ADNDRC Asian Domain Name Dispute Resolution Centre
hong kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2101574
Complainant:	KDDI CORPORATION
Respondent:	shu cai shu cai
Disputed Domain Name(s):	**<kddi-kaihatsu.com>**

1. The Parties and Contested Domain Name

The Complainant is KDDI CORPORATION, of 3-2, NISHI-SHINJUKU 2-CHOME, SHINJUKU-KU, TOKYO, JAPAN.

The Respondent is shu cai shu cai, of shu cai, shu cai, CN.

The domain name at issue is <kddi-kaihatsu.com>, registered by Respondent with Web Commerce Communications Limited dba WebNic.cc.

2. Procedural History

On 9 December 2021, the Complainant filed a complaint with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre ("ADNDRC" or "the Centre") and chose to have the dispute considered and decided by a single-member panel in accordance with the Uniform Policy for Domain Name Dispute Resolution, approved by the Internet Corporation for Assigned Names and Numbers ("ICANN") on 24 October 1999 ("the Policy"), the Rules for Uniform Domain Name Dispute Resolution Policy, approved by ICANN Board of Directors on 28 September 2013 ("the Rules") and the ADNDRC Supplemental Rules to the ICANN Uniform Domain Name Dispute Resolution Policy and the Rules For The Uniform Domain Name Dispute Resolution Policy effective from 31 July 2015 ("the Supplemental Rules").

On 10 December 2021, the Centre, by way of email, issued a New Case Notification to Web Commerce Communications Limited dba WebNic.cc ("the Registrar") to provide necessary information in relation to the disputed domain name. On 10 December 2021, the Registrar confirmed, by way of email, that:

1. The domain name <kddi-kaihatsu.com> is registered with Web Commerce Communications Limited dba WebNic.cc.
2. The registrant name of the disputed domain name <kddi-kaihatsu.com> is "shu cai".

3. The ICANN Uniform Domain Name Dispute Resolution Policy applies to the current dispute.
4. The language of the disputed domain name's registration agreement for the domain name is English.
5. The disputed domain name's registration date is 18 May 2021 and expiration date is 18 May 2022.
6. The disputed domain name has been locked.

On 13 December 2021, the Centre, by way of email, issued a Written Notice of Complaint to the Respondent informing the Respondent that the proceedings officially commenced and requested the Respondent to submit a Response (in Form R and its Annexures, if any) within 20 days from 13 December 2021 (that is, on or before 2 January 2022) and forwarded the Complaint and its Attachments to the Respondent.

On 3 January 2022, the Centre, by way of email confirmed that the Centre did not receive a response from the Respondent in respect of the Complaint concerning the domain name <kddi-kaihatsu.com> within the required time limit.

On 4 January 2022, the Centre, by way of email, appointed Dr. Lewis Luk as the sole panelist for this case. The Panel considered that it was properly constituted and submitted the acceptance notice as well as a statement of impartiality and independence.

On 7 January 2022, the Centre, by way of email, confirmed that Dr. Lewis Luk be appointed as the panelist and the panelist shall render his decision within 14 days from the date of 7 January 2022, i.e. 21 January 2022.

3. Factual background

The Complainant

KDDI CORPORATION (the "Complainant"), founded on June 1, 1984, is a Fortune Global 500 company and one of Asia's largest telecommunications providers, which has a proven global track record of high quality service delivery.

Complainant provides a multitude of services, including mobile phone services, fixed-line communication, and data centers, and the business scope has been consistently expanded for various fields in the worldwide. Complainant's main and core domain name "kddi.com" was registered in September 1999.

The Complainant is the owner of numerous trademarks worldwide for the trademarked word "KDDI" including but not limited to the Japanese trademarks (through Madrid protocol to many other territories), Chinese trademarks and international trademarks designated in various territories. The word "KDDI" is so special and important to the Complainant.

The Complainant has registered "KIDDI" in different classes and different territories, some of the registrations are listed as follows:

Trademark	Reg. No.	Territory	Reg. Date	Classes & Goods/services	Remarks
KDDI	4449663	Japan	2001-1-	Classes 14, 15, 16, 17,	These

