Asian Domain Name Dispute Resolution Centre

ADNDRC hong kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.:	**HK-2001325**
Complainant:	**東莞龍昌數碼科技有限公司**
Respondent:	**Host Master**
Disputed Domain Name:	**<LUNGCHEONG.COM>**

1. The Parties and Contested Domain Name

The Complainant is 東莞龍昌數碼科技有限公司, of No.408, Changhuang Road, Changping Town, Dongguan City, Guangdong Province, China.

The Respondent is Host Master, of PO BOX 957 OFFSHOREINC CTR, Roadtown, BVI, VG1110, VG.

The domain name at issue is <LUNGCHEONG.COM>, registered by Respondent with eNom, LLC, of 10400 NE 4th Street Floor 5, Suite 121 Bellevue, WA 98004, USA.

2. Procedural History

The present complaint (the "Complaint") was filed with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (the "Centre") on 4 March 2020 in accordance with the Uniform Domain Name Dispute Resolution Policy (the "Policy") which was adopted by the ICANN and came into effect on 24 October 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") which became effective on 28 September 2013 and the Supplemental Rules thereof (the "Supplemental Rules") which came into effect on 31 July 2015.

On 4 March 2020, the Centre transmitted by email to the Registrar, eNom, LLC, a request for registrar verification in connection with the domain name at issue and confirmed the receipt of the Complaint and case filing fee. On 5 March 2020, the Registrar made the verification to the Centre that the registrant of the domain name at issue is Host Master. The Registrar confirmed that the Policy applies to the Disputed Domain Name and pointed out that the language used in the Registration Agreement is English.

On 23 March 2020, the Centre informed the Complainant that the information of the Respondent included in the Complaint was different from the Whois information provided by the Registrar, and required the Complainant to rectify the deficiency within 5 calendar

days (on or before 28 March 2020) in accordance with the Rules. On 26 March 2020, the Complainant submitted to the Centre by email the amended Complaint.

On 31 March 2020, the Centre sent the formal Complaint Notice to the Respondent and requested the Respondent to reply within 20 days (on or before 20 April 2020) in accordance with the Rules and the Supplemental Rules and forwarded the Complaint and all the Annexures thereof. The procedures for this case formally commenced on 31 March 2020.

On 21 April 2020, the Centre issued a Default Notice and confirmed that the Respondent did not file a formal reply with the Centre within the required time limit for filing a reply.

On 22 April 2020, the Centre sent a Notice of Panelist Appointment to Ms. Vivien Chan as the Panel candidate for the current case, and the Panel candidate considered that it was properly constituted and submitted the acceptance notice as well as a statement of impartiality and independence on 22 April 2020.

On 23 April 2020, the Centre notified both parties and the Panel Ms. Vivien Chan by email that Ms. Vivien Chan be the sole Panelist for arbitrating this case. The Centre then formally transferred to the case to the Panelist. The Panelist agreed to deliver her decision with respect to the Disputed Domain Name on or prior to 7 May 2020.

3. Factual background

Background Information of the Complainant

The Complainant is part of a multinational manufacturing company whose ultimate parent is LUNG CHEONG GROUP, which was founded in 1964. LUNG CHEONG GROUP has developed from a single toy manufacturer to a multi-product manufacturer with focus on the innovation, education, electronics and digital sectors. The Complainant claims that LUNG CHEONG GROUP, together with its main arms, Lung Cheong Digitech (HK) Company Limited, Lung Cheong Brothers Toys Manufacture and Kid Galaxy and the Complainant, has exported its products to more than 100 countries and regions around the world and has a combined annual turnover of over HK$1 billion.

The Complainant, together with its sister company, Lung Cheong Digitech (HK) Company Limited, have, inter alia, registered the following trademarks in China, Hong Kong and the United States (the "Complainant's Marks"):-

Trademark	Jurisdiction	Registration No.	Class	Registration Date
	China	1258962	9	1997.11.10
	China	7007724	9	2008.10.20
	China	7007722	9	2008.10.20

龙昌	China	7007725	9	2008.10.20
龍昌國際	China	7007723	9	2008.10.20
	China	1252445	20	1997.11.10
	Hong Kong	302730861	28	2013.09.09
	United States	4779865	28	2015.07.28
	China	1283156	28	1997.11.10
龙昌	China	9549506	28	2011.06.02
龍昌國際	China	9549477	28	2011.06.02
龙昌玩具	China	10418918	28	2012.01.12
LC TOYS	China	10418898	28	2012.01.12
龙昌	China	9549517	28	2012.06.02
龙昌	China	9549510	28	2011.06.02
龍昌國際	China	9549492	28	2011.06.02
龙昌数码	China	5825278	28	2007.01.01

Background Information of the Respondent

The Respondent, Host Master, of PO BOX 957 OFFSHOREINC CTR, Roadtown, BVI, VG1110, VG, registered the Disputed Domain Name on 17 September 1999. The Respondent did not file any reply or other materials with the Centre.

