



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1500750
Complainant:	International Finance Centre Management Company Limited
Respondent:	So fresh 100
Disputed Domain Name:	<ifcmallshop.com>

1. The Parties and Contested Domain Name

The Complainant is International Finance Centre Management Company Limited, of Suite 1710, 17/F, One International Finance Centre, 1 Harbour View Street, Hong Kong. The Complainant's authorized representative is Diana Tsang of Mayer Brown JSM, of 16th to 19th Floor, Prince's Building, 10 Chater Road, Central, Hong Kong.

The Respondent is So fresh 100, of the next door of metro super market, putian, fujian, 351100, CN.

The domain name at issue is <ifcmallshop.com> (the "Disputed Domain Name"), registered by the Respondent with 1API GmbH c/o Abuse Department, Talstraße 27, 66424 Homburg, Germany.

2. Procedural History

The Complaint was filed with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre ("the Centre") on 14th April 2015. On 15th April 2015, the Centre notified the Complainant the receipt of its Complaint. The Centre transmitted a request for registrar verification in connection with the Disputed Domain Name to 1API GmbH on the same date. On 16th April 2015, 1API GmbH responded the Centre stating that (i) the Disputed Domain Name was registered with it, (ii) the Respondent was the registrant, (iii) Uniform Domain Name Dispute Resolution Policy applied and (iv) the language of the registration agreement for the Disputed Domain Name was English.

The Centre verified that the Complaint satisfied the formal requirements of the ICANN Uniform Domain Name Dispute Resolution Policy (the "Policy"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules"). In accordance with the Rules, the Centre formally notified the Respondent of the Complaint, and the proceeding commenced on 21st April 2015. According to Article 5 of the Rules, the Respondent was required to submit a Response (the Response Form R and its Annexures) on or before 11th May 2015. The Respondent has not filed a Response in accordance with the Supplemental Rules within the required period of time. On 12th May

2015 the Centre notified the parties the proceeding would be continued on default of the Respondent.

The Centre appointed Mr. Solomon Lam as the sole panelist in this matter on 19th May 2015. Mr. Solomon Lam has confirmed his availability to act as a panelist and his ability to act independently and impartially between the parties to this dispute.

The Panel finds that it was properly constituted and appointed in accordance with the Rules and the Supplemental Rules. Therefore, this Panel has jurisdiction over this domain name dispute.

3. Factual background

The Complainant is the owner and developer of the prominent landmark “International Finance Centre”, abbreviated and branded as “IFC” (the “IFC”). The IFC consists of two towers (One IFC and Two IFC), the IFC Mall, and the Four Seasons Hotel Hong Kong. Completed in 2003, Two IFC is the second tallest building in Hong Kong and the eighteenth tallest skyscraper in the world as of January 2014, with 88 floors above ground, and an architectural height of 415.03 meters tall. Two IFC was constructed by design architect Cesar Pelli & Associates and project architect Rocco Design Limited, and the building is well-known for its obelisk-like structure that is eye-catching and immediately noticeable along Hong Kong’s harbor view. The green features of the towers including double glazing with low-e coating, a seawater cooling system for air-conditioning and a design that maximizes natural light has resulted in the highest possible rating of Excellent by the Hong Kong Building Environmental Assessment Method for Two IFC.

As early as 1998, the Hong Kong Government had announced plans for the construction of the airport railway, Airport Express, to and from Hong Kong’s city centre. The completion of Two IFC completed the IFC development above the Hong Kong Station, linking the offices in the two towers via the IFC Mall. The IFC Mall is a 800,000 sq. ft., 4-storey high shopping mall, with more than 200 retail shops including many luxury-brand names and a wide range of restaurants.

The Disputed Domain Name was registered on 27th December 2014.

4. Parties' Contentions

A. Complainant

The Complainant's contentions can be summarized as follows:

The Complaint is based on the Complainant's rights in the registered trade mark "IFC" (the "Trade Mark"). The Complainant has obtained registrations for or incorporating the Trade Mark in respect of various goods and services in Hong Kong and China since 2003. The Complainant registered the Trade Mark in Hong Kong since 2003 and in China since 2009.

(i) Identical / Confusingly Similar

The Disputed Domain Name (<ifcmallshop.com>) incorporates the Trade Mark in its entirety. The prominent and distinctive part of the Disputed Domain Name is the term "ifc", which is identical to the Trade Mark. The other part of the Disputed Domain Name is "mallshop", which can be easily recognized as the generic and non-distinctive terms "mall" and "shop", does nothing to detract from the confusing similarity between the Disputed Domain Name and the Trade Mark. On the contrary, since the Trade Mark is closely associated with "mall" and "shop", the adoption of "mallshop" in the Disputed Domain Name only increases the likelihood of confusion. Hence, the Disputed Domain Name is identical or confusingly similar to the Trade Mark.

(ii) Rights or Legitimate Interests of the Respondent

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because:-

(1) Unauthorized use

The Complainant has not authorized, licensed or otherwise permitted the Respondent to the use of the IFC Marks or any other name/mark of the Complainant.

(2) The Respondent's name

The Respondent's name on record is "So fresh 100". Hence, the Respondent is not commonly known by the Disputed Domain Name.

(3) Passing off by the Respondent

While the Disputed Domain Name does not currently resolve to an active website, the Disputed Domain Name had previously resolved to a website which was clearly used to pass off the Complainant's business and create confusion (as discussed below). The Complainant submits that the Disputed Domain Name is clearly the Respondent's illegitimate attempt to pass off its business as the Complainant's business and create confusion. Hence, the Respondent cannot be said to have any rights or legitimate interests in respect of the Disputed Domain Name.

