Asian Domain Name Dispute Resolution Centre

ADNDRC hong kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2001342
Complainant:	Valdimir Pte.Ltd.
Respondent:	admin
Disputed Domain Name(s):	<fwdlife.com>

1. The Parties and Contested Domain Name

The Complainant is Valdimir Pte.Ltd., of 10 Collyer Quay, #10-01, Ocean Financial Centre, Singapore 049315.

The Respondent is admin, of 1411-402, CastleGoldPark Hwanggeum, 1-dong Cheongsu-ro, Suseong-gu, Daegu, 42114, Korea.

The domain name at issue is <fwdlife.com>, registered by Respondent with Gabia, Inc., of 4/F, ComplexB, U-SPACE 1 B/D, 660, Daewangpangyo-ro, Bundang-gu, Seongnam Gyeonggi-do 13494, Republic of Korea.

2. Procedural History

On 17 April 2020, the Complainant submitted a Complaint in the English language to the Hong Kong Office of the Asian Domain Name Dispute Resolution Center (the ADNDRC) 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). On 20 April 2020, the ADNDRC sent to the Complainant by email an acknowledgement of the receipt of the complaint. All correspondence to and from the ADNDRC described herein was in both Korean and English languages.

On 20 and 28 April 2020, the ADNDRC transmitted by emails to the Registrar a request for registrar verification in connection with the disputed domain name. On 29 April 2020, the Registrar transmitted by email to the ADNDRC its verification response. On 8 May 2020, the ADNDRC transmitted the Complaint to the Respondent and notified the Respondent of the commencement of the action and requested the Respondent to submit a Response within 20 calendar days. The Respondent replied on 17 May 2020 regarding the language issue. The Respondent submitted a Response on 28 May. The Complainant submitted a

supplemental filling on 5 June.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Mr. Zhao Yun, the ADNDRC notified the parties of the appointment of the Panel. The Panel determines that the appointment was made in accordance with Rules 6 and Articles 8 and 9 of the Supplemental Rules. On 15 June 2020, the Panel received the file from the ADNDRC and should render the Decision within 14 days, i.e. on or before 29 June 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 proceeding 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 proceeding. The language of the current disputed domain name Registration Agreement is Korean, thus the language of the proceedings should be Korean. However, it is possible for the Panel to decide on the use of another language based on the totality of the circumstances in a specific case.

The Complainant in this case requested to use English as the language of the proceedings. However, the Respondent claimed to have no knowledge of the English language. As such, the Panel is in a position to deal with this preliminary issue before moving to the substantive stage of the proceedings. In this case, it is clear that the Complainant does not have the knowledge of the Korean language. The question is thus whether the use of another language will cause unfairness to the Respondent. The Panel is drawn to the attention of the following facts: 1) the main part of the disputed domain name consists of two sub-parts "fwd +life", with the second sub-part "life" being an English word; 2) the evidence shows that the website of the disputed domain name is in the English language in its entirety; no single Korean word could be found in this website. The above facts thus refute the Respondent's claims of no knowledge of the English language. Even if Respondent indeed does not have the knowledge of the English language, the Respondent was not prohibited from exercising the procedural and substantive rights in this proceedings. The following facts are to be noted to ensure that the Respondent is well notified of the case and the subject matter in dispute: 1) all the email correspondences are in both the English and Korean languages; 2) the Response, though submitted in the Korean language, was translated to the English language, for the convenience of this Panel. The Respondent's procedural and substantive rights have been sufficiently protected. It should be taken into account the nature of the UDRP proceeding with the purpose of providing an efficient and effective means to resolve domain name disputes; the use of the Korean language in this case will inevitably add to the financial burden to the parties or at least to the Complainant, and unnecessarily prolong the whole dispute resolution process. The Panel accordingly determines English as the language of the proceedings.

3. Factual background

For the Complainant

The Complainant in this case is Valdinir Pte.Ltd., the registered address is 10 Collyer Quay, # 10-01, Ocean Financial Centre, Singapore 049315. The authorized representative is Paddy Tam of CSC Digital Brand Services Group AB.