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 a trademark or service mark in which the Complainant has rights

The Complainant contends that the Disputed Domain Name is identical to the Complainant's unregistered trademark and common law rights in the LUNG CHEONG brand, which is protected under the law of passing off in Hong Kong.

The Complainant claims that the Disputed Domain Name wholly incorporates the its LUNG CHEONG mark, and that confusion is enhanced by the fact that the Respondent operated a website under the Disputed Domain Name containing information about the Complainant and the use of one of the Complainant's famous registered trademark "  " in the website. Accordingly, the Complainant submits that the Disputed Domain Name is likely to be understood by the Complainant's associates, employees and the public as a marketing campaign or source of information operated by the Complainant.

Based on the above, the Complainant concludes that the Disputed Domain Name is identical to the business name or trademark in which the Complainant has rights in accordance with paragraph (4)(a)(i) of the Policy.

ii. The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name

The Complainant contends that it has not authorized the registration or use of the Disputed Doman Name and there is no evidence suggesting that the Respondent has been generally known by the Disputed Domain Name or the Respondent has acquired any trademark rights in relation to the Disputed Domain Name. Accordingly, the Complainant submits that the Respondent has no rights to use the Disputed Domain Name.

The Complainant further states that the Disputed Domain Name is not being used in connection with either a bona fide offering of goods or services, or for a legitimate noncommercial or fair use. Instead, the Disputed Domain Name is being used to host a domain parking site, which includes the Complainant's real physical address but also includes a false email address enquiry@lungcheong.com. The Complainant infers that the website is being used for directing internet users to websites of Complainant's competitors and to communicate with the Complainant's suppliers and/ or customers, and is a purposeful attempt to create and foster a false affiliation, association, and/ or connection to the Complainant to deceive the Complainant's employees and customers into believing that the website resolving at the Disputed Domain Name is operated and maintained by the Complainant.

In addition, the Complainant puts forward the following arguments to support its contention that the Respondent has engaged in cybersquatting and therefore has no rights or legitimate interests in respect of the Disputed Domain Name:-

(a) The Respondent was aware of the Complainant's rights at the time the Disputed Domain Name was registered, given that the Complainant filed its application for the mark "  " on 10 November 1997 and registered the domain name <lungcheong.com.hk> on 4 September 1998.

(b) The Disputed Domain Name is being used in a manner that confuses and misleads internet users. The Disputed Domain Name intentionally attracts, for commercial gain, internet users, including the Complainant's customers, to

the website linked to the Disputed Domain Name. These users are misled into believing that the Disputed Domain Name on the linked website is associated with the Complainant.

The Complainant further contends that the Respondent has committed an infringement of the Complainant's trademarks and common law rights in Hong Kong, and therefore there is no bona fide use of the Disputed Domain Name.

iii. The Disputed Domain Name has been registered and is being used in bad faith

The Complainant relies on the arguments above to submit that the Respondent registered and uses the Disputed Domain Name to intentionally attract internet users, including the Complainant's customers, to the website linked to the Disputed Domain Name for commercial gain. Accordingly, the Complainant submits that the Respondent's registration for the Disputed Domain Name constitutes classic bad faith registration and use under paragraph 4(b)(iv) of the Policy.

The Complainant refers to paragraph 4(b) of the Policy and states that in order to establish bad faith, the Complainant is not limited to the examples of circumstances set out under that paragraph. The Complainant further relies on paragraph 2 of the Policy and argues that the Respondent has infringed the Complainant's registered trademark and common law rights in Hong Kong, and by using the Disputed Domain Name in the said manner, the Respondent has breached the warranty it provided under paragraph 2(b) of the Policy. The Complainant submits that the Respondent's use of the Disputed Domain Name in bad faith has also rendered its registration to be in bad faith.

Therefore, the Complainant argues that the cumulative effect of all of the facts and matters set out above is that the Disputed Domain Name was registered and is being used in bad faith.

B. Respondent

The Respondent did not submit any reply.

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.

A) Identical / Confusingly Similar

Pursuant to Paragraph 4(a)(i) of the Policy, the complainant must prove that a disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

From the trademark registration records from various jurisdictions, including Hong Kong and China, the Panel accepts that the Complainant has trademark rights over "龙昌", "龙昌数码", "龍昌國際" and "  " (See Exhibit 4).

The Disputed Domain Name is < LUNGCHEONG.COM >, its distinctive element being "LUNGCHEONG". Comparing the Complainant's Marks and the Disputed Domain Name, the Disputed Domain Name wholly incorporates the English transliteration of the Complainant's trademark "龙昌". The addition of the gLTD ".com" to the Disputed Domain Name does not confer to the whole a new meaning involving the absence of risk of confusion with the said trademark of the Complainant (*See WIPO Case France Telecom SA v. France Telecom Users Group, D2000-0074.*).

