Asian Domain Name Dispute Resolution Centre

ADNDRC hong kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	**HK-2101562**
Complainant:	**K11 Group Limited**
Respondent:	**modanfeng**
Disputed Domain Name(s):	**<k11artfoundation.com>**

1. The Parties and Contested Domain Name

The Complainant is K11 Group Limited of 4/F Tsim Sha Tsui Centre, No. 66 Mody Road, Tsim Sha Tsui, Kowloon, Hong Kong.

The Respondent is modanfeng, of Yu Zhong Qu, Yu Zhong Qu, Zhong Qing Shi, 954523, China

The domain name at issue is **<k11artfoundation.com>** ("**Domain Name**"), registered by the Respondent with Alibaba.com Singapore E-Commerce Private Limited, 8 Shenton Way, #45-01 AXA Tower, Singapore 068811.

2. Procedural History

On 21 October 2021, the Complainant filed a Complaint with the Hong Kong Office of Asian Domain Name Dispute Resolution Centre (**"ADNDRC"**), pursuant to the Uniform Domain Name Dispute Resolution Policy (**"Policy"**) approved by the Internet Corporation for Assigned Names and Numbers (**"ICANN"**) on 24 October 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (**"Rules"**), approved by ICANN Board of Directors on 28 September 2013 and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (**"Supplemental Rules**") effective from 31 July 2015. The Complainant chose to have a sole panelist to handle the dispute.

On 21 October 2021, the ADNDRC transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On 22 October 2021, the Registrar transmitted by email to the ADNDRC its verification response confirming that the Respondent is listed as the registrant and providing the contact details. On 22 October 2021, the ADNDRC notified the Complainant of the deficiencies in the Complaint. On 25 October 2021, the Complainant filed a rectified Complaint. The ADNDRC formally notified the Respondent of the Complaint and the proceedings commenced on 25 October 2021. The ADNDRC did not receive any formal response from the Respondent within 20 calendar days as required under paragraph 5 of the Rules. Accordingly, on 15 November

2021, the ADNDRC informed the parties that no response has been received and it would shortly appoint a single panelist.

On 18 November 2021, the ADNDRC appointed Ms. Karen Fong as sole Panelist in this matter. The Panelist accepted the appointment and has submitted a statement to the ADNDRC that she is able to act independently and impartially between the parties.

3. Factual background

The Complainant, based in Hong Kong, is part of the K11 Group which was founded by entrepreneur Dr. Adrian Cheng Chi Kong in 2008 with a social mission to incubate talent and propagate culture. The K11 Group belongs to the New World Group, of which New World Development Company Limited has been a listed company in Hong Kong since 1972 and is one of Hong Kong's leading property investment, management and development company.

"K11" is a brand created and launched by K11 Group's founder. The name "K11" originates from the Eastern philosophy "the co-existence of nothingness and substance". The brand encapsulates three essential elements of "Art People Nature" and has grown successful businesses across retail, hospitality, offices, as well as open education platforms, not-for-profit and residential portfolios.

The K11 Art Foundation is a non-profit organisation founded by the K11 Group in 2010. It is dedicated to fostering the development of Chinese contemporary art. The K11 Art Foundation supports artists through its exhibitions, artist residencies and educational programmes. The K11 Art Foundation also establishes partnerships with leading art and cultural institutions around the world, collaborating with curators and other industry specialists to create impactful cross-cultural exchange and contribute to the expanding global contemporary art discourse.

The Complainant has a portfolio of trade marks in Hong Kong and China for the trade mark "K11 Art Foundation" (the "**Trade Mark**"). The earliest trade mark registration submitted in evidence, HK Trade Mark Registration No 302522600 dates back to 15 February 2013.

In addition to its trademark registrations, the Complainant has registered the domain name <k11artfoundation.org> since 23 April 2013 and has been using this domain name as its official website for the K11 Art Foundation.

The Respondent who is based in China registered the Domain Name on 13 June 2021. The Domain Name resolves to a website that has explicit adult images and pornographic content as well as gambling content and advertisements (the "**Website**").