For the Respondent

The Respondent in this case is admin, the current registrant of the disputed domain name <fwdlife.com> according to the Whois information. The registered address of the Respondent is 1411-402, CastleGoldPark Hwanggeum, 1-dong Cheongsu-ro, Suseong-gu, Daegu, 42114, Korea.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

Established in 2013, the Complainant is a member of the FWD Group and holds relevant trademark registrations (hereinafter collectively referred to as "the complainant", or "FWD"), with operations in Hong Kong, Macau, Thailand, Indonesia, Philippines, Singapore, Vietnam, Japan and Malaysia. In Hong Kong, FWD provides life and medical insurance, general insurance, employee benefits, and financial planning. FWD employs more than 760 employees and provides quality services to over 510,000 customers (as of June 30, 2019). FWD has diversified insurance products and services, including life insurance, medical and critical illness protection, children's education reserve, retirement savings and financial planning to meet different protection needs. FWD builds a holistic plan for clients, taking care of current needs and aligning with future goals.

FWD focuses on creating new experiences for customers, using digital technology to provide simple, easy-to-understand and caring products and services. FWD upholds customer-oriented service philosophy and policy, inspirational to become a leading insurance company in the Pan-Asia region, creating a new insurance experience. FWD in Hong Kong and Macau continues to achieve solid performance. As of June 2019, the total assets of FWD's life insurance operating institutions reached US $ 13.5 billion. FWD has also received an outstanding financial strength rating from an international rating agency, namely the "Moody's" "A3" rating, "Fitch International" awarded "A" rating and "Fitch International" awarded "A" rating.

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

By virtual of its trademark, the Complainant is the owner of FWD trademarks. It is a standard practice when comparing a Disputed Domain Name to the Complainant's trademarks, to not take the extension into account. In creating the Disputed Domain Name, the Respondent has added the generic, descriptive term "life" to the Complainant's FWD trademarks, thereby making the Disputed Domain Name confusingly similar to the Complainant's trademarks and affiliated company, FWD Life Insurance Company (Bermuda) Limited. The fact that such term is closely linked and associated with the Complainant's brand and trademarks only serves to underscore and increase the confusing similarity between the Disputed Domain Name and the Complainant's trademarks. More specifically: "life"—the Complainant's main business is the provision of life insurance products and services. Past Panels have consistently held that a disputed domain name that consists merely of a complainant's trademark and an additional term that closely relates to and describes that complainant's business is confusingly similar to that complainant's trademarks. In summary, the Complainant is the owner of the well-known FWD

trademarks, and the Disputed Domain Name is clearly confusingly similar, if not identical, to the Complainant's registered FWD trademarks.

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

The Respondent is not commonly known by the Disputed Domain Name, which evinces a lack of rights or legitimate interests. Furthermore, the Complainant has not licensed, authorized, or permitted the Respondent to register domain names incorporating the Complainant's trademark. In the instant case, the pertinent Whois information identifies the Registrant as "admin" which does not resemble the Disputed Domain Name in any manner—thus, where no evidence, including the Whois record for the Disputed Domain Name, suggests that the Respondent is commonly known by the Disputed Domain Name, then the Respondent cannot be regarded as having acquired rights to or legitimate interests in the Disputed Domain Name.

The Respondent is using the Disputed Domain Name to redirect internet users to a website featuring links to third-party websites, some of which directly compete with the Complainant's business. For instance, the website at which the Disputed Domain Name resolves features multiple thief-party links for "life cover" and "Life insurance Quotes". Further, the Respondent's website also features a link "FWD Insurance" that directly references the Complainant and its business. Presumably, the Respondent receives pay-per-click fees from the linked websites that are listed at the Disputed Domain Name's website. Prior UDRP decisions have consistently held that respondents that monetize domain names using pay-per-click links have not made a bona fide offering of goods or services that would give rise to rights or legitimate interests in a disputed domain name. As such, the Respondent is not using the Disputed Domain Name to provide a bona fide offering of goods or services as allowed under Policy 4(c)(i), nor a legitimate noncommercial or fair use as allowed under Policy 4(c)(iii).

