



Asian Domain Name Dispute Resolution Centre

hong kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.: HK-2301842

Complainant: Sichuan Shuxin Zhiyuan Enterprise Management Consulting Co., Ltd.

Respondent: Shan Shan Sun

Disputed domain name(s): <chibaidao.com>

1. The Parties and Contested Domain Name

The Complainant is Sichuan Shuxin Zhiyuan Enterprise Management Consulting Co., Ltd., of No. 206, Building 1, No. 12 Tuanjie South Road Qingbaijiang District, Chengdu, Sichuan Province, 610000, China.

The Respondent is Shan Shan Sun, of Shang Hai Shi Jia Ding Ou Chen Xiang Lu 1688 Hao 8Chuang BOu 168, China.

The domain name at issue is <chibaidao.com>, registered by the Respondent with GoDaddy.com, LLC.

2. Procedural History

On 29 November 2023, the Complainant submitted a Complaint to the Hong Kong Office of the Asian Domain Name Dispute Resolution Center (the ADNDRC Hong Kong Office) 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) and the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules) approved by the Internet Corporation for Assigned Names and Numbers (ICANN), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the ADNDRC Supplemental Rules) approved by the ADNDRC.

On 29 November 2023, the ADNDRC Hong Kong Office sent to the Complainant by email an acknowledgement of the receipt of the Complaint and transmitted by email to ICANN and the Registrar, GoDaddy.com, LLC, a request for registrar verification in connection with the disputed domain name.

On 30 November 2023, the Registrar transmitted by email to the ADNDRC Hong Kong Office its verification response, confirming that the Respondent is listed as the registrant and providing the contact details. The Registrar also pointed out that the language of the Registration Agreement is English.

After receiving the Registrar's confirmation, the ADNDRC Hong Kong Office invited the Complainant to revise the Complaint accordingly. On 13 December 2023, the Complainant submitted the revised Complaint in English to the ADNDRC Hong Kong Office.

On 14 December 2023, the ADNDRC notified the Complainant that the Complaint has been administratively confirmed. On 14 December 2023, the ADNDRC Hong Kong Office transmitted the Written Notice of the Complaint to the Respondent, and informed that the Complainant had filed a Complaint against the disputed domain name and the ADNDRC Hong Kong Office sent to the Respondent the Complaint and its attachments through email according to the Rules and the Supplemental Rules. On the same day, the ADNDRC Hong Kong Office notified ICANN and the Registrar, GoDaddy.com, LLC, of the commencement of the proceedings.

The Respondent failed to submit a response within the specified time period. The ADNDRC Hong Kong Office notified the Respondent's default. Since the Respondent did not mention the Panel selection in accordance with the time specified in the Rules, the ADNDRC Supplemental Rules, and the Notification, the ADNDRC Hong Kong Office informed the Complainant and the Respondent that the ADNDRC Hong Kong Office would appoint a one-person panel to proceed to render the decision.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Mr. Yang Anjin, the ADNDRC Hong Kong Office notified the parties on 4 January 2024 that the Panel in this case had been selected, with Mr. Yang Anjin acting as the sole panelist. The Panel determines that the appointment was made in accordance with Paragraph 6 of the Rules and Articles 8 and 9 of the Supplemental Rules.

On 4 January 2024 the Panel received the file from the ADNDRC Hong Kong Office and should render the Decision within 14 days, i.e., on or before 18 January 2024.

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 English, thus the Panel determines English as the language of the proceedings.

3. Factual Background

A. The Complainant

The Complainant in this case is Sichuan Shuxin Zhiyuan Enterprise Management Consulting Co., Ltd.. The registered address is No. 206, Building 1, No. 12 Tuanjie South Road Qingbaijiang District, Chengdu, Sichuan Province, 610000, China. The authorized representative in this case is Beijing Chofn Intellectual Property Agency Co., Ltd..

