



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2001371
Complainant:	FIL Limited
Respondent:	林妃龙
Disputed Domain Name(s):	< fudazq.com >

1. The Parties and Contested Domain Name

The Complainant is FIL Limited, of Pembroke Hall, 42 Crow Lane, Pembroke Hm 19, P.O. Box Hm 670, Hamilton Hmcx, Bermuda.

The Respondent is 林妃龙, of 广东深圳市南山区登良路汉京国际大厦.

The domain name at issue is <fudazq.com>, registered by Respondent with Alibaba Cloud Computing (Beijing) Co., Ltd. of DomainAbuse@service.aliyun.com; +86.95187.

2. Procedural History

On 24 June 2020, the Complainant filed a Complaint in this matter with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (“ADNDRC-HK”). On 29 June 2020, ADNDRC-HK confirmed receipt of the Complaint and requested the Complainant to submit the case filing fee.

On 26 June 2020, the ADNDRC-HK notified Alibaba Cloud Computing (Beijing) Co., Ltd. (“Registrar”) of the Disputed Domain Name of the proceedings by email.

On 29 June 2020, the Registrar acknowledged the email of ADNDRC-HK confirming that the Disputed Domain Name is registered with the Registrar, that 林妃龙 is the holder of the Disputed Domain Name, that the Internet Corporation for Assigned Names and Numbers Uniform Domain Name Dispute Resolution Policy (“the Policy”) is applicable to the Disputed Domain Name, the language of the Disputed Domain Name is Chinese as provided by the WHOIS information in relation to the Disputed Domain Name and confirmed that the Disputed Domain Name is under Registrar lock status.

On 27 July 2020, the ADNDRC-HK sent a Written Notice of Complaint (“Notification”), together with the Complaint, to the email address of the Respondent’s nominated registrant contact for the Disputed Domain Name (as recorded in the WHOIS database). The

Notification gave the respondent twenty (20) calendar days to file a Response (i.e. on or before 16 August 2020).

The Panel comprising of Dr. Shahla F. Ali as a single panelist was appointed by the ADRDRC-HK on 18 August 2020. The papers pertaining to the case were delivered to the Panel by email on the same day.

3. Factual background

According to the documents submitted by the Complainant, FIL Limited, is the owner of a number of trademark registrations for the "富达" trademark and other related trademarks ("FUDA Marks") in various jurisdictions worldwide.

The transliteration of Chinese language mark "富达" is FUDA in English. The Complainant brings this action to protect its rights in the FUDA Marks. The Complainant's registered FUDA Marks on which the Complaint is based are listed below.

Hong Kong

Mark	Class	Registration Number	Registration Date	Specification of Goods or Services
	36	199702632	06/07/1995	Financial management and planning; share underwriting; brokerage services
	36	1999B13347	21/08/1998	
A. 富達豐盛易 B. 富达丰盛易	36	301169550	28/07/2008	Financial services; investment advisory services; securities brokerage and services related thereto; securities underwriting; provision of information, advice and consultancy relating to securities, finance and investments; interactive database information services relating to securities, finance and investments securities brokerage and services related thereto; securities underwriting; provision of information, advice and consultancy relating to securities; interactive database information services relating to securities
A. 富達儲蓄易 B. 富达储蓄易	36	301169578	28/07/2008	
A. 富達投資易 B. 富达投资易	36	301169596	28/07/2008	
A. 富達資產管理 B. 富达资产管理	36	301733788	12/10/2010	
A.  Fidelity 富達 B.  Fidelity 富達	36	302023145	02/09/2011	
C.  Fidelity 富達 D.  Fidelity 富達				

•China

Mark	Class	Registration Number	Registration Date	Specification of Goods or Services
富达	36	9949149	14-12-2015	provision of information, advice and consultancy relating to securities, finance and investments;
富达投资	36	7974781	14-07-2014	interactive database information services relating to securities, finance and investments; brokerage; securities brokerage
	36	7974780	14-11-2015	Financial services; provision of information, advice and consultancy relating to securities, finance and investments; interactive database information services relating to securities, finance and investments; brokerage
	36	19078679	07-06-2017	Financial services; investment advisory services; brokerage; securities underwriting; provision of secured and unsecured loans; stock exchange quotations; financial information; providing financial information via a web site; securities
	36	9793892	07-09-2015	brokerage; financial management; financial advice. Financial services; investment advisory services; brokerage; securities underwriting; provision of information, advice and consultancy relating to securities, finance and investments; interactive database information services relating to securities, finance and investments
	36	19078680	07-06-2017	Financial services; securities underwriting; brokerage; stock exchange quotations; providing financial

Mark	Class	Registration Number	Registration Date	Specification of Goods or Services
				information via a web site; securities brokerage

The Respondent, 林妃龙 of Fujian Province registered the disputed domain name on 16 November 2019. The Respondent did not file a Reply with the Centre.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

- i. The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights:

The Complainant submits that FIL LIMITED, also known as Fidelity International Ltd. founded in 1969, is one of the trusted global leaders in the investment management industry. The Complainant has offices in 25 countries and territories and employs more than 7,000 people worldwide. The Complainant's primary business is asset management, serving institutional and individual investors around the world. As of June 30, 2016, the Complainant managed total customer assets of more than \$271.8 billion and total managed assets of more than \$351.8 billion. It has more than 700 stocks, fixed income, real estate and asset allocation funds. The Complainant works closely with investors, financial advisory institutions and channels to provide investors with fund information to help investors achieve their long-term investment goals and complete retirement savings plans.