The Disputed Domain Name is being offered for sale in an amount that far exceeds the Respondent's out-of-pocket expenses in registering the domain, which serves as further evidence of the Respondent's lack of rights and legitimate interests. The Respondent registered the Disputed Domain Name on 4 January 2014, which is significantly after the Complainant filed for registration of its FWD trademark with the KIPO, HKIPO and the USPTO, and also significantly after the Complainant's first use in commerce of its trademarks in 2013. The Respondent registered the Disputed Domain Name on 4 January 2014, which is significantly after the Complainant's registration of its <fwd.com> domain name on 4 April 2013. Based on the above, the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

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

The Complainant and its FWD trademarks are known internationally, with trademark registrations Korea, Hong Kong and in the United States. The Complainant has marketed and sold its goods and services using this trademark since 2013, which falls before the Respondent's registration of the Disputed Domain Name on 4 January 2014. At the time of registration of the Disputed Domain Name, the Respondent knew, or at least should have known, of the existence of the Complainant's trademarks and that registration of domain names containing well-known trademarks constitutes bad faith per se. In addition to the numerous trademarks filed in connection with the Complainant's business prior to the Respondent's registration of the Disputed Domain Name, the Complainant's operations span across Hong Kong, Macau, Thailand, Indonesia, Philippines, Singapore, Vietnam, Japan and Malaysia, employing more than 760 employees providing quality services to over 510,000 customers across the region. As of

June 2019, the total assets of FWD's life insurance operating institutions reached US$ 13.5 billion, which demonstrates the Complainant's fame. Further, performing searches across a number of internet search engines for "fwd life" returns multiple links referencing the Complainant and its business.

ICANN policy dictates that bad faith can be established by evidence demonstrating that the Respondent has "intentionally attempted to attract, for commercial gain, Internet users to [Respondent's] website...by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the web site or location of a product or service on [Respondent's] website or location." Here, the Respondent creates a likelihood of confusion with the Complainant and its trademarks by registering a domain that comprises of the Complainant's FWD trademark and by adding a generic term "life", which demonstrates that the Respondent is using the Disputed Domain Name to confuse unsuspecting internet users looking for Complainant's services, and to mislead internet users as to the source of the domain name and website. By creating this likelihood of confusion between the Complainant's trademarks and the Disputed Domain Name, leading to misperceptions as to the source, sponsorship, affiliation, or endorsement of the Disputed Domain Name, the Respondent has demonstrated a nefarious intent to capitalize on the fame and goodwill of the Complainant's trademarks in order to increase traffic to the Disputed Domain Name's website for the Respondent's own pecuniary gain, as evidenced by the presence of multiple pay-per-click links posted to the Respondent's website, some of which directly reference the Complainant and/or its competitors. Previous Panels have found bad faith under Policy 4(b)(iv) where a respondent uses a confusingly similar domain name to resolve to a website featuring links to third-party websites that create revenue for the respondent. "Particularly with respect to "automatically" generated pay-per-click links, panels have held that a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name (nor would such links ipso facto vest the respondent with rights or legitimate interests). Neither the fact that such links are generated by a third party such as a registrar or auction platform (or their affiliate), nor the fact that the respondent itself may not have directly profited, would by itself prevent a finding of bad faith."

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 pursuant to Policy 4(b)(iv), with no good faith use possible. More specifically, where the Disputed Domain Name comprises of the Complainant's FWD trademark and a generic term "life", there is no plausible good-faith reason or logic for the Respondent to have registered the Disputed Domain Name. Rather it is indicative of an intention to hold the disputed domain name "for some future active use in a way which would be competitive with or otherwise detrimental to the Complainant." Further, considering these circumstances, any use of the Disputed Domain Name whatsoever, whether actual or theoretical, would have to be in bad faith: "it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law."

The Respondent is currently offering to sell the Disputed Domain Name, which constitutes bad faith under Section 4(b)(i) because the Respondent has demonstrated an intent to sell, rent, or otherwise transfer the Disputed Domain Name for valuable consideration in excess of his out-of-pocket expenses. It is well established that seeking to profit from the sale of a confusingly similar domain name that incorporates a third party's trademark demonstrates bad faith.

Finally, on balance of the facts set forth above, it is more likely than not that the Respondent knew of and targeted the Complainant's trademark, and the Respondent should be found to have registered and used the Disputed Domain Name in bad faith.