The Panel also notes that the Complainant registered the domain name <lungcheong.com.hk> on 4 September 1998 (the "Complainant's Domain Name"), which precedes the date of registration of the Disputed Domain Name in 1999. The distinctive element of the Disputed Domain Name, i.e. "LUNGCHEONG", is identical to that of Complainant's Domain Name, i.e. "lungcheong".

Based on the above and taking into account the arguments and evidence submitted by the Complainant (including those indicated and not indicated above), the Panel finds that the Disputed Domain Name is identical or confusingly similar to the Complainant's Marks and the Complainant's Domain Name. Accordingly, the Complainant has satisfied the element required by Paragraph 4(a)(i) of the Policy.

B) Rights and Legitimate Interests

Once the Complainant establishes a prima facie case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name, the burden of production shifts to the Respondent to show that it has rights or legitimate interests in respect to the disputed domain name (See Edgwell Personal Care Brands LLC v. jifeifeil, Case No. HK-1600855).

In the present case, the Complainant has demonstrated a prima facie case that the Respondent lacks rights or legitimate interests in respect of the Disputed Domain Name and the Respondent has failed to assert any such rights or legitimate interests. The Panel notes that the Complainant indicated that the Complainant has not authorized the Respondent the registration or use of the Disputed Domain Name. The Panel also notes that the Respondent's name is Host Master, which has no relationship with "LUNGCHEONG". The Respondent also did not submit any explanation for using the Disputed Domain Name.

The Respondent has not submitted any reply to the Complaint and did not provide any explanation or evidence to show any rights or legitimate interests in the Disputed

Domain Name that is sufficient to rebut the Complainant's prima facie case. According to the evidence provided by the Complainant, the Panel accepts that the Respondent has, without authorization from the Complainant, used trademarks of the Complainant and promoted the Complainant's products in the website operated by the Respondent under the Disputed Domain Name (see Exhibit 5). The evidence presented indicates that the Respondent is not engaged in a bona fide offering of goods or services. Such use by the Respondent cannot be a basis for the Respondent to claim rights or legitimate interests over the Disputed Domain Name either.

Based on the above and taking into account the arguments and evidence submitted by the Complainant (including those indicated and not indicated above), the Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. Accordingly, the Complainant has satisfied the element required by Paragraph 4(a)(ii) of the Policy.

C) Bad Faith

The Complainant must show that the Respondent registered and is using the Disputed Domain Name in bad faith (Paragraph 4(a)(iii) of the Policy). Paragraph 4(b) of the Policy provides the following circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy:
(i) circumstances indicating that the Respondent has registered or acquired the Disputed 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 Disputed Domain Name; or
(ii) the Respondent has registered the Disputed 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 Disputed 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.

As mentioned above, according to the website printouts of the Disputed Domain Name submitted by the Complainant, the Respondent has set up a website under the Disputed Domain Name (see Exhibit 5). The Panel also accepts that the Complainant's registered trademark "  ", physical address and products were displayed in the wesbite. The website also displayed a false email address, which does not belong to the Complainant, in the "Contact Us" page. However, the Respondent did not provide any evidence to support that it has rights for the aforesaid usage. The Panel also notes that the Respondent registered the Disputed Domain Name a year after the Complainant registered its domain name <lungcheong.com.hk>.

In view of the absence of contrary evidence submitted by the Respondent, the Panel accepts the contention of the Complainant that the Respondent ought to have known of the Complainant's rights at the time the Disputed Domain Name was registered, and the Disputed Domain Name may mislead the public into believing that the Respondent is related to the Complainant and divert potential customers of the Complainant to the Respondent.

As such, the Panel finds that the Respondent has registered the Disputed Domain Name primarily for the purpose of disrupting the business of a competitor and that the Disputed Domain Name was registered and is being used by the Respondent with knowledge of the Complainant and in bad faith with the intent to create an impression of an association with the Complainant and profit therefrom. The Respondent's actions therefore constitute bad faith as the registration was to attract, for commercial gain, internet users to the website hosted under the Disputed Domain Name, by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement of the product sold on the website hosted by the Disputed Domain Name, satisfying Paragraphs 4b(iii) and 4b(iv) of the Policy.

Based on the above and taking into account the arguments and evidence submitted by the Complainant (including those indicated and not indicated above), the Complainant has satisfied the element required by Paragraph 4(a)(iii) of the Policy and the Panel finds that the Disputed Domain Name has been registered and is being used in bad faith.

6. Decision

Pursuant to Paragraph 4 of the Policy and Article 15 of the Rules, the Panel orders that the Disputed Domain Name <LUNGCHEONG.COM> be transferred to the Complainant.

Vivien Chan
Sole Panelist

Dated: 7 May 2020