



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1701021
Complainant:	AMOREPACIFIC CORPORATION
Respondent:	putianshi youlemidianzishangwuyouxiangongsi
Disputed Domain Name(s):	< amoreschina.com >

1. The Parties and Contested Domain Name

The Complainant is AMOREPACIFIC CORPORATION, of 100, Cheonggyecheon-ro, Jung-gu, Seoul, Korea.

The Respondent is putianshi youlemidianzishangwuyouxiangongsi, of Furong Lu 35hao NANPING Fujian CN.

The domain name at issue is < amoreschina.com >, registered by the Respondent with a Registrar named 1 API GmbH, of Talstrasse 27, 66424 Homburg, Germany.

2. Procedural History

The Complainant filed the Complaint with the Hong Kong Office of Asian Domain Name Dispute Resolution Centre (the “Centre”) and chose to have a sole panelist handle the dispute on 14 September 2017, 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 for Uniform Domain Name Dispute Resolution Policy effective from 31 July 2015 (the Supplemental Rules).

On 14 September 2017, the Centre confirmed the receipt of the Complaint, and transmitted by email to 1 API GmbH (the Registrar of the domain name) a request for registrar verification in connection with the domain name at issue. On 15 September 2017, the said Registrar made the said verification to the Centre, and pointed out that the language used in the Registration Agreement is English.

On 21 September 2017, the Centre confirmed the receipt of case fee from the Complainant. On the same day, the Centre sent the formal Complaint Notice to the Respondent and requested the Respondent to reply within 20 days (on or prior to 11 October 2017) in accordance with the Rules and Supplement Rules, and forwarded the Complaint and Registrar. The procedures for this case formally commenced on 21 September 2017.

On 12 October 2017, the Centre issued a Default Notice and confirmed that the Respondent did not file a formal reply with the Centre, within the required time limit for filing a reply.

On 25 October 2017, the Panel candidate considered that it was properly constituted and submitted the acceptance notice as well as a statement of impartiality and independence. On the same day, the Centre notified both parties and the Panel Mr. Matthew Murphy by email that Mr. Matthew Murphy is to be the sole panelist for arbitrating this case. The Centre then formally transferred the case to the Panelist. It was noted in the communications that if there be no exceptional circumstances, a decision with respect to the Disputed Domain Name was to be rendered by the Panelist on or before 8 November 2017.

3. Factual background

For the Complainant

The Complainant, AMOREPACIFIC CORPORATION, claims that, it is a world-renowned cosmetics company from Korea, founded in 1745, that its subsidiaries operate in dozens of industries, and that they not only have their own research and development centers but also have overseas branches across the world, producing over 4000 types of cosmetic products. According to the TOPEUTY analysis published by the French FASHIONLIFE magazine since 1992, AMOREPACIFIC CORPORATION has been ranked first in the South Korean cosmetics industry and listed as a world top twenty international cosmetics company.

Since the creation of the AMORE brand in 1995, it is claimed that the AMORE brand has developed a good reputation throughout the world, and is associated with good quality products. In order to promote the AMORE brand and to protect its precious intellectual property rights, the Complainant has applied for registration of multiple AMORE trademarks in China since 2011, covering goods included in Class 3, such as: Cake flavourings (essential oils); Household Brightening Chemicals (Pigments) (For Laundry); Laundry starches; Cosmetics; Cosmetics for skin care; Beauty masks; Cleaning preparations; Shampoos; Abrasives; Shampoos for pets etc.

For the Respondent

The Respondent, putianshi youlemidianzishangwuyouxiangongsi, is said to be located at Furong Lu 35hao, NANPING, Fujian Province, 250000, China. The Respondent registered the Disputed Domain Name on 26 May 2015. The Respondent did not file any Reply or other materials with the Centre.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

- i. The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights:

The Complainant claims that it is the owner of the AMORE trademark in China, and that AMORE enjoys a good reputation worldwide, and that the clear majority of consumers are familiar with the Complainant and its AMORE trademark.

The main part of the Disputed Domain Name “amoreschina.com” is “amores” which is identical with AMORE, the Complainant’s registered trademark. The word AMORE is entirely a coined term associated with the Complainant, which has a strong degree of distinctiveness. The Disputed Domain Name registered by the Respondent is identical with the Complainant’s trademark, which can easily lead to consumer confusion. Further, the website listed at the address of the Disputed Domain Name, offers the Complainant’s AMORE brand products, and a significant portion of its site states that it is “AMORE’s Official Flagship Store”. Therefore, the Complainant believes that the Disputed Domain Name and the trademark of the Complainant are confusingly similar.

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

It is claimed that the AMORE trademark was created by the Complainant and has been registered in many countries. AMORE is not only the Complainant's trademark, but also the name of the Complainant. The Disputed Domain Name was registered on 26 May 2015, not only much later than the first use of AMORE trademark used in relation to cosmetic products and services (the date can allegedly be traced back to 1945, however evidence of use going back to that date has not been provided), but also much later than the first day that the AMORE trademark was registered in China (2008), and also far later than the day that AMORE’s branded products gained great reputation and high visibility. It is claimed that the Respondent does not possess any AMORE trademark rights, the Complainant has never permitted the Respondent to use its AMORE trademark or give its authorization to the Respondent to register any domain name with AMORE or any similar word, and that the Respondent is not entitled to any rights in the Disputed Domain Name. In summary, the Respondent does not possess any rights or legitimate interests in the Disputed Domain Name.

