



Asian Domain Name Dispute Resolution Centre

hong kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2201653
Complainant:	PRINX CHENGSHAN (SHANDONG) TIRE COMPANY LTD.
Respondent:	Adam Majsky
Disputed Domain Name(s):	<fortunetire.com>

1. The Parties and Contested Domain Name

The Complainant is PRINX CHENGSHAN (SHANDONG) TIRE COMPANY LTD. of NO.98, NANSHAN ROAD NORTH, RONGCHENG CITY, SHANDONG PROVINCE, 264300, China.

The Respondent is Adam Majsky of Dvory 1951/26, Púchov, Slovakia.

The domain name at issue is <fortunetire.com>, registered by Respondent with Gransy, s.r.o., of Borivojova 878/35, 130 00 Prague, Czech Republic.

2. Procedural History

- i. On 30 August 2022, the Complainant's authorized representative, Shenzhen Hyrui Internet Technology Co., LTD., submitted the Complaint together with the accompanying Annexures to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (Centre) via email pursuant to 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 for Uniform Domain Name Dispute Resolution Policy effective from 31 July 2015 (the Supplemental Rules).
- ii. On 30 August 2022, the Centre notified the Registrar, Gransy, s.r.o., of the disputed domain via email and requested for verification and information on the domain name. The Centre also confirmed receipt of the Complaint and requested that the case filing fee be settled.

- iii. On 2 September 2022, a copy of transaction slip was sent by the Complainant's authorized representative to the Centre and the Centre confirmed receipt of the transaction slip on the same day.
- iv. On 5 September 2022, the Centre followed up with the Registrar on the verification and information of the Disputed Domain Name.
- v. On 6 September 2022, the Centre wrote to the ICANN requesting for the assistance of ICANN in contacting the Registrar. On the same day, the ICANN wrote to the Registrar requesting the Registrar to respond to the Centre's queries.
- vi. On 7 September 2022, the Registrar responded with the following verification and information: -
 - a) the Disputed Domain Name <fortunetire.com> is registered with the Registrar;
 - b) the Respondent is the registrant or holder of the Disputed Domain Name;
 - c) ICANN's Uniform Domain Name Dispute Resolution Policy is applicable to the Complaint;
 - d) the languages of the registration agreement for the Disputed Domain Name are Czech and English;
 - e) the Disputed Domain Name's expiration date is 12 April 2023;
 - f) the Disputed Domain Name will remain locked during the proceedings; and
 - g) WHOIS information on the Disputed Domain Name.
- vii. On 7 September 2022, the Centre notified the Complainant's authorized representative of a deficiency in the Complaint where the information of the Respondent in the Complaint is different from the WHOIS information provided by the Registrar and requested that the deficiency be rectified within 5 calendar days.
- viii. On 9 September 2022, the Complainant's authorized representative sent the amended complaint form and annexures to the Centre. The Centre requested for a scanned copy of the duly signed updated complaint form from the Complainant's authorized representative and the Complainant's authorized representative provided the same to the Centre on 13 September 2022.
- ix. On 13 September 2022, the Centre then confirmed that the Complaint is in compliance with the Uniform Domain Name Dispute Resolution Policy and its Rules, informed that the Complaint will be forwarded to the Respondent and that proceedings will be formally commenced in accordance with the Uniform Domain Name Dispute Resolution Policy and its Rules.
- x. On 13 September 2022, the Centre transmitted to the Respondent the Written Notice of Complaint via email and notified the Respondent that it is required to participate in mandatory administrative proceedings and that he may submit a Response on or before 3 October 2022.
- xi. On 4 October 2022, the Centre sent confirmation that it did not receive a Response from the Respondent and, in accordance with the Complainant's request for the case to be decided by a single-member Panel, contacted Michael Soo Chow Ming.

- xii. On 4 October 2022, Michael Soo Chow Ming confirmed his availability and ability to act independently and impartially vis-à-vis the parties, he was appointed as panelist on 5 October 2022.

3. Factual background

A. Complainant

The Complainant was formerly known as the Rongcheng Rubber Factory, which was established in 1976. The Complainant's name was officially changed to PRINX CHENGSHAN (SHANDONG) TIRE COMPANY LTD in 2005. The Complainant researches, develops, produces and sells semi-steel radial tires, all-steel radial tires and bias tires. Through years of development, the Complainant's annual revenue has exceeded RMB 7,537 million and the Complainant's annual production capacity exceeds 30 million tires, which are sold to 169 countries and regions worldwide.