B. The Respondent

The Respondent in this case is Shan Shan Sun. The registered address is Shang Hai Shi Jia Ding Ou Chen Xiang Lu 1688 Hao 8Chuang BOu 168, China.

The Respondent is the current registrant of the disputed domain name <chibaidao.com>, which was registered on 6 October 2021 subject to auto-renew upon its expiry on 6 October 2024 according to the WHOIS information and the relevant registrar: GoDaddy.com, LLC.

4. Parties' Contentions

A. Complainant

The Complainant, Sichuan Shuxin Zhiyuan Enterprise Management Consulting Co., Ltd., was established in 2021 and responsible for the operation and management of the CHABAIDAO brand.

The first store of the Complainant's core brand "Cha Baidao" opened in Wenjiang District, Chengdu in 2008. In 2009, the Complainant submitted a trademark application for "Cha Baidao". In the following years, the Complainant's store expanded rapidly. In 2020, the Complainant cooperated with Luzhou Laojiao and Dunhuang Museum to develop tea drinks in a joint brand manner. With the strengthening of products and operations, the Complainant have more than 7,000 stores in China so far, covering most cities across the country.

It can be seen that the sale scale of the Complainant has grown very rapidly in the past five years and has accumulated many honors. According to Frost & Sullivan, the Complainant is the fastest-growing company among the top ten new tea and beverage companies in China, with the highest compound annual growth rate of retail sales from 2020 to 2022, ranking third in the retail sales of China's new tea beverage stores in 2022, with a market share of 6.6%.

In terms of finance, the Complainant's performance is also very excellent. On 15 August 2023, the Complainant officially submitted an application for IPO through Hong Kong Stock Exchange.

When searching "CHABAIDAO" through search engine, the search results point to the Complainant and its brand, indicating that CHABAIDAO has established a unique relationship with the Complainant.

(1) The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights

In the disputed domain name chibaidao.com, .com should be ignored when determining confusing similarity, and the distinctive part is chibaidao, which is different from the Complainant's trademark CHABAIDAO by only one letter. This is clearly a case of "typo-squatting", where the disputed domain name is a slight misspelling of a registered trademark in order to divert Internet traffic.

Accordingly, a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered to be confusingly similar to the relevant mark for purposes of the first element. Comparing the pronunciation of the characters, the difference between "chi" and "cha" in Chinese Pinyin pronunciation is very slight.

In summary, The Complainant believes that the disputed domain name can easily lead to consumer confusion.

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

The Complainant searched the trademark database in China and confirmed that no trademark applications were found under the name of the Respondent. The Respondent is not the distributor or partner of the Complainant, and the Complainant has never authorized the Respondent to use the CHABAIDAO trademark or domain name in any form. Obviously, it is impossible for the Respondent to enjoy the relevant name rights for CHABAIDAO.

In summary, the Respondent does not have any rights or legitimate interest regarding the disputed domain name.

(3) The disputed domain name has been registered and is being used in bad faith

The Complainant has prior right to CHABAIDAO brand with high global reputation prior to the registration of the disputed domain name.

If the disputed domain name was registered with good faith, the Respondent should have chosen a domain name that was not confusingly similar to the Complainant's trademark. The Respondent was obliged to search CHABAIDAO and similar marks through the online trademark database before registering the disputed domain name.

It is clear that the Respondent knew or should have known the Complainant's trademark when registering the disputed domain name. However, the Respondent did not avoid the Complainant's trademark.

The disputed domain name is directed to a website related to the Complainant's business, and the content of the website also use the Complainant's CHABAIDAO trademark. Obviously, the Respondent maliciously use the disputed domain name to deliberately imitate the Complainant's CHABAIDAO brand for profit.

B. Respondent

The Respondent did not reply to the Complainant's contentions and made no submission in the proceedings.

5. Discussions and Findings

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 disputed domain name; and
- (iii) Respondent's domain name has been registered and is being used in bad faith.