			26	18, 19, 20, 21, 28 & 34 Precious metals, musical instruments, paper, insulation, leather, building materials, furniture, kitchenware, games, smoking products, etc.	Japanese registrations are basic trademark of **WIPO international trademark No. 1208895** owned by the Complainant, which are further designated and registered in China, India, Russian Federation, Turkey, etc.
KDDI	4472336	Japan	2001-5-11	Classes 1, 2, 3, 4 & 5 Chemicals, coating, cosmetics, industrial oil, medicals, etc.	
KDDI	4479048	Japan	2001-6-1	Classes 22, 23, 24, 25, 26 & 27 Nets, threads, fabrics, clothing, sewing utensils, carpets, etc.	
KDDI	4479049	Japan	2001-6-1	Classes 29, 30, 31, 32 & 33 Meat, tea, wood, beverages, acholic drink, etc.	
KDDI	4502914	Japan	2001-8-31	Classes 6, 7, 8, 9, 10, 11, 12 & 13 Metal, mechanical tools, hand tools, scientific instruments, medical equipment, lighting and thermal appliance, traffic tools, gunpowder, etc.	
KDDI	4531743	Japan	2001-12-21	Classes 35, 36, 37, 38, 39, 40, 41 & 42 Advertising, finance, construction, communications, travel, processing, education, and surveying services, etc.	
KDDI	5314794	Japan	2010-4-9	Class35 Providing business information, marketing research, etc.	
KDDI	4431465	Japan	2000-11-10	Classes 1, 2, 3, 4 & 5 Chemicals, coating, cosmetics, industrial oil, medicals, etc.	These Japanese registrations are basic trademark of **WIPO international trademark**
KDDI	4431466	Japan	2000-11-10	Classes 29, 30, 31, 32 & 33 Meat, tea, wood, beverages, acholic	

				drink, etc.	**No. 1207016** owned by the Complainant, which are further designated and registered in China, India, Russian Federation, Turkey, etc.
KDDI	4436629	Japan	2000-12-1	Classes 6, 7, 8, 9, 10, 11, 12 & 13 Metal, mechanical tools, hand tools, scientific instruments, medical equipment, lighting and thermal appliance, traffic tools, gunpowder, etc.	
KDDI	11803694	China	2014-5-7	Class 37 Installation, maintenance and repair of computer hardware, etc.	/
KDDI	11803695	China	2014-5-7	Class 36 Leasing of offices [real estate], etc.	/
KDDI	11817558	China	2014-5-14	Class 37 Installation, maintenance and repair of computer hardware and consultancy services relating thereto.	/
KDDI	11817559	China	2014-5-14	Class 36 Rental of offices [real estate].	/

KDDI Kaihatsu Corporation is one of the Complainant's subsidiaries and affiliated entities, with capital of JPY 4,403 million yen and 100% controlled by the Complainant, according to the Part 4 "Subsidiaries and Other Affiliated Entities" of the Complainant's 2001-2001 Annual Securities Report. Complainant specifically submitted KDDI Kaihatsu Corporation's Certificate of Incorporation provided by the Japanese government. After foundation of KDDI Kaihatsu Corporation, the Complainant attached great importance to the company and the trade name "KDDI Kaihatsu". In addition to that, the Complainant has used "kddi-kaihatsu" in their daily business contact both internally and externally.

The Respondent

The Respondent registered the Disputed Domain Name on 18 May 2021.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

i) The disputed domain name(s) is/are identical or confusingly similar to a trademark or service mark in which the Complainant has rights:

The disputed domain name completely contains the complainant's trademark "KDDI", although word "Kaihatsu" was added at the end, the word "Kaihatsu" is the pronunciation of the word "development" according to the Japanese language, which may mislead consumers that the website to which the disputed domain name resolves is relevant to the development of KDDI and related to the Complainant. With more than twenty-year's efforts, the Complainant has built a large group of customers, while the current improper use of the disputed domain name would cause confusion among customers, especially that the disputed domain name is identical with the tradename of the Complainant's affiliated company KDDI Kaihatsu Corporation.

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

a) The Respondent has no trademark rights on "KDDI".

b) The Complainant has never authorized or licensed the Respondent to use the "KDDI" trademark or assigned such trademark to the Respondent. According to the Complainant's knowledge, the Respondent has not been authorized or licensed to use trademark "KDDI" via other channels. Also, the Complainant gave no authorization to the Respondent to reflect the Complainant's trademark in the disputed domain name.

c) With internal investigation and based on the information displayed on the website to which the disputed domain name resolves, the Complainant believes that the Respondent is not an employee of the Complainant and/or its affiliated companies. The Respondent has not been authorized to register the disputed domain name. The Complainant has no connection with the Respondent.

d) There is no evidence that the Respondent has been commonly referred to by the disputed domain name.

In other words, it can testify that the Respondent has no rights or legitimate interests with respect to the disputed domain name.

iii) The disputed domain name(s) has/have been registered and is/are being used in bad faith:

In accordance with Article 4.b of the Uniform Domain Name Dispute Resolution Policy (UDRP), the Complainant holds the opinion that the Respondent is of obvious bad faith in the registration and use of the disputed domain name.

a) The Chinese companies such as Wu'An Water Heater Maintenance Co., Ltd (武安市热水器维修有限公司) mentioned on the website to which the disputed domain name resolves to does not exist according to the Chinese National Enterprise Credit Information Publicity System (the search results can be seen on the governmental system http://www.gsxt.gov.cn/index.html). In addition, all the information displayed on the websites seems to be sourced from others, and every time when the website is refreshed, the information displayed would change,

including the company information (for example, the company address may be listed as in different provinces in China) and the products introduction and news. It's obvious that the Respondent randomly grabs information from other websites and builds a false impression that this website is running actively. In this way, the Respondent could prevent the Complainant, i.e., the actual owner, from registering and owning the domain name which is closely related and highly similar to the Complainant's trademark "KDDI".

