



Asian Domain Name Dispute Resolution Centre

seoul

(Seoul Office)

ADMINISTRATIVE PANEL DECISION

Case No. KR-1500127

Complainant: SUNHAN ID Co., Ltd (Authorized Representative: Heesob Nam)

Respondent: leemyunsun

Disputed Domain Name(s): filerori.com

1. The Parties and Contested Domain Name

The Complainant is SUNHAN ID Co., Ltd. of (Sampyeong-dong Uspace), A-808, 660, Daewangpangyo-ro, Bundang-gu, Seongnam-si, Gyeonggi-do, Korea

The Respondent is leemyunsun of Gugu-dong, Buk-gu, 209, Republic of Korea

The Registrar of the domain name at issue is PDR Ltd. d/b/a of Directiplex, Next to Andheri Subway, Old Nagardas Road, Andheri (East), Mumbai, Maharashtra 400069 India.

2. Procedural History

The Complaint was filed with the Seoul Office of the Asian Domain Name Dispute Resolution Center ("ADNDRC")["Center"] on June 25 2015, seeking for a transfer of the domain name in dispute.

On July 1 2015, the Center sent an email asking for the detailed data of the registrant or the Respondent to the registration organization, and the registration organization. On July 2

2015, the Registrar transmitted by email to the Centre its verification response, advising that Privacy Protection Service is not listed as the registrant and providing the details of the underlying registrant, leemyunsun. The Complainant was notified and given until 13 July 2015 to file an amended Complaint. An amended Complaint was filed on 13 July 2015.

The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (“the Policy”), the Rules of Procedure under the Policy (“the Rules”), and the Centre’s Supplemental Rules. In accordance with the Rules, the Centre formally notified the Respondent of the Complaint. The proceedings commenced on 14 July 2015. In accordance with the Rules, the due date for the Response was 3 August 2015. On August 3 2015, the Respondent didn’t submit the Response.

On August 11 2015, the Center appointed Mr. Jong-Yoon Kim as the Sole Panelist of this case, and with the consent for the appointment, impartiality and independence declared and confirmed by the panelist, the Center, in accordance with paragraph 7 of the Rules, organized the Panel of this case in a legitimate way.

3. Factual background

3.1 The Complainant is a hosting service provider in South Korea, whose principal aim is permitting users to share, by using computers, third parties’ copyrighted works. The service provided by the Complainant is what is so called “web-ard service”. The Complainant launched its business in February 2007, and has provided service since at latest May 2007 through its webpage using its domain names “filenori.com” and “filenori.co.kr” both of which were registered on February 12, 2007.

3.2 The Complainant has eight registered marks to protect its service marks “FILENORI” in the Korea Intellectual Property Office. Among them, a mark “Filenori” and Logo was registered in class 42 on May 11, 2009, and another mark “FILENORI” was registered in class 38 on December 29, 2008. The registration dates of the service marks were earlier than the registration date of the Disputed Domain Name (July 25, 2014).

3.3 “FILENORI” has been used by the Complainant as its service mark and also as its domain name (www.filenori.com and www.filenori.co.kr) since 2007. Visitors of the

Complainant's website is about three hundred thousand (300,000) per day since 2010. According to the Korea Internet & Security Agency, the Complainant was one of the service providers regulated under the "Identity Verification System". As reference for understanding, in Korea, any telecommunication service provider whose daily visitors exceeds one hundred thousand (100,000) per day in average should adopt a so-called "Identity Verification System" regulated by the Korea Internet & Security Agency.

3.4 In April 2015 when the Complainant became aware of the existence of the disputed domain name, the webpage of the disputed domain name was used to direct internet traffic to the website (www.smartfile.co.kr) operated by SmartCrew, one of the Complainant's competitor.

3.5 On April 16, 2015, the Complainant sent a cease and desist letter to SmartCrew demanding to stop such unlawful activities as attracting users to its website using the disputed domain name. SmartCrew did not reply. However, subsequently to the cease and desist letter, the website of the disputed domain name was changed to be connected to the website of the Complainant (www.filenori.com).

3.6 According to the Complainant, the service mark of the Complainant "Filenori" was created by combining the English word "File" and "nori". "nori" is the English transliteration of Korean word "놀이" which has a meaning of "play" in English.

4. Parties' Contentions

A. Complainant

The Complainant asserts that the disputed domain name is confusingly similar to the service marks registered. According to the Complainant, the registration of the disputed domain name is a typical "typo-squatting".

The Complainant claims that the Respondent has no rights or legitimate interests in the disputed domain name because (a) the Complainant has never authorized the Respondent to use the disputed domain name, (b) the Respondent has not been commonly known by

the disputed domain name and (c) the Respondent has not used the domain name for its own products or services.

The Complainant states that the Respondent has registered and used the disputed domain name in bad faith because the Respondent has registered the disputed domain name for the purpose of intentionally attempting to attract, for commercial gain, Internet users to Respondent's website or other on-line location by creating a likelihood of confusion as stated in Para 4(b)(iv) of the UDRP.

The Complainant requests the Panel to direct the registrar to transfer the disputed domain name to the Complainant.

B. Respondent

The Respondent has not filed a Response. Under paragraph 5(e) of the Rules, it is provided that if a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based on the Complaint. As no exceptional circumstances have been brought to the Panel's attention, it proceeds to make the findings below on the basis of the material contained in the Complaint. Furthermore, under paragraph 14(b) of the Rules, when a party defaults in complying with any of the requirements of the Rules, in the absence of exceptional circumstances, the Panel is entitled to draw such inferences therefrom as it considers appropriate.

5. Findings

General

According to para. 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainant must prove that:

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

A. Identical or Confusingly Similar

The Complainant asserts that the disputed domain name is typical typo-squatting under the reason that the dominant part of the disputed domain name differs from the Complainant's service mark only by the change of a single letter – the substitution of the letter “r” for the letter “n”. Considering that the disputed domain name “filerori” was not such a word as could easily be created without referring to the Complainant's service mark, the assertion of the Complainant is persuasive.

Therefore, the Panel conclude that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Policy enumerates several ways in which a respondent may demonstrate rights or legitimate interests:

“Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purpose of paragraph 4(a)(ii):

- (i) before any notice to you of the disputes, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in accordance with a *bona-fide* offering of goods or service; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleading divert consumers or to tarnish the trademark or service mark at issue.”

The Respondent has not provided evidence to prove its rights or legitimate interests on the disputed domain name.

Therefore, the Panel conclude that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The disputed domain name “filerori” was not such a word as could easily be created without referring to the Complainant’s service mark. On the other hand, in April 2015, the disputed domain name was used to be connected to the website of the SmartCrew which is one of the competitors of the Complainant, and subsequently to the cease and desist letter sent by the Complainant to Smart Crew, the website of the disputed domain name was changed to be connected to the website of the Complainant.

Considering the facts, the Panel finds that the Respondent was clearly aware of the Complainant, and has registered and used the disputed domain name with the bad faith intention within the meaning of Paragraph 4(b)(iv) of the Policy.

Therefore, the Panel conclude that the Complainant has satisfied the requirements of paragraph 4(a)(iii) of the Policy.

6. Decision

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

Jong-Yoon Kim

Panelists

Dated: September 1, 2015