



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case Number:	HK-2001319
Complainant:	First Pacific Company Limited
Respondent:	Harold Sokyrka
Disputed Domain Name:	<faifirstpacificinsurance.com>

1. The Parties and Contested Domain Name

The Complainant is First Pacific Company Limited, of Hong Kong Special Administrative Region of the People's Republic of China.

The Respondent is Harold Sokyrka, of London, United Kingdom.

The domain name at issue is <faifirstpacificinsurance.com>, registered by the Respondent with OpenTLD B.V. of Amsterdam, Netherlands (the registrar).

2. Procedural History

The Complaint was filed with the Hong Kong office of the Asian Domain Name Dispute Resolution Centre (the "ADNDRC-HK") on 18th February 2020. On July 18th February 2020 the ADNDRC-HK transmitted by email to the registrar a request for registrar verification in connection with the disputed domain name (<faifirstpacificinsurance.com>). No response was received from the registrar and the ADNDRC-HK wrote an email to the Complainant on 26th February 2020, to enquire about the contact details of the registrar. On the 26th February 2020, the Complainant provided an alternative email contact for the ADNDRC-HK to contact the registrar.

On 27th February 2019, the registrar transmitted by email to the ADNDRC-HK its verification response disclosing registrant information for the disputed domain name which differed from the named Respondent information in the Complaint. The ADNDRC-HK sent an email communication to the Complainant on 27th February 2020, providing the registrant information disclosed by the registrar, and invited the Complainant to submit an amended Complaint. Through an email of 28th February 2020, the Complainant filed an amended Complaint. The ADNDRC-HK verified that the Complaint satisfies the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “**Policy**”), the Rules of Procedure under the Policy (the “**Rules**”) and the ADNDRC-HK’s Supplemental Rules (the “**Supplemental Rules**”).

In accordance with the Rules, the ADNDRC-HK formally notified the Respondent of the Complaint and the proceedings commenced on 28th February 2020. In accordance with the Rules, the due date for the Response was 19th March 2020. No Response was received by the ADNDRC-HK from the Respondent.

The ADNDRC-HK appointed Dr. Christopher To as the Panelist in this matter on 7th April 2020. The Panel finds that it was properly constituted and has acted impartially in reaching its conclusion.

3. Factual background

A. The Complainant

The Complainant is a Hong Kong based investment management and holding company listed on the Hong Kong Stock Exchange with interests relating to consumer food products, infrastructure, natural resources and telecommunications and incorporated in Bermuda. The Complainant is the owner of numerous registrations in Hong Kong, People’s Republic of China, Taiwan, Philippines and Indonesia for the trade mark "FIRST PACIFIC" (the “Trade Mark”), the earliest dating from 15th April 1992. The Complainant also operates a website at www.firstpacific.com which forms the integral part of its business and promotion.

B. The Respondent

According to the Complaint and the registrar's email of 27th February 2020, the Respondent is an individual (Harold Sokyrka) whose address is London, United Kingdom.

C. The Disputed Domain Name

According to the registrar's email of 27th February 2020, the disputed domain name (<faifirstpacificinsurance.com>) was registered on 30th April 2019.

4. Parties' Contentions

A. Complainant

The Complainant made the following submissions in the Complaint.

The history of the Complainant dates back to 1981 when First Pacific Finance Limited was founded as a financial services provider in Hong Kong. The Complainant further expanded its portfolio by investing in marketing and distribution, banking, investment banking and securities brokerage, real estate brokerage and investment, and telecommunications through First Pacific International Limited ("FPIL") and First Pacific Holdings Limited ("FPHL"), both of which were listed on The Stock Exchange of Hong Kong as early as 1983. In 1988, FPIL and FPHL merged to form First Pacific Company Limited, a listed Hong Kong company.

In the 1990's, the Complainant enhanced its portfolio and developed its businesses in four core sectors: marketing and distribution, telecommunications, property and banking and had operations in 50 countries around the world of which 17 were in the Asia-Pacific. In 1998, the Complainant restructured and refocused in Asia. Currently, the Complainant's operations are located in Asia-Pacific with principal business interests relating to consumer food products, infrastructure, natural resources and telecommunications. Further, First Pacific Group companies now has approximately 110,000 employees.

Through extensive transactions, promotion and marketing, not only has the Complainant made substantial development in its business, it has also built up and acquired significant reputation in the First Pacific Marks in Hong Kong and around the world.

The Complainant is not affiliated with any company named as “FAI First Pacific Insurance”, nor has it licensed or authorized any individual or entity to register the disputed domain name which incorporates the Complainant’s Trade Mark.

The disputed domain name is confusingly similar to the Trade Mark. The Respondent has no rights or legitimate interests in respect of the disputed domain name.

