ADNDRC Asian Domain Name Dispute Resolution Centre hong kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	**HK-2001318**
Complainants:	**BB IN Technology Co., Ltd** **YANG, JEN-CHIEH (楊仁傑)**
Respondent:	**souer heish**
Disputed Domain Name:	**<dd-in.com>**

1. The Parties and Contested Domain Name

The Complainants is BB IN Technology Co., Ltd. and YANG, JEN-CHIEH (楊仁傑) of 60 Market Square, P.O. Box 364, Belize City, Belize. The Complainants are represented in these administrative proceedings by Mr. Eugene Low from Hogan Lovells, whose address is 11/F, One Pacific Place, 88 Queensway, Hong Kong.

The Respondent is souer heish, of Rm 3, 8F., No. 406, Sec. 2, Taiwan Blvd., West Dist., Taichu, NA O, Taiwan (Postal Code: 403).

The domain name at issue is <dd-in.com>, registered by Respondent with NameCheap, Inc., of abuse@namecheap.com.

2. Procedural History

On 7 February 2020, the Complainants submitted a complaint in English to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre ("the ADNDRC-HK") and elected this case to be dealt with by a one-person panel, in accordance with the Uniform Domain Name Dispute Resolution Policy ("the Policy") approved by the Internet Corporation for Assigned Names and Numbers ("ICANN"), the Rules for Uniform Domain Name Dispute Resolution Policy ("the Rules") and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy ("the ADNDRC Supplemental Rules").

Upon receipt of the complaint, the ADNDRC-HK sent to the Complainants by email an acknowledgement of the receipt of the complaint and reviewed the format of the complaint for compliance with the Policy, the Rules and the ADNDRC Supplemental Rules. On 7 February 2020, upon request by the ADNDRC-HK, the Registrar transmitted by email to the ADNDRC-HK its verification response, confirming that the Respondent is listed as the registrant and providing the contact details.

On 14 February 2020, the ADNDRC-HK notified the Respondent about the commencement of the proceedings. On the same day, the ADNDRC-HK notified the Complainants that the complaint had been confirmed and transmitted to the Respondent, and also notified the Registrar of the commencement of the proceedings.

On 14 February 2020, the ADNDRC-HK notified the Respondent that the language of the registration agreement was English and invited response from the Respondent on or before 5 March 2020.

The Respondent had not filed any response within the stipulated time. On 9 March 2020, the ADNDRC-HK sent out notice noting that no response had been received and the complaint was to be proceeded to a decision by the Panel to be appointed.

On 9 March 2020, the ADNDRC-HK sent to the Complainants and the Respondent notification for the selection of a one-person panel to proceed to render the decision. Having received a declaration of impartiality and independence and a statement of acceptance, the ADNDRC-HK notified the parties, on 11 March 2020, that the Panel in this case had been appointed, with Mr. Gary Soo acting as the sole panelist.

On 11 March 2020, the Panel received the file by email from the ADNDRC-HK and was requested to render the Decision on or before 25 March 2020.

Pursuant to Paragraph 11 (a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the registration agreement, the language of the administrative proceedings shall be the language of the registration agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceedings.

Language of Proceedings

The language of the current Disputed Domain Name registration agreement is English. The Complainants submit that the Panel has authority to determine the language of the proceedings having regard to the circumstances under Paragraph 11 (b) of the Rules and requests the language to be in English. The Complainants highlight, inter alia, that the domain name in dispute is in the English language. The Panel notices that the name of the Respondent is also in English. In the circumstances, given there is no response from the Respondent to the Complainants' request, the Panel determines English as the language of the proceedings.

3. Factual background

The Complainants

The Complainants in this case is BB IN Technology Co., Ltd and YANG, JEN-CHIEH (楊仁傑). The registration address is 60 Market Square, P.O. Box 364, Belize City, Belize. The Complainants appointed Mr. Eugene Low from Hogan Lovells, the address of which being at 11/F, One Pacific Place, 88 Queensway, Hong Kong, as its authorized representative in this matter.

The Respondent

The Respondent, souer heish, is the current registrant of the Disputed Domain Names <dd-in.com> according to the NameCheap, Inc.. The address of the Respondent from the registration information is "Rm. 3, 8/F., No. 406, Sec. 2, Taiwan Blvd., West Dist., Taichu, NA P, Taiwan (Postal Code: 403)". The Respondent's email is souerisme@gmail.com.

