



(Hong Kong Office)

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	<b>HK-1701037</b>
<b>Complainant:</b>	<b>Janchor Partners Limited</b>
<b>Respondent:</b>	<b>Regina Effiong</b>
<b>Disputed Domain Name:</b>	<b>&lt; janchorpartners.net &gt;</b>

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**1. The Parties and Contested Domain Name**

The complainant is Janchor Partners Limited (“the Complainant”), incorporated in Hong Kong and having its registered business address at Unit 3508, One Exchange Square, Central, Hong Kong, self-represented.

The respondent is Regina Effiong (“the Respondent”) of 25 Oduwa Street, Ikota Villa Estate, Lagos, Nigeria, not represented.

The disputed domain name is < **janchorpartners.net** >, registered with IAPI GmbH (“the Registrar”).

**2. Procedural History**

The Complaint was filed with the Hong Kong office of the Asian Domain Name Dispute Resolution Centre (the “Centre”) on November 7, 2017. That same day the Centre transmitted by email to the Registrar a request for registrar verification in connection with the domain name at issue. On November 10, 2017 the Registrar transmitted by email to the Centre its verification response confirming that the Respondent is listed as the underlying registrant and providing the contact details. At the time the Complaint had been filed the identity of the Respondent had been masked by a privacy service and so the Centre invited the Complainant to amend the Complaint to name the underlying registrant as the Respondent. That amendment was duly made and the Complaint then 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, and the proceedings commenced on November 23, 2017. In accordance with the Rules, the due date for Response was December 13, 2017. No Response was received by the Centre and on December 14, 2017 the Respondent was notified of its default.

The Centre appointed Debrett G. Lyons as panelist in this matter on December 22, 2017. The Panel finds that it was properly constituted and has acted impartially in reaching its conclusion.

### **3. Factual background**

#### **A. For Complainant**

1. The Complainant is an investment management company which does business by reference to the common law trademarks **Janchor** and **Janchor Partners**.
2. The Complainant has not licensed or otherwise permitted the Respondent to use the trademarks or to register or use any domain name incorporating the trademarks.
3. The Complainant petitions the Panel to order transfer the disputed domain name from the Respondent to the Complainant.

#### **B. For Respondent**

4. The Respondent registered the disputed domain name on January 16, 2017.
5. The disputed domain name resolves to a website purporting to offer investment management services.

### **4. Parties' Contentions**

#### **A. Complainant**

The Complainant asserts trademarks rights in **Janchor** and **Janchor Partners** and states that the disputed domain name is either identical or confusingly similar to its trademarks.

The Complainant alleges that the Respondent has no rights or legitimate interest in the disputed domain name because it has no trademark rights; is not known by the same name; and the domain name has not been used other than for a nefarious purpose.

The Complainant alleges that the Respondent registered and used the disputed domain name in bad faith having targeted Complainant's business and its trademarks.

#### **B. Respondent**

Respondent failed to submit a Response in this proceeding.

### **5. Findings**

Paragraph 4(a) of the Policy states that each of three findings must be made in order for the Complainant to prevail:

- i. the Respondent's domain name must be identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

- ii. the Respondent must have no rights or legitimate interests in respect of the domain name; and
- iii. the Respondent's domain name must have been registered and is being used in bad faith.

### **A) Identical / Confusingly Similar**

Paragraph 4(a)(i) of the Policy requires a two-fold enquiry – a threshold investigation into whether a complainant has rights in a trademark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to the trademark.

Paragraph 4(a)(i) of the Policy does not distinguish between registered and unregistered trade mark rights. It is accepted that a trademark registered with a national authority is evidence of trade mark rights for the purposes of the Policy (see, for example, *Mothers Against Drunk Driving v. phix*, FA 174052 (FORUM Sept. 25, 2003)). Equally, it is accepted that rights might be shown in an unregistered (“common law”) trademark as a result of use and reputation (see, for example, *Philip Morris USA Inc. v. ZhangXin*, FA1704001729096 (FORUM June 13, 2017)).

In this case there is no evidence of a national trademark registration. Instead, the Complainant annexes to the Complaint a copy of its Hong Kong business name registration certificate for “Janchor Partners Limited” together with certain media material. It is well understood that, of itself, a business name registration is not a substitute for proof of use and reputation. Taken alone, the Panel would have to give that document very little weight. However, the media articles show that the Complainant was incorporated in June 2009 and began offering investment management services in January 2010 (article from the newspaper, *China Daily*, in 2010). In 2011 the *New York Times* carried an article about the success and rapid growth of the Complainant and later articles from two prominent Australian newspapers, the *Sydney Morning Herald* and the *Australian Financial Review*, underscore the commercial success and growth of the Complainant year-on-year since its inception.

Two observations should be made on this media material. The first is that each article gives much attention to the founder and Chief Investment Officer of the Complainant, John Ho, a prominent financial advisor and investment manager. Nevertheless, it is fair to say that there is in each case a strong connection between Mr Ho and the Complainant. Secondly, references to the Complainant and to its services are, in even measure, references to it under the names “Janchor” and “Janchor Partners” and I find that any reputation attaching to one trademark attaches equally to both.