The disputed domain name has been registered and used in bad faith. It has been used by the Respondent for the purpose of linking it to the Complainant’s official website www.firstpacific.com, which the Complainant has not authorized, thus misleading members of the public into believing that the Respondent is somehow related to or associated with the Complainant thus benefiting unfairly from the reputation of the Complainant and its Trade Mark.

B. Respondent

The Respondent did not file a response to the ADNDRC-HK within the required timeframe stipulated by the ADNDRC-HK in its email of 28 February 2020 and as such has not contested the allegations of the Complaint and is in default.

5. Findings

Having considered all the documentary evidence before me, and the Respondent’s non-participation in these proceedings after being afforded every opportunity to do so in accordance with Paragraph 5(f) of the Rules, the Panelist is of the view that it should proceed to decide on the disputed domain name, namely <faifirstpacificinsurance.com> based upon the Complaint and evidence adduced by the Complainant.

Paragraph 5(f) of the Rules stipulates that:-

“If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint.”

Whereas paragraph 10(d) of the Rules states that:

“The Panel shall determine the admissibility, relevance, materiality and weight of the evidence.”

Paragraph 11(a) of the Rules provides that:

“Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.”

In the present case the Complainant and Respondent had not agreed to use a particular language for these proceedings. As the registration agreement is in the English language as confirmed by the registrar in its email of 27th February 2020, then in accordance with Paragraph 11(a) of the Rules, the language of the administrative proceedings shall be in the English language. In these circumstances given that the Complaint is drafted in the English language which is in line with the registration agreement and that the Respondent has failed to communicate on the matter, the Panelist considers that it would be appropriate (and without prejudice to any of the parties) for the present proceedings to be conducted in the English language.

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 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.

The Panelist would like to state that the Respondent’s non-participation (i.e. default) would not by itself mean that the Complainant claims are deemed to have prevailed. In fact the Respondent’s default is not necessarily an admission that the Complainant’s claims are true. The burden of proof still rests with the Complainant to establish the three elements

contained with Paragraph 4(a) of the Policy as stated above by a preponderance of the evidence.

A. Identical / Confusingly Similar

The Complainant contends that the disputed domain name is confusing similar to the Complainant's Trade Mark.

The threshold test for confusing similarity under the Policy involves a comparison between the relevant marks (i.e., trade mark or service mark) belonging to the Complainant and the disputed domain name to ascertain the presence of the Trade Mark in the disputed domain name. In order to satisfy this test, the relevant marks would generally need to be recognizable as such within the disputed domain name, with the addition of merely descriptive, common or geographical wording typically being regarded as insufficient to prevent a finding of confusing similarity.

On a side-by-side comparison of the disputed domain name and the textual components of the Complainant's Trade Mark, the Trade Mark is recognizable within the disputed domain name. In fact the disputed domain name incorporates the entirety of the Trade Mark sandwiched between the descriptive and non-distinctive words "*fai*" and "*insurance*".

The Panelist finds that the Complainant has rights in the Trade Mark acquired through use and registration.

The Panelist agrees with the Complainant contentions that the disputed domain name is the same and is a central and distinguishable part of the Complainant's registered Trade Mark "First Pacific". In saying so, the Panelist is also of the opinion that the addition of "*fai*" and "*insurance*" does nothing to distinguish it from the Complainant's Trade Mark of "First Pacific" but rather increases the likelihood of confusion. As a result, the Panelist further concurs with the Complainant's stance that the disputed domain name can easily mislead members of the public into believing that the disputed domain name is owed or operated by the Complainant, or that the Respondent has a relationship or association with the Complainant in some way or form.

As stated previously, the Respondent has not contested the allegations of the Complaint and is in default.

For the foregoing reasons, the Panelist concludes that the Complainant has discharged the burden of proof to establish the elements of identical and confusingly similar trade mark or service mark in accordance with Paragraph 4(a) (i) of the Policy.

B. Rights and Legitimate Interests

The burden of proof shifts to the Respondent once the Complainant provides prima facie evidence showing that the Respondent lacks legitimate rights or interests.

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances, any of which is sufficient to demonstrate that a Respondent has rights or legitimate interests in the disputed domain name:

- (i) before any notice to the Respondent of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services; or
- (ii) the Respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name, even if the Respondent has acquired no trade mark or service mark rights; or
- (iii) the Respondent is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

There is no evidence that the Complainant has authorized, licensed, or permitted the Respondent to register or use the disputed domain name or to use the Trade Mark. The Complainant has prior rights in the Trade Mark which precede the Respondent's registration of the disputed domain name by twenty-seven (27) years.