For the reasons set out above, the Respondent should be considered to have registered and is using the Disputed Domain Name in bad faith, as described in paragraph 4(a)(iii) of the Policy.

The Complainant requests that the disputed domain name be transferred to the Complainant.

B. Respondent

The Respondent's contentions may be summarized as follows:

i. Whether the disputed domain name is similar or identical to the Complainant's trademark or service mark

The disputed domain name and the Complainant's trademark are not identical and also not confusing. The disputed domain name is constituted with two nouns ("Four Wheel Drive"—FWD and "life"), it cannot be confused with the trademark. The Complainant registered the trademark "FWD", but the disputed domain name is "fwdlife.com". Both are not identical in principal. The Complainant registered the trademark "FWD", but it cannot deny or file a claim against all people who use the domain name that includes alphabet "FWD". The trademark of the Complainant is "FWD", the disputed domain name is "fwdlife.com". They are totally different.

ii. Whether the Respondent legitimately possesses the right or legitimate interests

To obtain legitimate rights and benefit, disclosure of the Respondent about the disputed domain name is unnecessary. The disputed domain name is merely a combination of generic keyword "FWD=Four Wheel Drive" and "life". The Register of generic term based domain name does not need to check all the databases of trademark from the whole world. The Complainant cannot deny all the users of domain name that is constituted with more than one word and contains alphabet "FWD". The Respondent already registered the disputed domain name according to the ICANN Policy on 4 January 2014, which is way before the Complainant started its business.

iii. Whether the disputed domain name has been maliciously registered and used

The disputed domain name is not registered or obtained in purpose of sale, lease, or assignment of disputed domain name for the price which is higher than the cost of the Respondent to the Complainant who is the owner of the trademark or service mark, or its competitor. The disputed domain name is not registered to hinder the Complainant having trademark reflected in the disputed domain name, and the Respondent has never been involved in such action. The Complainant and the Respondent are not in relation of competition, and/or the Respondent did not register the disputed domain name to disrupt the Complainant's business. The disputed domain name is not registered confusingly similar with the Complainant's trademark to attract internet users or commercial benefits in purpose of advertisement, sponsorship, or alliance of website's or its region's commodities and services, and of website or the region itself.

Based on the above reasons, the Respondent responds to the Complaint and respectfully requests the administrative panel to reject the remedies requested by the Complainant.

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

The Complainant, established in 2013, provides life and medical insurance, general insurance, employee benefits, and financial planning. The evidence submitted by the Complainant shows that the Complainant has registered the trademark "FWD" in Hong Kong, Korea and the US. The earliest registration date of the trademark "FWD" is 21 January 2013, earlier than the registration date of the disputed domain name, i.e. 3 January 2014. The Panel therefore finds that the Complainant enjoys the prior rights and interests in the trademark "FWD".

As the suffix ".com" only indicates that the domain name is registered under this gTLD and is not distinctive, the main part of the disputed domain name is "fwdlife", which consists of two sub-parts ("fwd" and "life"). The first sub-part ("fwd") is the same as the Complainant's trademark ("FWD"). The second sub-part ("life") is a generic English word and is not distinctive. The combination of the Complainant's trademark and a generic word as the main part of the disputed domain name cannot effectively differentiate from the disputed domain name from the trademark; since the Complainant's main business covers life insurance, adding the generic word "life" to the trademark "FWD" shall further strengthen the linkage between the disputed domain name and the Complainant. Therefore, the main part of the disputed domain name <fwdlife.com> is confusingly similar to the Complainant's trademark "FWD".

The Respondent argues that the disputed domain name and the trademark are not identical. It is to be noted that the Policy requires either "identical" or "confusing similarity". In this case, the disputed domain name is confusingly similar to the trademark, which has satisfied the Policy requirement. The Respondent further argues that the term "FWD" refers to "Four Wheel Drive"; however, no explanations have been offered as to why "fwd" is used together with "life" and why the Complainant chose not to use the full term "Four Wheel Drive", which would be more straightforward.

The Panel therefore holds that the Complaint fulfills the condition provided in Paragraph 4 (a)(i) of the Policy.

