to the totality of the evidence, the Panel finds that, in view of Respondent’s acquisition of the disputed domain names using the respective trademarks of the Complainant in the manner described above and in view of the Respondent’s subsequent dishonest conduct in parking the domain names and claiming to be entitled to offer some of them for sale, 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, <**anipals.com**>, <**chiripa.com**>, <**cycris.com**>, <**dinoz.com**>, <**dracco.com**>, <**draccos.com**>, <**filly.com**>, <**klixit.com**>, <**minimodels.com**>, <**pearlies.com**>, <**totz.com**>, <**universaltrends.com**> and <**zibbs.com**> be TRANSFERRED to the Complainant.

The Honourable Neil Anthony Brown QC

Dated: April 14, 2014