The Panelist finds on the record that there is therefore a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name, and the burden shifts to the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that it has acquired any trade mark rights in respect of the disputed domain name or that the disputed domain name has been used in connection with a bona fide offering of goods or services. To the contrary, the evidence shows that when one accesses the disputed domain name, it diverts to the Complainant's official website www.firstpacific.com, which the Complainant has not authorized.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain name.

There has been no evidence adduced to show that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name.

The Complainant has in a credible way alleged that the Respondent has no rights or legitimate interests in respect of the disputed domain name whereas the Respondent has failed to show that the Respondent has any rights or legitimate interests in respect of the disputed domain name. This ineffectively entitles the Panelist to infer that the Respondent has no rights or legitimate interests in respect of the disputed domain name at issue.

To sum up, the Panelist is satisfied on the totality of the evidence before it that the Respondent's use of the disputed domain name is not in connection with a bona fide offering of goods or services. The Respondent has not been authorized or licensed by the Complainant to use its Trade Mark. Nor is there any evidence that the Respondent has been commonly known by the disputed domain name or similar name. Neither is there evidence that the Respondent has been making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the Trade Mark of the Complainant. In fact the use of the disputed domain name in connection with a website that creates a misleading impression of association with the Complainant, does not give rise to any rights or legitimate interests in the disputed domain name on the part of the Respondent.

In the circumstances, the Panelist concludes that, on a balance of probabilities, the Complainant has discharged its burden of proof to show that the Respondent has no rights or legitimate interests in respect of the disputed domain name pursuant to paragraph 4(a) (ii) of the Policy.

C. Bad Faith

Paragraph 4(b) of the Policy sets out four (4) factors in which the Panelist shall take into consideration in determining whether the Respondent has registered and used the disputed domain name in bad faith. Either one (1) of these four (4) factors are evident would amount to registration and use in bad faith on the part of the Respondent.

Bad faith cannot be presumed, but once the Complainant has presented some evidence to establish a prima facie case, the onus then shifts onto the Respondent to either justify or explain its business conduct.

The disputed domain name is identical in substance to the Complainant's "First Pacific" mark (leaving aside the word "fai" and "insurance" as explained above) thus demonstrating that the Respondent's sole purpose is to pass off as the Complainant. Through such a behavior the Respondent attempts to confuse/mislead members of the public into believing that the goods/services offered on the disputed domain name website are somewhat associated with and endorsed by the Complainant thus creating a likelihood of confusion with the intention to attract internet users for commercial gain. As such the Panelist contends that the Respondent's bad faith is evident by Paragraph 4(b) (iv) of the Policy:

"(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site 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 web site or location or of a product or service on your web site or location."

In the present case, the evidence submitted by the Complainant clearly shows that the Respondent has an intention to mislead and/or to deceive internet users into believing that the disputed domain name is that of the Complainant by registering the disputed domain name on 30th April 2019.

The Panelist also notes that the Complainant rights in the Trade Mark predate the Respondent's registration of the disputed domain name. The Panelist finds that, given the fact that the Complainant's Trade Mark is widely known, it is overwhelmingly likely that the Respondent, at the time of registration of the domain name and thereafter, was aware that it was infringing the Complainant's Trade Mark. Therefore the Panelist concludes that the Respondent has registered the disputed domain name and is using the disputed domain

name in order to attract internet users to the Respondent's website for commercial gain, thereby creating a likelihood of confusion for the purposes of paragraph 4(b) (iv) of the Policy. The Panelist therefore finds the requisite element of bad faith has been satisfied under paragraph 4(b) (iv) of the Policy.

For the foregoing reasons, the Panel concludes that the Complainant has discharged the burden of proof to establish that the Respondent registered and used the disputed domain name in bad faith in accordance with Paragraph 4(a) (iii) of the Policy.

6. Reverse Domain Name Hijacking

Paragraph 15(e) of the Rules provides that, if “...after considering the submissions the panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding”. Reverse Domain Name Hijacking is defined under the Rules as “...using the Policy in bad faith to attempt to deprive a registered domain-name holder of a domain name”.

In light of the conflicting decisions as to whether it is necessary for a Complainant to establish both bad faith registration and bad faith use, the Panel does not find this to be a case of Reverse Domain Name Hijacking.

7. Decision

For the foregoing reasons and in accordance with Paragraph 4(a) of the Policy and Paragraph 15 of the Rules, the Panelist is satisfied that the Complainant has sufficiently proved the existence of all three elements pursuant to Paragraph 4(a) of the Policy. The Panel orders that the disputed domain name <faifirstpacificinsurance.com> be transferred to the Complainant.



Dr. Christopher To
Panelist

Dated: 20th April 2020