4. Parties' Contentions

A. Complainants

The Complaint is based on the rights of the Complainants in the trade mark "bbin" (in various forms)(the **"Mark"**) which has been registered in Classes 41 and 42 in many jurisdictions including Taiwan, Mainland China, Hong Kong, Japan and Singapore. Copies of print-outs of the trade mark certificates I official trademark records are provided as Annex B. The particulars of the said registrations are summarized as follows:

Mark	Jurisdiction	Registration No.	Registrant (Second Complainant)	Registration Date (date/month /year)	Goods/Services [For detailed specifications, please refer to Annex B]
bbin	Hong Kong	303248343	楊仁傑	23-12-2014	Class 41 Casino, entertainment, online games, etc.
bbin 寶盈集團	Hong Kong	303920058	楊仁傑	03-10-2016	Class 41 Casino, entertainment, online games, etc.
bbin	China	16158219	楊仁傑	21-03-2016	Class 41 Amusement parks; entertainment; providing amusement arcade services, etc.
bbin	China	16158428	楊仁傑	21-03-2016	Class 42 Computer software consultancy, server hosting, computer software design, computer programming, etc.
bbin	Taiwan	01711095	楊仁傑	01-06-2015	Class 41 Casino, entertainment, online games, etc.
bbin	Taiwan	01711146	楊仁傑	01-06-2015	Class 42 Computer graphics, design, computer programming, etc.
bbin	Japan	5764174	楊仁傑	15-05-2015	Class 41 Entertainment information, etc.
bbin	Japan	5777537	楊仁傑	10-07-2015	Class 42 Computer software design, computer programming.

bbin 寶盈集團	Japan	5953283	楊仁傑	09-06-2017	Class 41 Entertainment information, etc.
bbin 寶盈集團	Japan	5953284	楊仁傑	09-06-2017	Class 42 Computer software design, computer programming, etc.
bbin	Singapore	4020140278 4Q	YANG, JEN-CHIEH	23-12-2014	Class 41 Casino services, entertainment information, etc.
bbin 寶盈集團	Singapore	4020161615 8Y	YANG, JEN-CHIEH	30-09-2016	Class 41 Casino services, entertainment information, etc.

The Complainants further submit as follows:

i. The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainants have rights

The 1st Complainant is "BB IN Technology Co., Ltd". The 2nd Complainant is "YANG, JEN-CHIEH" ("楊仁傑" in Chinese) who is the CEO of the 1st Complainant. The 1st Complainant is the beneficial owner of the Mark and has authorised the 2nd Complainant to hold the aforesaid trademark registrations on its behalf. A copy of a letter of the 1st Complainant dated 25 July 2016 confirming the 2nd Complainant has been appointed as its CEO since August 2004 is provided as **Annex C**.

The 1st Complainant is a leading gaming software developer and supplier in Asia, with successful collaborations with 500 clients around the world. The 1st Complainant has been the beneficial owner of the domain name bb-in.com since 1 September 2005. The 1st Complainant licensed State Leader Co., Ltd. to hold the domain name bb-in.com on the 1st Complainant's behalf until April 2015, and has always used its official website www.bb-in.com ("**1st Complainant's Website**") to promote its online gaming products. A copy of the print-out of the WHOIS database searches on the domain name bb-in.com conducted on 22 January 2020 is provided as **Annex D**. Since the registrant's details are not publicly available for data privacy reasons, a copy of print-out of the Complainant's account registered with GoDaddy.com showing the 1st Complainant as the current registrant of the domain name bb-in.com is provided as **Annex E**.

The Complainants' "BBIN" group is an active participant in gaming events and exhibitions in Asia. For instance, the Complainants' group has taken part in the Global Gaming Expo Asia ("**G2E Asia**") for the past 7 years. G2E Asia is a premier Asian trade event and the largest regional sourcing platform for global gaming and entertainment products. Annually, more than 95% of the top Asian gaming operators attend the show. Website print-outs of the Complainants' "BBIN" group's participation are provided as **Annex F**.

As mentioned above, the Complainants enjoy trade mark rights under the Mark in many jurisdictions by way of trade mark registrations of the Mark (in various

forms) including in Taiwan, Mainland China, Hong Kong, Japan and Singapore. The Complainants have also built up a protectable goodwill in the Mark through active use of the Mark on the 1st Complainant's Website and through other activities in Asia (e.g. participation at G2E Asia).

The Complainants would also like to draw the panelist's attention to a previous domain name complaint filed by the Complainants with ADNDRC (DCN-1600699) in respect of the domain name <bb-in.com.cn>, in which the panelist found that the Complainants have a relatively high reputation in Asia and that this "bbin" mark / name is distinctive and is a creative combination of "bb" and "in".

The distinguishing element of the Disputed Domain Name is "dd-in", which is confusingly similar to the "bbin" mark in which the Complainants have rights. Both "dd-in" and "bbin" consist of double letters in lowercase followed by the word / abbreviation "in". The lowercase of letter "d" and letter "b" are visually identical save for them being left-right reversed. Their respective pronunciations, "/b/" and "/d/", are highly similar and could be mistaken easily. Given the visual and aural similarities of "dd-in" and "bbin" (and the Complainants' official domain name "bb-in.com"), the Disputed Domain Name is very likely to mislead people into thinking that the Disputed Domain Name relates to the Complainants' businesses. The hyphen in the Disputed Domain Name could not practically distinguish it from the Mark to reduce the likelihood of confusion.