By using the disputed domain name, the Respondent obviously attempted to attract, for commercial gain, internet users to the disputed website, by creating a likelihood of confusion with the Complainant's mark and even the identical trade name of the Complainant's affiliated company, which prove that Respondent intentionally takes advantage of the Complainant's goodwill and reputation and tries to earn interests by improper use of the disputed domain name.

Considering the specialty and reputation of KDDI and KDDI Kaihatsu, it's reasonable believed that the Respondent intentionally chose the disputed domain name for the website with full knowledge of the Complainant's business and trademark, KDDI. The Respondent's use of the disputed domain name in relation to the Website is harmful to the Complainant's commercial interests. The customers might think the website to which the disputed domain name resolves is held by the Complainant or affiliated company (KDDI Kaihatsu corporation) of the Complainant.

The Respondent is riding on the Complainant's reputation and on its KDDI trademark to attract internet users to the disputed website for commercial benefit, and to mislead as to the source, sponsorship, affiliation or endorsement of the Respondent's website or location or of a product or service on the Website.

b) The website information is displayed in Chinese. While in China, to operate a website, the internet service provider shall file for the record the domain name in the system of the Ministry of Industry and Information Technology with the real-name authentication and get license of Internet Content Provider ("ICP"). The purpose of domain name recording is to prevent illegal website business activities and combat the spread of unhealthy and bad Internet information. If a website does not register in due course, it is likely to be investigated or shut down.

Filing such recording and obtaining ICP license is China's domestic law requirement. Thus, those who have not obtained ICP license and completed the formalities shall not engage in Internet information services according to the Article 4 of *Administrative Measures for Internet Information Services* (unless the website is built and released in a foreign server, in this way the Chinese government could not duly check the website situation). According to the officially designated registration system of the Ministry of Industry and Information Technology https://beian.miit.gov.cn/#/Integrated/index, the website to which the disputed domain name resolves has not been registered as required by the national regulations.

That is to say, the Respondent intentionally chose to use foreign server to build such website, so it could keep running and avoid punishment from Chinese government. It's obviously that the Respondent plans to further take illegal and

unethical action with respect to the disputed domain name, and that's why the Respondent has not legally registered domain name in China though the website is displayed in Chinese.

c) According to the Complainant's monitoring records, the disputed domain name website has previously been used for online gambling and attraction consumers. The Complainant once lost the control of domain name out of business problems and would like to keep using the website for the recent years because it's closely related to the affiliated company of the Complainant, while when the Complainant plans to register the domain name again, the Complainant notices that the domain name has been improperly used and is immediately registered when expires. The Complainant has no way to register the domain name. It's possible that the website might be used as online gambling or improper business advertising again, which will consistently cause adverse impact on the Complainant's reputation.

All the facts listed above could prove that the Respondent's selection of the disputed domain name is not an accident. The Respondent has intentionally registered and used the disputed domain name to mislead the public and obtain illegal benefit. According to UDRP and listed factual grounds, the registration and use of the disputed domain name shall be determined as out of bad faith.

B. Respondent

The Respondent's contentions may be summarized as follows:

The Respondent did not submit a Response.

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 Panel finds that the Complainant owns the trademarks "KDDI", which are registered in various countries including China and Japan. The Panel finds that the Complainant's trademarks "KDDI" is fully incorporated into the Disputed Domain Name. The Panel finds that the Disputed Domain Name is substantially similar to the Complainant's trademark "KDDI" and thus it is very likely to cause confusion to the public. The Complainant has fulfilled the first condition.

B) Rights and Legitimate Interests

The Panel accepts that the confirmation by the Complainant that it has no connection with the Respondent, nor has authorized or consented to the Respondent to use the

Complainant's trademarks or register the Disputed Domain Name. The Panel is of the view that the Respondent has therefore no rights or legitimate interests in respect of the Disputed Domain Name. The Complainant has fulfilled the second condition.

C) Bad Faith

The Panel finds that the Respondent is taking unfair advantage of the goodwill and reputation associated with the Complainant's businesses and other Intellectual Property rights, and intentionally attempting to mislead consumers into believing that the Disputed Domain Name, the websites associated with it, and/or its businesses are licensed by, have an association with or are otherwise endorsed by the Complainant. The Panel finds that the Respondent has registered and used the Disputed Domain Name in bad faith. The Complainant has fulfilled the third condition.

6. Decision

The Panel orders that the Disputed Domain Name <kddi-kaihatsu.com> be transferred to the Complainant.

Dr. Lewis Luk
Panelists

Dated: 21 January 2022