The Complainant is also the proprietor of the following trademark registrations: -

Registration No	Mark	Jurisdiction	Class	Reg Date
13543671	FORTUNE	China	12	14.02.2015
13543661	FORTUNE	China	12	28.01.2015
3339379	FORTUNE	China	12	28.11.2003
1340384	FORTUNE	WIPO – designating Albania, Austria, Bosnia and Herzegovina, Bulgaria, Belarus, Switzerland, Colombia, Cyprus, Czech Republic, Denmark, Algeria, Estonia, Spain, Finland, France, Greece, Croatia, Hungary, Ireland, Iran, Iceland, Kenya, Korea, Lithuania, Latvia, Moldova, Montenegro, Madagascar, North Macedonia, Norway, Poland, Portugal, Romania, Serbia, Slovenia, Slovakia, Thailand, Ukraine, Uzbekistan and Vietnam.	12	27.12.2016

845453	FORTUNE	WIPO – designating Australia, Japan, Turkey, United Kingdom, Benelux, Democratic People’s Republic of Korea, Egypt, Germany, Italy, Russian Federation and Sudan.	12	28.02.2005
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B. **Respondent**

The Respondent did not file a Response within the prescribed time period.

4. **Parties’ Contentions**

A. **Complainant**

The Complainant’s contentions can be summarized as follows:

- i. The Disputed Domain Name is identical or confusingly similar to trade marks in which the Complainant has rights.
 - a) The Complainant believes that comparison should focus on the second-level part of the domain name and the Complainant’s “**FORTUNE**” trademarks. The Disputed Domain Name fortunetire.com, minus the .com suffix, is “**fortunetire**”, which is a combination of the generic words “**fortune**” and “**tire**”, of which the Complainant submits that the Disputed Domain Name “**fortune**” is identical to the Complainant’s “**FORTUNE**” trademarks.
 - b) The Complainant contends that it adds the word “**tire**” to its daily use of the “**FORTUNE**” trademarks and the fact that the Complainant has not registered “**FORTUNETIRE**” as a trademark does not affect the likelihood of confusion found in the Disputed Domain Name in this case.
 - c) Further, the Complainant contends that the addition of the generic word “**tire**” to the Disputed Domain Name does not avoid confusion. Indeed, the word “**tire**” describes the Complainant’s products and therefore, the addition of the word “**tire**” is likely to increase confusion.
 - d) The incorporation of the Complainant’s well-known trademarks in the Disputed Domain Name is considered sufficient to find the Disputed Domain Name confusingly similar to the Complainant’s trademarks.
 - e) The Complainant believes that the Disputed Domain Name is identical or extremely similar to the trademarks owned by the Complainant, which is likely to cause confusion.

- ii. The respondent has no rights or legitimate interests in respect of the Disputed Domain Name.
 - a) Searches confirmed that there are no trademarks in the name of the Respondent.
 - b) Although it appears from the WHOIS information that the Respondent in this case is related to Prinx Chengshan Europe, s.r.o., but according to the Complainant's feedback, the actual controller of the Disputed Domain Name is Adam Majsky, who used to work for Prinx Chengshan Europe, s.r.o., a subsidiary of the Complainant.
 - c) Prinx Chengshan Europe, s.r.o. was an associated company of the Complainant but this company was cancelled / dissolved by the Complainant in 2020. The Respondent, Adam Majsky transferred the Disputed Domain Name to himself without the Complainant's consent and authorization.
 - d) The Respondent is no longer affiliated with the Complainant. The Complainant confirms that the Disputed Domain Name is now in the Respondent's unlawful possession.
 - e) The Complainant has never directly or indirectly authorized the Respondent to use the "**FORTUNE**" trademarks and domain name in any form.
 - f) The name of the Respondent is "**Adam Majsky**" and it is therefore impossible for the Respondent to enjoy the relevant name rights for "**FORTUNE**" and "**FORTUNETIRE**".
- iii. The Disputed Domain Name has been registered and is being used in bad faith.
 - a) The Respondent worked for the Complainant for a period of time and then took unlawful possession of the Disputed Domain Name due to the handover of work.
 - b) The Complainant believes that when discussing whether the Disputed Domain Name is a malicious registration, it should focus on the time when the Respondent illegally occupied the Disputed Domain Name, because the Disputed Domain Name was originally registered by the Complainant, and from the WHOIS information, the Registrant Organization has always been Prinx Chengshan Europe, s.r.o.. Therefore, the Respondent's unlawful possession of the Disputed Domain Name is considered by the Complainant to be in bad faith.
 - c) Unlawful possession of a domain name is tantamount to "registering or acquiring" a domain name. The Respondent did not commit this act by accident and the Respondent's motive is to prevent the Complainant from acquiring the domain name corresponding to the mark. The Complainant contends that the Respondent had indicated in a telephone conversation

with the Complainant that he was willing to transfer the Disputed Domain Name to the Complainant for RMB 2 million.

