



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1500732
Complainant:	LEVOVO (BEIJING) LTD.
Respondent:	JRING KER
Disputed Domain Name(s):	<lenovo.city> and <lenovo.wiki>

1. The Parties and Contested Domain Name

The Complainant is Lenovo (Beijing) Ltd, of 6 Chuangye Road, Shangdi, Information Industry Base, Haidian District, People's Republic of China.

The authorized representative of the Complainant is Mingyong Law Office, Zhang Pen, B-2-304, Five Buildings, No 9 Chegongzhuang Street Xicheng District, Beijing 100044 P.R. China.

The Respondent is Jring Ker, of 2 Cardinal Hayes Pl, 10 Floor, Room 202, Kings County, New York 10017, USA.

The domain names at issue are <lenovo.city> and <lenovo.wiki>, registered by Respondent with Go Daddy LLC, of 14455 N Hayden Rd Suite 219, Scottsdale, Arizona 85260,U.S.

2. Procedural History

The Complaint was filed with the Hong Kong Office of the Asian Domain Name Dispute Resolution Center ("Center") on March 26, 2015. The Center transmitted by email to the Registrar, on March 27, 2015, a request for registrar verification in connection with the disputed domain names. On March 28, 2015 the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant, and that the Policy applies to the disputed domain names.

The Complainant by email informed the Center that a copy of the Complaint was served to the Respondent and Registrar as required under paragraph 3 (b) (xii) of the Rules and Article 5 (3) of the Supplemental Rules. The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") and the ADNDRC Rules Uniform Domain Name Dispute Resolution Policy (the "Supplementary Rules").

In accordance with Article 4 of the Rules, and Articles 6 of the Supplemental Rules, the Center notified the Respondent of the Complaint and the commencement of proceedings on April 10, 2015. In accordance with the Rules, paragraph 5(a), the due date for Response was April 30, 2015. The Respondent did not file any response. The Center informed the Complainant of the Respondent's default by email dated May 4, 2015 and that the Center would proceed to appoint a single member panel.

The Center appointed Harini Narayanswamy as the single member panel in this matter on May 5, 2015. The Panel has submitted a Declaration of Impartiality and Independence and a Statement of Acceptance and Impartiality in accordance with the Rule 6 and Articles 8 and 9 of the Supplemental Rules. The Panel received the case documents from the Center on May 5, 2015.

3. Factual background

The Complainant is an internationally known manufacturer of computers and related products with headquarters in Beijing, China and Morrisville, North Carolina, United States of America. The Complainant holds trademark registrations for the LENOVO mark in numerous jurisdictions and has provided details of some of its registered marks. Its website is hosted at www.lenovo.com in around one hundred and thirty languages.

The Respondent is Jring Ker, who is located in New York, United States of America as per the domain name registration record. The Respondent registered the disputed domain name on February 12, 2015 and does not use it in connection with an active website.

Details of some the Complainant's registered trademarks are:

Lenovo trademarks in United State of America (USA)

Mark	Registration No	Application Date	Class	Goods/ Services	Validation Date
LENOVO	3,149,377	2003-2-20	9 37 42	Computer, Note book Computers etc.	2006-9-26 to 2016-9-26
LENOVO	3,226,026	2003-3-24	7	Machine and Machine tools etc.	2007-4-3 to 2017-4-3
LENOVO	3,271,488	2003-3-24	11 16 28 35 38 39 40 41	Apparatus for heating, printed matter paper, toys, message sending, transport, air purification, education etc.	2007-7-31 to 2017-7-31

Lenovo trademarks in European Union (EU)

Mark	Registration No	Application Date	Class	Goods/ Services	Validation Date
Lenovo	003065381	2003-2-24	9 37 42	Computer, Note book Computers etc.	2003-2-24 to 2023-3-24
Lenovo	003707746	2004-3-11	7 11 16 28 35 38 39 40 41	Apparatus for heating, printed matter paper, toys, message sending, transport, air purification, education etc.	2004-3-11 to 2024-3-11