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

It is claimed that the Complainant's AMORE brand is well-known and widely associated with the Complainant due to quality maintenance and long-term promotion. Based on the reputation of the Complainant’s AMORE brand, the Respondent should have been aware of the existence of the Complainant's AMORE trademark before registering the Disputed Domain Name. Further, it is claimed that the fact that the Respondent registered the Disputed Domain Name, even though they most likely knew it belonged to a third party, should be evidence of a malicious intention.

In summary, it is claimed that the Disputed Domain Name has been registered and is being used in bad faith.

B. Respondent

The Respondent did not submit any Reply.

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 Complainant has established its right to the "AMORE" trademark by, *inter alia*, submitting a copy of the Trademark Registration Certificate for China Trademark Registration No. 10187951 for "AMORE".

The Disputed Domain Name < amoreschina.com > contains the Complainant's "AMORE" trademark in plural form, with the addition of the word "china". Since "china" is the name where the Respondent is based and a general country name, the "amores" part of the Disputed Domain Name is the most significant part of the domain name. The only difference between it and the Complainant's "AMORE" trademark is that an "s" has been added to it, to take it from AMORE to AMORES, which does not detract from the AMORE trademark itself which is incorporated in the Disputed Domain Name. Furthermore, "AMORE" is the Complainant's trading name. Thus, the Disputed Domain Name is likely to lead people to believe that the Complainant is connected with it, as the addition of "schina" to the Complainant's trademark, does not alleviate the risk of confusion.

In conclusion, the Panel finds that the Disputed Domain Name is confusingly similar with the Complainant's trademark, and the Complainant has satisfied Paragraph 4(a)(i) of the Policy.

B) Rights and Legitimate Interests

As the rightful owner of the AMORE trademark, the Complainant has confirmed that the Respondent does not enjoy any rights to use of the AMORE trademark, the Complainant has never permitted the Respondent use its AMORE trademark in any way, and the Complainant does not have any relationship with the Respondent.

When it comes to determine whether the Respondent has any legal rights and interests in the Disputed Domain Name or not, the mere registration of the Disputed Domain Name by the Respondent itself is not sufficient to prove that it owns legal rights and interests therein; otherwise, "all registrants would have such rights or interests, and no complainant could succeed on a claim of abusive registration" - See: Adobe Systems Incorporated v. Domain OZ, WIPO Case No.: D2000-0057.

The Panel notes that the Respondent failed to prove and there is no evidence indicating that he/she has been commonly known by the Disputed Domain Name, nor has been making a legitimate non-commercial or fair use thereof, as is provided in the Paragraph 4(c) of the Policy. On the contrary, the Complainant pointed out that the Disputed

Domain Name was used to sell cosmetics products marked with the Complainant's AMORE brand, and that placed on the site located at the address of the Disputed Domain Name is a representation that the Respondent is "AMORE's Official Flagship Store" – such acts constitute misrepresentations, bad faith and mislead consumers. Obviously, using the Disputed Domain Name by the Respondent does not count for "bona fide offering of goods or services" given the issues raised above.

In conclusion, the Panel finds that the Complainant has satisfied the Paragraph 4(a)(ii) of the Policy.

C) Bad Faith

In looking at this issue, the following factors have been taken into consideration:

- (1) The word AMORE is a coined word and inherently distinctive;
- (2) Both the core businesses of the Complainant and the Respondent involve the sale of cosmetics;
- (3) The fame of the Complainant and its AMORE trademark in the cosmetics industry seems apparent;
- (4) The significant part of the Disputed Domain Name is the Complainant's AMORE trademark (and its name) with minor non-distinctive additions;
- (5) The way the Disputed Domain Name was used for the sale of the Complainant's AMORE branded cosmetics without authorization from the Complainant; and
- (6) A significant portion of the site located at the address of the Disputed Domain Name, includes a misrepresentation that the Respondent's site is "AMORE's Official Flagship Store".

It is reasonable for the Panel to infer that the Respondent must have been aware of the Complainant and its AMORE trademark prior to registering the Disputed Domain Name based on the the first four of the findings of fact laid out above. The Panel finds that such registration, with prior knowledge of the Complainant's trademark, indicates bad faith registration.

Moreover, such bad faith registration is further supported by the way the Disputed Domain Name has been used as set out five and six above. It is highly likely that consumers have been misled as to the Respondent's authority to operate an AMORE branded cosmetics online shop, as well as the origin of the products offered for sale on that site. Thus, the Panel concludes that the Disputed Domain Name has been used in bad faith as well.

In conclusion, the Panel finds that the Complainant has satisfied the Paragraph 4(a)(iii) of the Policy.

6. Decision

Pursuant to Paragraph 4(i) of the Policy and Article 15 of the Rules, the Panel orders that the disputed domain name < amoreschina.com > be transferred to the Complainant.

Matthew Murphy
Sole Panelist
Dated: 7 November 2017