- d) The Complainant contends that the Disputed Domain name has been pointed to <http://prinxeurope.eu>, a domain name belongs to the Complainant's affiliate, and has shown the Complainant's affiliate's contact details.
- e) The Complainant contends that the scenarios described in UDRP paragraph 4(b) are non-exclusive and merely illustrative, even where a Complainant may not be able to demonstrate the literal or verbatim application of one of the above scenarios, evidence demonstrating that a Respondent seeks to take unfair advantage of, abuse, or otherwise engage in behavior detrimental to the Complainant's trademark would also satisfy the Complainant's burden.
- f) The Respondent has no legitimate rights or interests in the Disputed Domain Name. The Respondent has acted in bad faith in obtaining the Disputed Domain Name unlawfully.

Based on the above, the Complainant requests the Disputed Domain Name <fortunetire.com> be transferred to the Complainant.

B. **Respondent**

The Respondent did not file a Response within the prescribed time period.

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.

Given that the Respondent failed to file a Response within the prescribed time, the Panel will consider and render a decision based on the information and materials submitted by the Complainant only.

A) **Identical / Confusingly Similar**

- i. The Complainant has adduced evidence that it is the proprietor of "FORTUNE" trademarks around the world which were registered since as early as 28.11.2003. The Disputed Domain Name, <fortunetire.com>, incorporates the entirety of the Complainant's "FORTUNE" trademarks.

ii. In this regard, paragraph 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Jurisprudential Overview 3.0”) states that “... in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.” [emphasis added]

iii. The Complainant has also adduced sufficient evidence to prove that the Complainant’s “FORTUNE” trademarks are well-known. Therefore, the incorporation of the Complainant’s well-known “FORTUNE” trademarks in the Disputed Domain Name is considered sufficient to find the Disputed Domain Name confusingly similar to the Complainant’s trademarks. This principle was decided in Ansell Healthcare Products Inc. v Australian Therapeutics Supplies Pty, Ltd.; WIPO Case No. D2001-0110: -

“The incorporation of a Complainant’s well-known trademark in the registered domain name is considered sufficient to find the domain name confusingly similar to the Complainant’s trademark: see Quixtar Investments, Inc. v. Smithberger and QUIXTAR-IBO, Case No. D2000-0138 (WIPO, April 19, 2000) (finding that because the domain name <quixter-sign-up.com> incorporates in its entirety the Complainant’s distinctive mark, QUIXTER, the domain name is confusingly similar); Hewlett-Packard Company v. Posch Software, Case No. FA95322 (Nat. Arb. Forum, Sept. 12, 2000).

[emphasis added]

iv. Further, it was found that the addition of generic words would not stop confusion from being caused by the use of a trademark in Fondation Le Corbusier v Monsieur Bernard Weber, Madame Heidi Weber; WIPO Case No. D2003-0251: -

“Each disputed domain name includes the trademark LE CORBUSIER with the addition of a generic word: art, museum, fondation, foundation, centre or center. The combinations obtained are generic and do not stop the confusion caused by the use of the trademark LE CORBUSIER: The Body Shop International PLC. v. CPIC Net and Syed Hussain, WIPO Case No. D2000-1214; Space Imaging, eResolution Case No. AF0298. The words foundation and museum were found to be descriptive in Indivision Picasso v. Manuel Mu iz Fernandez [Hereisall], WIPO Case No. D2002-0496 as was the word center in Nintendo of America Inc. v. Berric Lipson, WIPO Case No. D2000-1121.”

[emphasis added]

v. The English word “tire” is a generic word which lacks significance and does not dispel any likelihood of confusion between the Disputed Domain Name and the Complainant’s “FORTUNE” trademarks. Further, the Complainant’s “FORTUNE” trademarks were registered in Class 12 for goods include “tires for vehicle wheels; tires for bicycles, cycles; tires, solid, for vehicle wheels; and automobile tires.”. Since the word “tire” describes the Complainant’s products, therefore, the addition of the word “tire” in the Disputed Domain Name does not avoid confusion.

vi. Further, the word “fortune”, which is the dominant and distinguishing component of the Disputed Domain Name, is clearly visible and immediately recognizable.