According to paragraph 4(b) of the Policy, the following circumstances, in particular but without limitation, shall be evidence of registration and use in bad faith:

(i) circumstances indicating that the respondent has registered or the respondent has acquired the domain names primarily for the purpose of selling, renting, or otherwise transferring the domain names 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 domain names; or

(ii) the respondent has registered the domain names 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 domain names primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain names, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on its website or location.

Respondent in Default

The Policy and the Rules provide that “[i]f a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint.” The Panel finds that no exceptional circumstances exist. Accordingly, the Panel will decide the dispute based upon the Complaint and the evidence submitted therewith.

Trademark or Service Mark Rights of the Complainant

According to paragraph 4(a)(i) of the Policy, the Complainant should prove that it has protectable rights in the mark to which it contends the Respondent's domain name is identical or confusingly similar. In general, the Complainant should own the protectable right prior to the registration date of the disputed domain name, namely 6 October 2021, the registration date of the disputed domain name <chibaidao.com> in this case.

The Panel notes that according to the evidence provided, on 20 August 2021, the Complainant obtained the trademark “^{CHA}BAO”, with the Chinese Trademark Reg. No. 31923313 in class 29, from the prior trademark owner 刘洧宏. This trademark was registered on 14 April 2019 and presently valid in China.

The Panel also notes that on 20 August 2021, the Complainant obtained the trademark “茶百道”, with the Chinese Trademark Reg. No. 28429186 in class 29, from the prior trademark owner 刘洧宏. This trademark was registered on 28 November 2018 and presently valid in China. “茶百道” is the corresponding Chinese name of “^{CHA}BAO”.

Hence, the Panel concludes that the Complainant enjoys the prior trademark right over “^{CHA}BAO” and has satisfied the threshold requirement of being eligible to claim rights.

The Panel also notes that the trademark mentioned above has been actively used by the Complainant and its affiliates especially on beverage products.

The disputed domain name ends with “.com”, this suffix only indicates that the domain name is registered under this gTLD, and “.com” is not distinctive without legal significance since the use of a gTLD is technically required to operate a domain name. Thus, the Panel only needs to examine the main part of the disputed domain name “chibaidao”.

The differences between the Complainant’s trademark “^{CHA}_{BAI}DAO” and the main part of the disputed domain name “chibaidao” are as follows: (i) the trademark is constituted of upper case letters while the domain name is in lower case; (ii) “CHA”, “BAI” and “DAO” in the above-mentioned trademark are arranged up and down, while “chibaidao” in the disputed domain name is arranged horizontally; and (iii) the third letter in the above-mentioned trademark is “A”, and the third letter in the disputed domain name is “i”.

In English, each lower case letter has one and only upper case letter correspondingly, which have identical meaning and pronunciation. That is, the disputed domain name using lower case letters, rather than upper case letters, does not distinguish this domain name from the trademark.

Due to the domain name format, for trademarks with characters are arranged up and down, if the trademark is used for the domain name, the characters in the trademark also need to be arranged horizontally and usually with the sequence of top to bottom. That is to say, if the trademark “^{CHA}_{BAI}DAO” is used for a domain name, it can usually be arranged as “CHABAIDAO” and cannot be arranged up and down, which means general consumers have reasonable expectations for the display of trademarks arranged up and down in the domain name, and will naturally expect the horizontal arrangement of these characters. The potential customers will not treat the up and down arrangement of characters in trademarks as an important distinguishing feature.

The identification part of the above trademark and disputed domain name has 9 letters. Except for the difference of the third letter, the other letters and their arrangements are the same. The Panel believes that although the third letter in the above trademark is “A”, while the third letter in the disputed domain name is “i”, such difference is very slight in the overall 9 letters, and the difference in appearance and pronunciation is not obvious. Especially when the Complainant’s trademark “^{CHA}_{BAI}DAO” has a certain popularity, as demonstrated in the evidences, this difference is more likely to be ignored.