The likelihood of confusion is further increased due to the following:-

1) The domain name of the 1st Complainant's Website, "bb-in.com" is almost identical to the Disputed Domain Name save for the reversed letters "bb" and "dd".

2) As per the print-outs provided, the website associated with the Disputed Domain Name, www.dd-in.com (the **"Respondent's Website"**) features the mark "ddin" in the exact same style as the Mark. As shown in the comparison therein, the marks look almost identical apart from the different directions of the letters "bb" and "dd".

3) The Respondent presents itself as an online game developer that actively participates in gaming events and exhibitions, which is similar to the 1st Complainant's profile as shown in the print-out extracts of the contents on the websites.

By reason of the above, the Disputed Domain Name will easily mislead people into believing that the Respondent's Website belongs to or is associated with the Complainants' "BBIN" group.

Full print-outs of the 1st Complainant's Website and the Respondent's Website, as dated 23 January 2020 and 6 January 2020 respectively are provided.

The Complaints note that the contents of the Respondent's Website have recently changed. Print-outs of the Respondent's Website as dated 5 February 2020 are provided and attached. As can be seen therein, the Respondent's Website in the

new layout still displays the confusingly similar "ddin" logo and presents the Respondent as a game developer.

ii. The Respondent has no rights or legitimate interests in respect of the domain name

The Respondent has no rights or legitimate interests in the Disputed Domain Name for the reasons below.

The Complainants have not authorised or licensed anyone to use or register any domain names consisting of their Mark "bbin" or "bb-in", or similar marks such as "dd-in".

According to WHOIS record, the registrant of the Disputed Domain Name is stated as "WhoisGuard Protected" without a full address or contact details. After the filing of this complaint, the registrar informed ADNDRC that the registrant of the Disputed Domain Name is "souer heish" with its address as "Rm. 3, 8F., No.406, Sec. 2, Taiwan Blvd., West Dist., Taichu, NA P, Taiwan (Postal Code: 403)". The Complainants have no knowledge of the registrant and there is no reason to believe that the registrant has any rights or legitimate interests in the Disputed Domain Name.

Moreover, the Complainants' representatives have conducted trade mark searches at the online database of Hong Kong, Mainland China, Taiwan, Japan and Singapore. The searches did not reveal any trade mark applications or registrations for the mark "ddin" or "dd-in" or in the proprietor name of "souer heish". The search results for the mark "ddin" or "dd-in" dated 22 January 2020 are provided as **Annex H**. The search results for "souer heish" dated 12 February 2020 are provided as **Annex H-1**.

In addition, as illustrated under Ground 1 above, the Respondent's Website attempts to mislead customers into associating the Respondent's Website with the Complainants. In particular, the Respondent's Website prominently features a stylized "ddin" mark in the form of ddin which is a clear imitation of the Complainants' stylized "bbin" mark, i.e. bbin , used on the 1st Complainant's Website. The registrant is clearly using the Disputed Domain Name in bad faith (see Ground 3 below); as such, it cannot be said that the registrant has any rights or legitimate interests in the Disputed Domain Name.

iii. The disputed domain name has been registered and is being used in bad faith

It is obvious that the Disputed Domain Name has been registered and is being used in bad faith, for the reasons below.

1) The Respondent was clearly aware of the Complainants, the Mark and the associated goodwill, which is evidenced by the following:

a. The Disputed Domain Name was registered in July 2017, by which time the Complainants have already acquired rights and a substantial goodwill in the Mark.

b. The Respondent, who (based on the Respondent's Website) claims to be a game developer targeting the Asian market and appears to be based in Taiwan, must have been aware of the Complainants' Group which has been well-established in the Asian gaming industry (and in the Taiwan market) since 1999.

c. The Respondent's Website features the mark  which is a clear imitation of the Complainants' stylized "bbin" mark  used on the 1st Complainant's website.

2) The Complainants, through their legal representatives, sent a cease and desist letter to the Respondent on 6 January 2020 in respect of the domain name "dd-in.com" (copy of the letter (without enclosures) provided as Annex I). To date, neither the Complainants nor their legal representatives received any response from the Respondent. The Respondent's Website remains active as of to date.

3) By the aforesaid reasons, it is apparent that the Respondent must have been aware of the Complainants' businesses and associated goodwill, and deliberately registered the Disputed Domain Name primarily for the purpose of disrupting the business of a competitor (i.e. the Complainants), and uses the Disputed Domain Name in an attempt to attract, for commercial gain, Internet users to the Respondent's Website, by creating a likelihood of confusion with the Mark. This is clear evidence of "bad faith" under Paragraph 4(b)(iii) and (iv) of the Uniform Domain Name Dispute Resolution Policy.