- vii. Other than that, the only other element in the Disputed Domain Name is a generic Top-Level Domain (“gTLD”) suffix of “.com”. It is well established in domain name cases that the inclusion of gTLD and ccTLD is immaterial in determining whether the domain name in dispute is identical or confusingly similar to a Complainant’s trademark (**Volkswagen Group Singapore Pte Ltd v Webmotion Design** Case No.: rca/dndr/2003/01 (int)). This principle can also be found in **Rollerblade, Inc. v Chris McCrady**; WIPO Case No. D2000-0429: -

*“It is already well established that the specific top level of the domain name such as “net” or **“com”** does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.”*

[emphasis added]

- viii. Therefore, the Panel finds that the Disputed Domain Name is identical / confusingly similar to the Complainant’s trademarks and that the Complainant has satisfied the first element in paragraph 4(a) of the Policy.

B) Rights and Legitimate Interests

- i. Based on the facts presented, the Complainant has established a *prima facie* case in showing that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.
- ii. The Complainant has confirmed that it has never directly or indirectly authorized the Respondent to use the “**FORTUNE**” trademarks and domain name in any form. There is also no evidence of there being any trademark registrations in the name of the Respondent.
- iii. Based on the information and materials submitted by the Complainant, the Respondent used to work for Prinx Chengshan Europe, s.r.o., a subsidiary of the Complainant which was cancelled / dissolved by the Complainant in 2020. There is no explanation from the Respondent on how the Respondent transferred the Disputed Domain Name from Prinx Chengshan Europe, s.r.o. to himself and became the actual controller of the Disputed Domain Name.
- iv. Further, the name of the Respondent is “Adam Majsky”. It is therefore impossible for the Respondent to enjoy the relevant name rights for “**FORTUNE**” and “**FORTUNETIRE**”.
- v. Regardless of whether the products featured at the Disputed Domain Name are genuine or counterfeit, the website does not disclose the Respondent’s lack of relationship with the Complainant. On the contrary, the website gives the impression that it is somehow affiliated with, or endorsed by, the Complainant.
- vi. In **Oki Data Americas, Inc. v ASD, Inc.**; WIPO Case No. D2001-0903, it was found as follows: -

*“The site must accurately disclose the registrant’s relationship with the trademark owner; **it may not, for example, falsely suggest that it is the trademark owner, or that the website is the official site, if, in fact, it is only one of many sales agents.** E.g., *Houghton Mifflin Co. v. Weatherman, Inc.*, WIPO*

*Case No. D2001-0211 (WIPO April 25, 2001) (no bona fide offering where website's use of Complainant's logo, and lack of any disclaimer, suggested that website was the official Curious George website); R.T. Quaiife Engineering v. Luton, WIPO Case No. D2000-1201 (WIPO Nov. 14, 2000) (**no bona fide offering because domain name <quaiifeusa.com> improperly suggested that the reflected site was the official U.S. website for Quaiife, an English company;** moreover, respondent's deceptive communications with inquiring consumers supported a finding of no legitimate interest); Easy Heat, Inc. v. Shelter Prods., WIPO Case No. D2001-0344 (WIPO June 14, 2001) (no bona fide use when respondent suggested that it was the manufacturer of complainant's products)."*
[emphasis added]

- vii. Further, there is no evidence that the Respondent is commonly known by the Disputed Domain Name or that the Respondent has used the Disputed Domain Name for a legitimate non-commercial or fair use, without intent for commercial gain.
- viii. In any event, the Respondent did not submit a response with the Centre and consequently failed to adduce evidence to prove it has any right or legitimate interest in the Disputed Domain Name. In this regard, paragraph 2.1 of the WIPO Jurisprudential Overview 3.0 states as follows: -

*"As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. **If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.**"*

[emphasis added]

- ix. In other words, the absence of rights or legitimate interests is established if a complainant makes out a *prima facie* case and the respondent enters no response. (**De Agostini S.p.A. v Marco Cialone**; WIPO Case No. DTV2002-0005).
- x. Therefore, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