B) Rights and Legitimate Interests

The Complainant contends that the Respondent does not have rights to or legitimate interests in the Disputed Domain Name. The Complainant' assertion is sufficient to establish a *prima facie* case under Policy 4 (a)(ii), thereby shifting the burden to the Respondent to present evidence of its rights or legitimate interests.

The Respondent has failed to show that the Respondent has any rights or legitimate interests in respect of the Disputed Domain Name. No evidence shows that the Respondent has acquired any

trademark rights or other proprietary interests relevant to support its claim to the dispute domain name. The act of registering the Disputed Domain Name and the Respondent's like/dislike do not automatically endow any legal rights or interests with the Respondent. The Respondent does not appear to be using, or preparing to use the disputed domain name in connection with a *bona fide* offering of goods or services, nor does the Respondent make a legitimate non-commercial or fair use of the domain name. Rather the Respondent is using the disputed domain name to confuse Internet users as to the source, sponsorship or affiliation of the website. Furthermore, no evidence shows that the Respondent has been commonly known by the disputed domain name.

The Panel therefore finds that the Complaint fulfills the condition provided 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 you have registered or you have 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 your documented out-of-pocket costs directly related to the domain name; or
(ii) You have 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 you have engaged in a pattern of such conduct; or
(iii) You have registered the domain name primarily for the purpose disrupting the business of a competitor; or
(iv) By using the domain name, you have intentionally attempted to attract, for commercial gain, internet users to your 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 your website or location or of a product or service on your website or location.

The Complainant was established in 2013 to provide life and medical insurance, general insurance, employee benefits, and financial planning. It employs more than 760 employees and provide quality services to over 510,000 customers. As of June 2019, the total assets of the Complainant's life insurance operating institutions reached US$ 13.5 billion. The evidence shows that the Complainant and its insurance business has received wide media coverage. The Complainant has received an outstanding financial strength rating from the Moody, an international rating agency. The Complainant has registered its trademark "2013" in Hong Kong since 21 January 2013. While the registration of the trademark "FWD" in Korea was dated in 2015, it is to be noted that the Complainant filed its application on 6 November 2013, a date before the registration date of the disputed domain name. These trademarks are still within the protection period. Almost all the search results of the term "fwd life" in major internet search engines are related to the Complainant and its life insurance services trademarked with "FWD". It is also to be noted that the term "fwd" is not a generic word. The Complainant has been continuously using the trademark "FWD" since 2013 for its insurance services, including life insurance services. As such, the public has come to recognize and associate the Complainant's trademark "FWD" as originating from the Complainant and no other.

This entitles the Panel to infer that the Respondent should be aware of the existence of the Complainant and its trademark. This inference has been further substantiated by the fact that the

website of the disputed domain name features the information related to the Complainant, such as "Fwd Insurance", "Life Cover" and "Compare Life Insurance Quotes", which are exactly the Complainant's major business. Under the above circumstance, the Panel cannot but hold that the Respondent is aware of the existence of the Complainant and its trademark. The action of registering the disputed domain name *per se* has constituted bad faith.

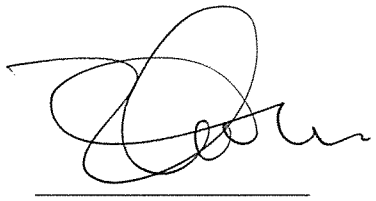
The evidence shows that the Respondent is selling the disputed domain name, obviously for the purpose of making profits from the selling. This exactly constitutes the type of bad faith use of the disputed domain name as identified in the Policy, i.e. the Respondent has registered or acquired the domain 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 documented out-of-pocket costs directly related to the domain name.

The Respondent argues that there are no other types of bad faith as identified in the Policy. It is to be noted that Paragraph 4 (b) of the Policy provides a non-exhaustive list of examples of bad faith and that the existence of one example would be sufficient.

In conclusion, the Panel finds that the Respondent has registered and used the domain name in bad faith. Accordingly, the Panel finds that the Complaint satisfies the condition provided in Paragraph 4 (a) (iii) of the Policy.

6. Decision

Having established all three elements required under the ICANN Policy, the Panel concludes that relief should be granted. Accordingly, it is ordered that the dispute domain name <fwdlife.com> should be TRANSFERRED from the Respondent to the Complainant.



Yun ZHAO
Panelist

Dated: 29 June 2020