The Complaint itself makes the following claims:

“Since its launch in January 2010, the Complainant has at all material times provided investment management services under the trade and service marks “Janchor” and “Janchor Partners”. It manages over USD3 billion in assets for global institutional investors, ... The Complainant has established rights and has accrued enormous brand value, trust, and goodwill in the distinctive names, trademarks and service marks “Janchor” and “Janchor Partners” over a period of 8 years with investors, business partners and counterparties.”

The Panel accepts those uncontested assertions and on balance finds that the Complainant has shown common law trade mark rights in **Janchor** and **Janchor Partners**.

For the purposes of comparison the Panel need only take account of the trademark **Janchor Partners**. It has long been held that generic top-level domains, such as “.net” in this case, can be ignored (see, for example, *Am. Int’l Group, Inc. v. Domain Admin. Ltd.*, FA 1106369 (FORUM Dec. 31, 2007) finding that “spaces are impermissible and a generic top-level domain, such as ‘.com,’ ‘.net,’ ‘.biz,’ or ‘.org,’ is required in domain names). The Panel finds the disputed domain name to be legally identical to the trademark **Janchor Partners** and so finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

## **B) Rights and Legitimate Interests**

The Complainant has the burden to establish that the Respondent has no rights or legitimate interest in the disputed domain name. Nevertheless, it is well-settled that the Complainant need only make out a *prima facie* case, after which the onus shifts to the Respondent to rebut such *prima facie* case by demonstrating rights or legitimate interests (see, for example, *Do The Hustle, LLC v. Tropic Web*, D2000 0624 (WIPO Aug. 21, 2000)).

Paragraph 4(c) of the Policy states that 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 rights or legitimate interests to a domain name for purposes of paragraph 4(a)(ii) of the Policy:

- “(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; 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 misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

The Registrar identified the underlying registrant as “**Regina Effiong**” and so there is no support for any conclusion that the Respondent might be commonly known by the disputed domain name. There is no evidence that the Respondent has trademark rights in the disputed domain name, registered or not.

There is no evidence that the disputed domain name has ever been used in connection with a *bona fide* offering of goods or services. To the contrary, the evidence provided with the Complaint shows that the disputed domain name resolves to a website which in style and content mimics if not directly reproduces the Complainant’s website. The resolving website purports to offer investment management services, lists Mr Ho as a principal of the business and gives a Hong Kong address which was in fact the Complainant’s former business address in Hong Kong. The resolving website includes an email address using the disputed domain name to invite enquiries and potential investors.

The Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name and so the onus shifts to the Respondent to show a right or legitimate interest in the name (see, for example, *Kmart of Mich., Inc. v. Cone*, FA 655014 (FORUM Apr. 25, 2006) where the panel found the respondent's attempt to pass itself off as the complainant was not a *bona fide* offering of goods or services pursuant to Policy ¶ 4(c)(i), or a legitimate noncommercial or fair use pursuant to Policy ¶ 4(c)(iii); *Chevron Intellectual Property LLC v. Thomas Webber / Chev Ronoil Recreational Sport Limited*, FA 1661076 (FORUM Mar. 15, 2016) finding that the respondent had failed to provide a *bona fide* offering of goods or services or any legitimate noncommercial or fair use, stating, "Respondent is using an email address to pass themselves off as an affiliate of Complainant. Complainant presents evidence showing that the email address that Respondent has created is used to solicit information and money on false pretences. The disputed domain name is being used to cause the recipients of these emails to mistakenly believe Respondent has a connection with Complainant and is one of the Complainant's affiliates."); *Church Mutual Insurance Company v. Paul Looney*, FA 1668317 (FORUM May 17, 2016) where the panel reasoned that "Respondent is making neither a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use of the <churchrnutual.com> domain name. Respondent registered and uses the disputed domain name and an associated email account to impersonate Complainant and acquire personal or financial information from Complainant or Complainant's customers.").

Absent a Response there is nothing to rebut that *prima facie* case and so the Panel finds that the Respondent has no rights or legitimate interest in the disputed domain name and that the Complainant has satisfied the second element of the Policy.

### **C) Bad Faith**

Paragraph 4(b) of the Policy sets out the circumstances which shall be evidence of the registration and use of a domain name in bad faith. They are:

- (i) circumstances indicating that you have registered or you have 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 your documented out of pocket costs directly related to the domain name; or
- (ii) you have 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 you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website 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 your website or location or of a product or service on your website or location.

The Panel finds that the Respondent's conduct falls squarely under paragraph 4(b)(iv) above. The Panel has already found the domain name to be legally identical to the trademark **Janchor Partners**. Confusion is therefore inevitable and is demonstrated in fact by the evidence accompanying the Complaint showing, *inter alia*, that the well-known financial information publisher, Bloomberg, mistakenly linked the homepage resolving from the disputed domain name to Bloomberg's company profile page for the Complainant. Clearly, the Respondent's primary intention is and was commercial gain. The Panel finds registration and use in bad faith and finds that the Complainant has satisfied the third and final element of the Policy.

## 6. Decision

Having established all three elements required under the ICANN Policy, the Panel concludes that relief shall be GRANTED.

Accordingly, it is Ordered that the <**janchorpartners.net**> domain name be TRANSFERRED from the Respondent to the Complainant.



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Debrett G. Lyons

Panelist

Dated: January 3, 2018