C) Bad Faith

- i. It is necessary for the Complainant to show that the Disputed Domain Name was registered and is being used in bad faith to establish bad faith for the purposes of the Policy. Paragraph 4(b) of the Policy provides: -

*"For the purposes of Paragraph 4(a)(iii), the following circumstances, in particular **but without limitation**, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:*

- (i) *circumstances indicating that the Registrant has registered or has 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 Registrant's documented out-of-pocket costs directly related to the Domain Name; or

- (ii) the Registrant 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 Registrant has engaged in a pattern of such conduct; or*
- (iii) the Registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor; or*
- (iv) by using the Domain Name, the Registrant has intentionally attempted to attract, for commercial gain, Internet users to the Registrant'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 Registrant's web site or location or of a product or service on the Registrant's web site or location."*

[emphasis added]

- ii. The above criteria are not exhaustive, and the Complainant may also rely on the Respondent's conduct that is bad faith within the generally accepted meaning of that expression. The Panel considers that the Respondent's conduct in this case constitutes bad faith registration and / or use of the Disputed Domain Name within the meaning paragraph 4(a)(iii) of the Policy.
- iii. The Respondent failed to provide any explanation and evidence to justify how the Respondent became the actual controller of the Disputed Domain Name. It would be unreasonable to conclude that the Respondent is unaware of the Complainant's well-known "**FORTUNE**" trademarks when acquiring the Disputed Domain Name, given the extensive prior use, fame of these marks and the fact that the Respondent used to work for Prinx Chengshan Europe, s.r.o., a subsidiary of the Complainant.
- iv. The Respondent also failed to rebut the Complainant's contention that the Respondent had indicated in a telephone conversation with the Complainant that he was willing to transfer the Disputed Domain Name to the Complainant for RMB 2 million. Therefore, the Panel finds that the Respondent has acquired the Disputed Domain Name primarily for the purpose of selling or transferring the Disputed Domain Name registration to the Complainant who is the owner of the Complainant's "**FORTUNE**" trademarks for value consideration, in the meaning of Paragraph 4(b)(i) of the Policy.
- v. It is shown that a simple search on online search engines such as Google would lead to a large number of hits / results on or leading to the Complainant or which refers to the Complainant's "**FORTUNE**" trademarks, pages and media reports. These show that the "**FORTUNE**" trademarks associated with the Complainant and its products.
- vi. In view of the Complainant's standing and reputation and the fact that the Disputed Domain Name has been pointed to <http://prinxeurope.eu>, a domain name belongs to the Complainant's affiliate and has shown the contact details of the Complainant's affiliate, the Panel finds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion

with the Complainant's trademarks as to the source of the website and the products sold, in the meaning of Paragraph 4(b)(iv) of the Policy.

- vii. In Swarovski Aktiengesellschaft v WhoisGuard Protected / Peter D. Person; WIPO Case No. D2014-1447, it was found that: -

“Given the circumstances of the case, in particular the extent of use of the Complainant's trademark, the reputation and the distinctive nature of the mark, it is inconceivable to the Panel in the current circumstances that the Respondent registered the disputed domain name without prior knowledge of the Complainant and the Complainant's mark. Further, the Panel finds that the Respondent could not have been unaware of the fact that the disputed domain name it chose could attract Internet users in a manner that is likely to create confusion for such users.

*The Panel therefore finds that the disputed domain name was **registered in bad faith.***

[emphasis added]

- viii. In Barclays Bank PLC v PrivacyProtect.org / Sylvia Paras; WIPO Case No. D2011-2011, it was found that: -

“The Respondent has registered and used a domain name which incorporates the Complainant's well-known trademark, with the mere addition of two generic words. The disputed domain name is used to resolve to a website where financial services are offered, without the Respondent having rights or legitimate interests in the disputed domain name. These services, if actually provided, would compete with the services offered by the Complainant.

The Panel finds that use of the disputed domain name will divert potential customers from the Complainant's business to the website under the disputed domain name by attracting Internet users who mistakenly believe that the disputed domain name is affiliated to the Complainant, and which may further mistakenly believe that the services offered on this website are offered by the Complainant, or by an entity affiliated to the Complainant.”

- ix. Thus, the Panel finds that the Respondent has acquired and used the Disputed Domain Name in bad faith.

6. Decision

Based on the foregoing reasons, the Complaint is allowed and the Disputed Domain Name, <fortunetire.com>, is to be transferred to the Complainant.



Michael Soo Chow Ming
Panelist

Dated: 17th October 2022