The slight difference between the main part of the disputed domain name – “chibaidao.com” and the Complainant’s trademark “^{CHA}_{BAI}DAO” is completely negligible in the case that their appearances, pronunciations and lengths are highly similar, which does nothing to dispel confusing similarity, but instead references the Complainant’s trademark “^{CHA}_{BAI}DAO”, which is used for Complainant’s beverage products.

The Panel therefore finds that the disputed domain names “chibaidao” is confusingly similar to the Complainant’s registered trademarks.

Accordingly, the Complainant has proven the element required by paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests of the Respondent

The Panel accepts that the Complainants has amply demonstrated that the Respondent lacks any rights or legitimate interests, and by virtue of its default, the Respondent has failed to come forward with any evidence to rebut that finding [including the examples listed in paragraph 4(c) of the Policy].

There is similarly no evidence that the Respondent is making a legitimate non-commercial or fair use of the disputed domain names without intent for commercial gain. The relevant content will be further discussed in the “Bad Faith” section below.

Accordingly, the Panel finds that the Complainant has satisfied the second condition under paragraph 4(a)(ii) of the Policy.

C. Bad Faith

The examples of bad faith registration and use set forth in paragraph 4(b) of the Policy are not meant to be exhaustive of all circumstances from which such bad faith may be found. The overriding objective of the Policy is to curb the abusive registration of domain names in circumstances where the registrant seeks to profit from and exploit the trademark of another.

For the reasons discussed under this and the preceding heading, the Panel considers that the Respondent’s conduct in this case constitutes bad faith registration and use of the disputed domain names within the meaning of paragraphs 4(b)(iv) and 4(a)(iii) of the Policy.

The Panel notes that according to the evidence provided, the disputed domain name is used to establish a website, on which the Complainant’s trademark “^{CHA}BAO” and “茶百道” are used as LOGO apparently, to promote similar products of the Complainant. Meanwhile, as the content on the aforementioned website claims to be the Complainant’s official website, the Respondent is suspected to sell counterfeit products of “^{CHA}BAO” beverage products. Obviously, the consumers will be misled to think the products promoted on the website redirected by the disputed domain name are the genuine products from the Complainant or its affiliates.

It can be reasonably deduced that the Respondent clearly was aware of the Complainant and had the Complainant’s “^{CHA}BAO” mark in mind, and deliberately attempted to confuse the consumers through the use of the disputed domain name to seek illegal benefits.

The Respondent does not present any grounds to convince the Panel that it is reasonable for the Respondent to use this word “chibaidao”, with high distinctiveness, in the disputed domain name.

The Panel believes that the Respondent intentionally creates confusion with the Complainant’s trademark by maliciously registering and using the disputed domain names for the purpose of commercial interests, and deliberately lures Internet users to visit its website. Such behavior is clearly malicious and falls within the “bad faith” provision paragraph 4b(iv) of the Policy, namely: your (the Respondent’s) use of the domain name is deliberately trying to attract Internet users access to your (the Respondent’s) website or other online website to obtain commercial interests, and the method is to make your (the Respondent’s) website or URL or the source,

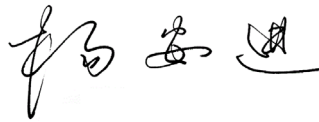
sponsor, affiliation or recognition of products or services on the website or URL similar to the complainant's mark, so as to cause confusion.

6. Decision

Based on the above analysis, the Panel decides that:

The disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and the Respondent has no rights or legitimate interests in respect of the domain names; and the domain names have been registered and is being used in bad faith.

Accordingly, pursuant to paragraph 4(a) of the Policy and 15 of the Rules, the Panel decides that the Disputed domain name “chibaidao.com” should be transferred to the Complainant Sichuan Shuxin Zhiyuan Enterprise Management Consulting Co., Ltd..



Yang Anjin
Sole Panelist

Dated: 9 January 2024