For the above reasons, the registration and use of the Disputed Domain Name is in bad faith.

In these decisions, the Panelist decided that (1) the domain name is confusingly similar to the Complainants' name or mark in which the Complainants have rights; (2) the respondent has no rights or legitimate interests in respect of the domain name; and (3) the respondent has registered and is using the domain name in bad faith.

B. Respondent

As said, the Respondent, souer heish, is the current registrant of the Disputed Domain Name <dd-in.com> according to the NameCheap.com, Inc.. The Respondent registered the Disputed Domain Name on 7 July 2017.

The Respondent has not submitted a response within the stipulated time.

5. Findings

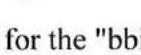
Paragraph 14 of the Rules provides that, in the event that a Party, in the absence of exceptional circumstances, does not comply with any of the time periods established by the Rules or the Panel, the Panel shall proceed to a decision on the complaint; and that, if a Party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

Paragraph 15(a) of the Rules instructs the Panel as to the principles that the Panel is to use in determining the dispute, stating that the Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

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.

A) Identical / Confusingly Similar

The Complainants, though with name changed, were and are the holder of the various trademark registrations for the "bbin" mark or  series, i.e. the BBIN Series Marks and the registrations were with various jurisdictions and of dates earlier than the registration of the domain name in issue by the Respondent. The BBIN Series Marks were put to use via websites of, *inter alia*, the <bb-in.com> and other likewise domain names. From the documents and evidence supplied, the Complainants are of wide scale operation with the BBIN Series Marks, at places including Taiwan and Hong Kong. To all these, the Panel accepts and finds that the Complainants have the necessary legal rights and interests over the BBIN Series Marks for the purpose of the Complaint.

The Panel finds it clear that the domain name in issue the domain name in dispute <dd-in.com > incorporate the "dd-in" part as its key part for distinctive identification purposes. To some internet users, this is confusing with "bb-in" and hence the BBIN Series Marks of the Complainants and/or their related websites with the "dd-in" part in the domain names. Thus, in the circumstances, the Panel also believes that some internet users may be exposed to the typo risks in this regard that are also relevant.

Accordingly, the Panel finds that the Complainants have succeeded in proving the element in Paragraph 4(a)(i) of the Policy as regards < dd-in.com >.

B) Rights and Legitimate Interests

In the present case the Complainants allege that Respondent has no rights or legitimate interests in respect of the domain name. Also, the Complainants submit that the Complainants and the Respondent have no prior connection, and the latter has not been authorized by the former to use its mark in the disputed domain name. As per the above,

the BBIN Series Marks have acquired significant recognition regionally and in places like Taiwan, prior to the registration of the domain name in issue.

Furthermore, the Panel agrees that the part "dd-in" is not a term commonly used in the English language and there is also no evidence that the Respondent has been commonly known by the disputed domain name or has in any way has any rights or association to the name of "dd-in".

To all theses, the Respondent does not respond to disagree or to submit contrary evidence.

Thus, the Panel finds that the Complainants have succeeded in proving the element in Paragraph 4(a)(ii) of the Policy.

C) Bad Faith

Under Paragraph 4(b) of the Policy, the following are relevant examples a Panel may take as evidence of registration and use in bad faith:

(i) Circumstances indicating that the Respondent has registered or 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 its website 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 its website or location or of a product or service on its website or location.

The Complainants contend that it is clear that the disputed domain name has been registered and is being used in bad faith. The Complainants highlight that the Complainants obtained its registration for the BBIN Series Marks since 2014 and become widely known among internet users and the relevant public in the sectors. The Complainants submit that, from the print-outs and other evidence, the Respondent was clearly aware of the Complainants and/or the BBIN Series Marks and the associated goodwill in registering / using the disputed domain name. To all theses, the Respondent does not respond to disagree or to submit contrary evidence.

The Panel accepts these as factual findings and agrees with the Complainants that the Respondent registers the domain name in issue knowing the rights and interests of the

Complainants over the BBIN Series Marks. The Panel particularly notices that the BBIN Series Marks had been registered as trademarks in Taiwan, the place of the stated Respondent. The Panel finds that all these do constitute bad faith on the part of the Respondent.

Therefore, the Panel also finds that the Complainants have succeeded in proving the elements in Paragraph 4(a)(iii) of the Policy as regards <dd-in.com>.

6. Decision

Having established all three elements required under the Policy in respect of the Disputed Domain Name <dd-in.com>, the Panel concludes that relief should be granted in favour of the Complainants. Accordingly, the Panel decides and orders that the Disputed Domain Name <dd-in.com> shall be transferred from the Respondent to one of the Complainants BB IN Technology Co., Ltd.

Mr. Gary Soo

Sole Panelist
Date:16 March 2020