



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1400579
Complainant:	Dreamworks Animation L.L.C.
Respondent:	Weiping Zheng
Disputed Domain Name:	<dinotrux.com>

1. The Parties and Contested Domain Name

The Complainant is Dreamworks Animation L.L.C., of 1000 Flower Street, Glendale, California, United States of America.

The Respondent is Weiping Zheng, of No. 12, Xingqian Road, Jimei Dist., Xiamen, Fujian 361000, China.

The domain name at issue is <dinotrux.com>, registered by Respondent with Name.Com, Inc., of 2500 East Second Avenue, Second Floor, Denver, Colorado 80206, United States of America (“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 February 28, 2014. On March 1, 2014 the Registrar confirmed that the domain name is registered with it and that the Respondent is the registrant of domain name. The Registrar also provided the Respondent’s contact details, confirmed that the ICANN Uniform Dispute Resolution Policy (“the Policy”) applies and that the language of the registration agreement is English. At the request of the Centre, the Complainant made an amendment to the Complaint on March 7, 2014. That day the Centre formally notified the Respondent of the amended Complaint and that the Respondent had until March 27, 2014 to file a Response. No Response was received.

The Panel is satisfied that, in accordance with the ICANN Uniform Dispute Resolution Rules (“the Rules”), paragraphs 2(a) and 4(a), the Centre employed reasonably available means calculated to achieve actual notice of the Complaint to the Respondent and the proceedings commenced on March 7, 2014. In accordance with the Rules, paragraph 5(a), the due date for Response was March 27, 2014. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 28, 2014.

The Center appointed Alan L. Limbury as the sole panelist in this matter on February 4, 2013. The Panel finds that it was properly constituted. The Panel informed the Centre on February 4, 2014 that he was in a position to act independently and impartially between the parties

3. Factual background

Established in 1995, the Complainant produces animated feature films, many of which have won awards and many of which have been screened in China. In 2009 the Complainant obtained the exclusive rights to produce an animated feature film based on the book “Dinotrux”, created by US cartoonist Chris Gall. The Complainant’s acquisition of those rights was attended by much publicity, including in China. The book was published in May 2012.

The Complainant has registered the trademark DINOTRUX in China in various classes, the earliest such registration being dated August 14, 2013, No. 10874433 in International Class 9.

The domain name was registered on December 11, 2013. Since registration it has not resolved to a website.

4. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

- i. The domain name is identical to the Complainant’s DINOTRUX mark.
- ii. The Respondent has no rights or legitimate interests in the domain name. He is not employed by or associated with the Complainant, which has never authorized the Respondent to use the DINOTRUX mark in the domain name. “Dinotrux” is a fictional name created by Chris Gall and has no inherent meaning. The Respondent is a natural person named Weipeng Zheng.
- iii. The Respondent registered and is using the domain name in bad faith. Because of the publicity, including in China, attendant upon the Complainant’s acquisition of the rights to make an animated feature film of the “Dinotrux” book, the Respondent is highly likely to have been aware of that book and of the Complainant’s rights in relation to it when applying to register the domain name. Details of the Complainant’s DINOTRUX mark had been published in the *PRC Trademark Gazette* in May, 2013.
- iv. In January, 2014, in response to an anonymous enquiry on behalf of the Complainant regarding the possible acquisition of the domain name, the Respondent said he would charge RMB 150,000 (approximately USD 24,800) to an interested purchaser, a sum clearly in excess of his out-of-pocket expenses directly related to the domain name.
- v. According to WHOIS data available on the domaintools.com website, the Respondent has registered more than 1,000 domain names. Several of these copy or imitate famous trademarks and are publicly offered for sale.
- vi. In sum, the Respondent registered the domain name primarily for the purpose of selling, renting or otherwise transferring it to the Complainant or to a competitor of the Complainant for a sum in excess of his direct costs.

- vii. Further, the Respondent registered the domain name in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain name and has engaged in a pattern of such conduct.

B. Respondent

As mentioned, there was no Response.

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 respondent is not obliged to participate in a proceeding under the Policy but if it fails to do so, asserted facts may be taken as true and reasonable inferences may be drawn from the information provided by the complainant: *Reuters Limited v. Global Net 2000, Inc.*, WIPO Case No. D2000-0441. See also *Microsoft Corporation v. Freak Films Oy*, WIPO Case No. D2003-0109; *SSL International plc v. Mark Freeman*, WIPO Case No. D2000-1080 and *Alta Vista Company v. Grandtotal Finances Limited et al.*, WIPO Case No. D2000-0848.

A) Identical / Confusingly Similar

The specific top level of the domain name “.com” is irrelevant for the purpose of determining whether the domain name is identical or confusingly similar: *Magnum Piering, Inc. v. The Mudjacks and Garwood S. Wilson, Sr.*, WIPO Case No. D2000-1525; *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. D2000-0429.

The domain name is clearly identical to the Complainant's DINOTRUX mark. The Complainant has established this element.

B) Rights and Legitimate Interests

The Panel finds that the DINOTRUX mark is distinctive and well known. The Complainant's assertions are sufficient to constitute a *prima facie* showing of absence of rights or legitimate interest in the domain name on the part of the Respondent. The evidentiary burden therefore shifts to the Respondent to show by concrete evidence that it does have rights or legitimate interests in that name: *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. D2000-0624 and the cases there cited. The Respondent has made no attempt to do so.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the domain name. The Complainant has established this element.

C) Bad Faith

Paragraph 4(b) of the Policy sets out four illustrative circumstances, which, though not exclusive, shall be evidence of the registration and use of the domain name in bad faith for purposes of paragraph 4(a)(iii) of the Policy. The Complainant invokes the following two such circumstances:

- (i) circumstances indicating that the Respondent has registered or 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 the Respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) the Respondent has 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 the Respondent has engaged in a pattern of such conduct.

The publicity in China concerning the Complainant's acquisition of the right to make an animated film of the "Dinotrux" book makes it likely that the Respondent was aware of the Complainant's DINOTRUX mark when he registered the domain name. Despite the fact that the first enquiry to purchase the domain name was made anonymously by the Complainant, the surrounding circumstances, including:

- the distinctive character of the domain name;
- the absence of any web site associated with the domain name or other use for any legitimate purpose;
- the likelihood that any use of the domain name in trade would infringe the Complainant's mark; and
- the price attached by the Respondent to any sale of the domain name, being so much in excess of registration costs,

make it likely that the domain name was registered primarily for the purpose of selling the registration to the Complainant for valuable consideration in excess of out-of-pocket expenses directly related to the domain name, and are thus evidence of registration and use in bad faith under paragraph 4(b)(i) of the Policy.

The registration and offering for sale by the Respondent of other domain names incorporating the well-known trademarks of others lead to the conclusion that the Respondent registered the domain name in order to prevent the Complainant from reflecting its DINOTRUX mark in a corresponding domain name and that the Respondent has engaged in a pattern of such conduct, and are thus evidence of registration and use in bad faith under paragraph 4(b)(ii) of the Policy.

Accordingly the Panel finds that the domain name has been registered and is being used in bad faith. The Complainant has established this element.

6. Decision

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

Alan L. Limbury

Alan L. Limbury
Panelist

Dated: April 14, 2014