4. Parties' Contentions

A. The Complainant's contentions

- i. The Complainant states Lenovo Beijing Ltd is a China based company, established in 1984, its former name was LEGEND (BEIJING) LTD. The Complainant contends it maintains offices in sixty countries, has 54,000 employees and sells its products in around 160 countries. In the year 2014, the Complainant states it was the world's largest personal computer vendor by unit sales and ranked 286 on the Global Fortune 500 List.
- ii. The Complainant states it has spent substantial time and effort advertising and promoting the LENOVO mark and has acquired enormous goodwill. The Complainant states it became a global partner of the International Olympics Committee in 2004, and sponsored the Turin Winter Olympic Games in 2006 and Beijing Olympic Games, 2008. The Complainant states it was also the sponsor for Shanghai World Expo with computer equipment and system operating services.
- iii. The Complainant states it has been awarded and recognized by many organizations such as "China Famous Brand", by the State Administration of Quality Supervision in 2005 and "2000-2005 most valuable desktop PC" by China Electronic Information Industry Development Research Institute.
- iv. The Complainant claims it has trade name rights for "Lenovo", and under the Paris Convention Article 8, members are required to protect trade names. The Complainant states that China, E.U and U.S.A are members of the Paris Convention and therefore its trade name should be protected. The Complainant states it created the word "Lenovo", and there is no dictionary meaning for

Lenovo. Consumers associate the name LENOVO with the Complainant exclusively, and this proves its prior trade name rights.

- v. The Complainant states it has registered the domain name <lenovo.com> on September 6, 2002 and started using it with a live website since the registration of the domain name.
- vi. The Complainant argues that the disputed domain names are confusingly similar to its trade name, trademark and its domain name. The Complainant states it has been the prior owner of the trademark and the main part of the disputed domain name is “Lenovo”. The domain name extensions “.city” and “.wiki” are launched by ICANN and need not be included in finding similarity of the disputed domain names with the Complainant’s mark and trade name.
- vii. The Complainant states the Respondent does not have any rights in the disputed domain names, as there is no evidence that the Respondent has ever used the trademark LENOVO or any similar marks, nor claimed any civil rights to the mark. Respondent is not affiliated in any way with the Complainant or obtained any authorization from the Complainant to register the disputed domain names.
- viii. An Internet search of the term LENOVO, the Complainant states, shows the name is related to the Complainant. The Respondent is a cyber squatter who has registered the disputed domain names with knowledge of the Complainant’s rights. The disputed domain names are not actively used and are linked to the webpage of <lenovo.city> where the disputed domain names are put up for sale. .
- ix. The Complainant states the disputed domain names have been registered and used in bad faith citing the principle of preponderance of evidence, where the existing evidence indicates the possibility that the Respondent has bad faith outweighs the possibility that he has not.
- x. The Complainant requests for the transfer of the disputed domain name

B. Respondent

The Respondent did not submit any response in these proceedings.

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 first requirement under paragraph 4(a) of the Policy stipulates the Complainant has to establish the disputed domain names are identical or confusingly similar to a trademark or a service mark in which it has rights.

The Panel finds, based on evidence filed by that the Complainant, that it owns numerous registered trademarks for LENOVO. The Complainant’s trademark registration details clearly establish its extensive use of the trademark internationally. Trademark

registration constitutes *prima facie* evidence of rights in a mark; accordingly, it is found the Complainant has proved that it has rights in the LENOVO trademark.

The Panel finds the disputed domain names contain the Complainant's trademark LENOVO in its entirety in the second level of the disputed domain names. This is sufficient to satisfy the requirement that the disputed domain names are confusingly similar to the Complainant's mark.

It is well established that the generic Top Level Domain Name (gTLD), is generally not taken into consideration when evaluating the confusing similarity of the disputed domain names with the mark. This holds good even if the gTLD is a generic term, as in the present case, where the gTLDs of the disputed domain names are “.city “ and “.wiki”.

It is standard practice to disregard the top-level suffix under the confusing similarity test, except in cases where the top-level suffix may itself form part of the relevant trademark. See *Companie Gervais Danone, Société Anonyme des Eaux Minérales d'Evian (SAEME), Société Eaux de Volvic, Nutricia International BV v. Giovanni LaPorta, Yoyo Mail*, WIPO Case No. 2015-0505 (where several domain names resembling trademarks were registered under the “.email” gTLD) and in *Staedtler Mars GmbH & Co. KG v. Maryna Kobeilieva*, WIPO Case No. D2015-0050 (<fimo.club>) where it was found that the combination of a trademark in the second level of a domain name together with a generic term in the first level should not be treated differently from the general rule that the gTLD is considered inconsequential in finding confusing similarity between the domain name and trademark.

The Panel finds that the disputed domain names, registered by the Respondent are virtually identical and confusingly similar to a mark in which the Complainant has rights. Accordingly the Complainant is found to have successfully established the first requirement under paragraph 4 (a) the Policy.

B) Rights and Legitimate Interests

The second element under paragraph 4(a) of the Policy requires the Complainant to make a *prima facie* case that the Respondent lacks rights and legitimate interests in the disputed domain names. Once the Complainant has made a *prima facie* showing that the Respondent lack rights, the Respondent has the opportunity to rebut the Complainant's contentions and demonstrate any rights in or legitimate interests in the disputed domain name.