(iii) Bad faith

The Complainant submits that the Respondent has registered and used the Disputed Domain Name in bad faith because:-

(1) *The Complainant's reputation in Hong Kong and China*

The Disputed Domain Name was registered on 27th December 2014, when the Complainant has already established a strong reputation in the Trade Mark. Further, in view of the Respondent's (fraudulent) activities conducted with reference to the Disputed Domain Name, the Respondent clearly is well aware of the Complainant and the reputation of the Trade Mark but instead chooses to ride on the Complainant's reputation.

(2) *Intention to cause confusion / passing off*

As mentioned above, the Disputed Domain Name previously resolved to a website which was clearly used to pass off the Complainant's business and create confusion ("Respondent's Website"). Printouts of the Respondent's Website are provided as Annex I of the Complaint. As seen from Annex I, the Respondent's intention to cause confusion is evident:

(a) The Respondent used the Respondent's Website as an online store to sell luxury brand fashion products under the name "*International Finance Centre, Hong Kong – ifc designer shopping*". The Respondent was clearly trying to mislead visitors that its website is affiliated with the IFC, which is known to be a luxury shopping destination especially for luxury brand fashion products.

(b) The Respondent also represented itself as "the ifc mall" and copied the logo



from the Complainant's official website.

(c) On each of the product pages of the Respondent's Website, the Respondent further claimed that "*www.ifcmallshop.com if official shopping site for the heart of Hong Kong and include Hong Kong's tallest office building, a luxury shopping mall and cinema*". This is a blatantly false claim and highlights the Respondent's intention to mislead visitors that its website is affiliated with the IFC.

As a result of the above, the Complainant received an enquiry from the public enquiring whether the Respondent's Website belonged to the Complainant. This is evidence of actual confusion.

(3) *Suspected pattern of hijacking domain names*

The Complainant also received an enquiry from the public enquiring whether the website at <ifcshop.hk> belonged to the Complainant. While the registrant's name for <ifcshop.hk> is different, the email address on record, "buysoonbags@gmail.com", is the same as that of the Respondent's. This gives the Complainant good reason to suspect that the Respondent and other related persons are engaging in a pattern of hijacking domain names (especially those associated with the IFC).

B. Respondent

The Respondent has not filed a Response (the Response Form R and its Annexures) in accordance with the Supplemental Rules.

5. 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 must be 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

On the evidence before the Panel, the Complainant has established rights in the "IFC" mark through its registration and its long use in Hong Kong and China since 2003. The Panel also accepts that the Complainant's rights in the "IFC" mark are well-known in Hong Kong and China.

The Panel considers that the generic top-level domain <.com> shall be disregarded (see e.g. *Pomellato S.p.A. v. Richard Tonetti*, WIPO Case No. D2000-0493). Therefore, the identifiable part of the Disputed Domain Name is "ifcmallshop". The prominent and distinctive part of the Disputed Domain Name is the term "ifc", which is identical to the Complainant's "IFC" mark. The rest of the identifiable part of the Disputed Domain Name is "mallshop". The Panel accepts that it can be easily recognized as the generic and non-distinctive terms "mall" and "shop". Since the Complainant and its registered trade marks are closely associated with "mall" and "shop", the Panel finds that the Disputed Domain Name will cause confusion to the internet user.

Therefore, the Panel finds that Article 4(a)(i) of the Policy is satisfied.

B. Rights and Legitimate Interests

Even the Respondent did not produce any evidence to support its rights and legitimate interests in using the Disputed Domain Name, the Complainant is still required to prove that the Respondent has no rights and legitimate interests (*Neusiedler Aktiengesellschaft v. Kulkarni*, WIPO Case No. D2000-1769).

As mentioned above, the Panel accepts that the Complainant has rights in the "IFC" mark in Hong Kong and China and this pre-dated the registration of the Disputed Domain Name and the Complainant confirmed that it has not authorized, licensed or otherwise permitted the Respondent to the use of the IFC Marks or any other name/mark of the Complainant.

On the other hand, the Respondent's name "So fresh 100" has no connection with the Disputed Domain Name.

Therefore, the Panel is satisfied that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Panel finds that Article 4(a)(ii) of the Policy is satisfied.

C. Bad Faith

The Panel finds that the Respondent must have been aware of the Complainant's prior rights and interests in the Disputed Domain Name in light of the Respondent's Website and it is obvious that the Respondent used the Disputed Domain Name intentionally to attract internet users to the Respondent's Website for commercial gain by creating a likelihood of confusion with the Complainant's mark.

The Respondent used the "IFC" mark and a logo identical to the Complainant's official website in the Respondent's Website. The Respondent used the Respondent's Website as an online store to sell luxury brand fashion products under the name "*International Finance Centre, Hong Kong – ifc designer shopping*". This is the situation stated under Article 4(b)(iv) of the Policy.

Therefore, the Panel finds that the Respondent has registered and used the Disputed Domain Name in bad faith for the purposes of Article 4(a)(iii) of the Policy.

6. Decision

The Panel is satisfied that the Complainant has sufficiently proved the existence of all three elements of Paragraph 4(a) of the Policy. The Panel orders the Disputed Domain Name <ifcmallshop.com> be transferred to the Complainant.



Solomon Lam
Sole Panelist

Dated: 30th May 2015