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

The Domain Name is identical or confusingly similar to the Trade Mark, that the Respondent has no rights or legitimate interests with respect to the Domain Name, and that

the Domain Name has been registered and is being used in bad faith. The Complainant requests transfer of the Domain Name.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

5. Findings

A. General

The Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

i. Respondent's domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
ii. Respondent has no rights or legitimate interests in respect of the domain name; and
iii. Respondent's domain name has been registered and is being used in bad faith.

B. Identical / Confusingly Similar

The Panel is satisfied that the Complainant has established that it has rights to the Trade Mark.

The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the trade mark and the domain name to determine whether the domain name is confusingly similar to the trade mark. The test involves a side-by-side comparison of the domain name and the textual components of the relevant trade mark to assess whether the mark is recognizable within the domain name.

In this case the Domain Name consists of the Trade Mark in its entirety. For the purposes of assessing identity or confusing similarity under paragraph 4(a)(i) of the Policy, it is permissible for the Panel to ignore the generic Top-Level Domain ("**gTLD**") which in this case is ".com". It is viewed as a standard registration requirement.

The Panel finds that the Domain Name is identical to trade marks in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy therefore are fulfilled.

C. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights or legitimate interests in the disputed domain name by demonstrating any of the following:

(i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) the respondent has been commonly known by the domain name, even if it has acquired no trade mark or service mark rights; or

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

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name, it is well established that, as it is put in section 2.1 of the WIPO Overview 3.0, that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent does come forward with some allegations of evidence of relevant rights or legitimate interests, the panel weighs all the evidence, with the burden of proof always remaining on the complainant.

The Complainant contends that there is no evidence that the Respondent is commonly known by the Domain Name nor has any trade mark rights to the Trade Mark. Further, it has not authorised, licensed, sponsored or otherwise permitted the Respondent to use the Trade Mark in the Domain Name or for any other purpose.

The Respondent's unauthorised use of the Trade Mark in the Domain Name in relation to gambling and pornography is not *bona fide* or legitimate noncommercial or fair use of the Domain Name.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not in its response provided any explanation of its rights or legitimate interests in relation to the Domain Name and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the Domain Name.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

D. Registered and Used in Bad Faith

To succeed under the Policy, the Complainant must show that the Domain Name has been registered and is being used in bad faith.

The Panel is satisfied that the Respondent was aware of the Trade Mark when it registered the Domain Name given the fact that the most prominent element of the mark, "K11", is made up of an invented term which has no dictionary meaning other than the name of the Complainant's corporate group and brand. It is therefore implausible that the Respondent was unaware of the Complainant when it registered the Domain Name.

In the WIPO Overview 3.0, section 3.2.2 states as follows:

"Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant's mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant's mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern,

may obviate a respondent's claim not to have been aware of the complainant's mark."

The fact that there is a clear absence of rights or legitimate interests coupled with the Respondent's choice of the Domain Name is also a significant factor to consider (as stated in section 3.2.1 of the WIPO Overview 3.0). The Domain Name falls into the category stated above and the Panel finds that registration is in bad faith.

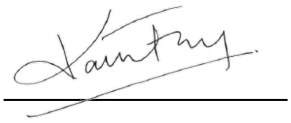
The Panel also finds that the actual use of the Domain Name is in bad faith. The Website is a gambling and pornographic site. These services have been set up for the commercial benefit of the Respondent. It is highly likely that web users when typing the Domain Name into their browser or finding it through a search engine would have been looking for a site operated by the Complainant rather than the Respondent.

The Domain Name is likely to confuse Internet users trying to find the Complainant's official website. Such confusion will inevitably result due to the complete incorporation of the Trade Mark in the Domain Name. The Respondent employs the reputation of the Trade Mark to mislead users into visiting the website connected to the Domain Name instead of the Complainant's. From the above, the Panel concludes that the Respondent intentionally attempted to attract for commercial gain, by misleading Internet users into believing that the Respondent's website is authorised or somehow connected to the Complainant.

The Panel therefore concludes that the Domain Name was registered and is being used in bad faith both under paragraph 4(b)(i) and (iv) of the Policy.

6. Decision

For the foregoing reasons, and in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name <k11artfoundation.com> be transferred to the Complainant



Karen Fong
Panelist

Dated: 3 December 2021