The Complainant has emphasized that the Respondent has used the trademark in the disputed domain names without seeking any authorization from the Complainant. The Respondent is not commonly known by the disputed domain names and has no trademark or service mark rights in LENOVO or any similar variant of the mark.

The Panel finds, the evidence on record shows the Respondent's domain names resolve to an inactive web page and there is nothing that indicates the disputed domain names are used for any *bona fide* purposes. The Respondent's name is Jring Ker and there is no material on record that indicates that the Respondent is known by the disputed domain names. As the Respondent has not participated in these proceedings, and rebutted the Complainant's submissions that the Respondent has been given no authorization to use the Complainant's mark, the Complainant's submissions remain unchallenged.

On the basis of the unchallenged submissions and evidence filed by the Complainant, it is found that the Complainant has put forward a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain names. Accordingly the Panel finds the Complainant has fulfilled the second element under paragraph 4 (a) of the Policy.

C) Bad Faith

The third element under paragraph 4 (a) of the Policy requires the Complainant to establish the disputed domain names have been registered in bad faith and are being used in bad faith.

The Panel considers the following circumstances in the present case are relevant to the finding bad faith registration: The Complainant is clearly the creator of the LENOVO trademark and has built a substantial reputation by virtue of its extensive use worldwide. The trademark is registered in a number of countries, which proves the world famous nature of the mark. The Respondent ought to have known of the Complainant's mark and registered the disputed domain names for its trademark value. Public are likely to be confused and deceived by the use of the mark by the Respondent, as the Respondent has no connection with the Complainant and has no legitimate rights to use the Complainant's mark.

The Complainant has argued that passive holding of the disputed domain names show bad faith use for purposes of the Policy. The Complainant has further argued that there is no contemplated good faith use, as the domain names are not susceptible to be used in a generic manner, because the Complainant's mark is coined and not a generic word with any meaning, and "Lenovo" reflects only the Complainant's proprietary trade name or trademark.

UDRP panels have consistently been of the view that lack of active use of a domain name does not prevent a finding of bad faith use. This is more so, if the trademark is widely known and is a reputed trademark See *Telstra Corporation Limited v. Nuclear Marshmallows* WIPO Case No D2000-0003, and see *Advance Magazine Publishers Inc. and Les Publications Condé Nast. S.A v. China Vogue.com*, WIPO Case 2005-0615 and where there can be no conceivable good faith use of the mark, See *Jaguar Land Rover Limited v. Damasco Inc., Ezio Damasco*, WIPO Case No. D2015-0297 (<jaguarlandroverlimited.com>), it was found that even if there is no positive action by the respondent in relation to the domain name, passive holding of the domain name is considered evidence of bad faith registration and use under paragraph 4 (a) (iii) of the Policy.

In *Cellular One Group v. Paul Brien*, WIPO Case No. D2000-0028 bad faith use was found where the domain name contained in its entirety the trademark of the complainant and the mark in question was a coined word, that has been used for a substantial time before registration of the domain name. It was found that, under such circumstances, there is no basis for good faith use of the domain name.

While the Panel does not consider lack of use of a domain name in and of itself demonstrative of bad faith, however, when there appears to be no *bona fide* reason to use the mark in the domain name except for the value of the trademark and the unfair advantage the respondent may derive by owning the well known mark online, bad faith registration and use can be found. The factors and circumstances that a panel would

generally consider in finding bad faith passive use of a domain name are: the prior use of the mark by a complainant, the length of use of the trademark, whether the mark is a well known mark, whether the mark is a coined word exclusively associated with the owner of the trademark, no plausible legitimate use of the domain name and whether respondent's domain name registration with the mark, would result in a likelihood of damage, loss of reputation, dilution to a complainant's mark and the deception to consumers and the public.

The following circumstances in the present case are relevant to the finding bad faith use. The disputed domain names are associated with a website that shows no signs of active use. Further, there appears to be no plausible legitimate use of the domain names by the Respondent due to the well-known nature of the Complainant's mark and there is evidence that the Respondent has advertised the disputed domain names for sale, which reinforces the Complainant's submission that the Respondent is a cyber squatter.

The Panel finds, based on all that has been discussed, the circumstances in the present case show that the Respondent has registered and is using the disputed domain names in bad faith. In conclusion the Panel finds that the Complainant has established the third element under paragraph 4 (a) of the Policy.

6. Decision

It is ordered that the domain names <lenovo.city> and <lenovo.wiki> be transferred to the Complainant.



Harini Narayanswamy
Panelist

Dated: May 15, 2015