Currently, the Complainant has a number of business, investment research and operating entities in various regions of China and Hong Kong. In China, the Complainant is committed to working with Chinese government regulators to identify business development opportunities and achieve the Complainant's long-term strategic goals.

The Complainant currently owns the following entities in China and Hong Kong:

- FIL Investment Management (Hong Kong) Limited 富達基金(香港)有限公司 (set up in 1981)
- Fuda Litai Investment Management (Shanghai) Co., Ltd. 富达利泰投资管理(上海)有限公司 (set up in 2015)
- Fidelity Fund (Hong Kong) Co., Ltd. Shanghai Representative Office 富达基金(香港)有限公司上海代表处 (set up in 2004)
- Fidelity Fund (Hong Kong) Co., Ltd. Beijing Representative Office 富达基金(香港)有限公司北京代表处 (set up in 2008)

- FIL (Dalian) Technology Co., Ltd. FIL (大连) 科技有限公司 (set up in 2007)

According to the Complainant, in January 2017, Fidelity International became the first global asset manager approved to launch investment products in China through a wholly-owned subsidiary. In May 2017, Fidelity International launched China's first wholly foreign-owned private equity investment fund. Well-known investment websites such as Phoenix Finance and Oriental Fortune Network also reported this milestone of the Complainant.

The Complainant has been in China for over 10 years and is one of the world's largest investment institutions for China and China related stock investments. The investment scale of related Chinese investment products including A-shares, H-shares and ADRs has exceeded US\$20 billion. After obtaining approval from the China Securities Regulatory Commission, the Complainant can sell QDII products through banks, including HSBC, Citigroup, Standard Chartered and other banks. In November 2010, the Complainant invested an initial amount of US\$150 million in QFII quotas. By February 2014, it had accumulated a total of US\$400 million.

The Complainant notes that after long-term publicity and use of the “Fuda Marks”, the Complainant has been widely recognized in mainland China, especially in the financial industry, accumulating substantial goodwill and reputation in the Fuda Marks which are associated exclusively with the Complainant and no other.

The Complainant submits evidence showing that it owns prior registered and common law trade mark rights in the Chinese character “Fuda” Marks. The Complainant has registered the Fuda Marks for a variety of goods and services, including but not limited to, securities brokerage and related services. All of these trade mark registrations were obtained prior to the Respondent’s registration of the disputed domain name in March 2019.

According to the Complainant, the disputed domain name is confusingly similar to the Complainant’s Fuda Marks. The disputed domain name "fudazq.com" contains two elements, namely “fudazq” and “.com”.

Accordingly, Complainant contends that Internet users who see the domain name <fudazq.com> are likely to mistake it for or confuse it with the Complainant’s Fuda Marks, and also as we explain further below, it is obvious that the Respondent is trying to exploit the goodwill associated with the Complainant’s Fuda Marks for their own benefit.

- ii. The Respondent has no rights or legitimate interests in respect of the domain name:

The Complainant submits that According to the WHOIS records, the Respondent registered the disputed domain name on November 16, 2019, long after the registration dates of the Complainant's Fuda Marks.

After years of extensive use by the Complainant and its affiliates, the Complainant notes that the Fuda Marks have acquired significant worldwide recognition. The Complainant and the Respondent have no prior connection, and the latter has not been licensed or authorized by the former to use its mark in the disputed domain name. There is also no evidence that the Respondent has been commonly known by the disputed domain name. Complainant suggests that it is therefore logically impossible for the Respondent to use the disputed domain name, except in a deliberate attempt to take advantage of the "富达" mark for commercial gain.

The Complainant submits that the foregoing is sufficient to establish a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name and therefore the burden of proof shifts to the Respondent to produce evidence demonstrating its rights or legitimate interests in respect of the disputed domain name.

iii. The disputed domain name has been registered and is being used in bad faith:

On the bad faith issue, the Complainant submits that i) the Respondent has registered the disputed domain name to intentionally attempt to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's Fuda Marks; and ii) the Respondent has registered the dispute domain name primarily for the purpose of disrupting the Complainant's business. In view of the following observations, it is clear that the disputed domain name has been registered and is being used in bad faith.

As noted by the Complainant, it obtained its registration for the "富达" FUDA Marks in Class 36 as early as 1995 before the registration date of the disputed domain name. The Complainant's Fuda Marks had become widely-known among consumers and the relevant public as a result of long-term promotion and use. The Respondent must have had prior knowledge of the Complainant's FUDA Marks before the registration of the disputed domain name on November 16, 2019.

The disputed domain name "fudazq.com" resolves to a website operated under the name of a Hong Kong company, "富达证券国际（香港）有限公司".

This Chinese company name appearing on the website contains the Complainant's Chinese mark "富达" in its entirety and is similar to the Complainant's affiliate in Hong Kong, 富达基金（香港）有限公司.

The Respondent registered the "fuda" as the main part of the domain name followed by "zq", which is very easy for consumers to confuse and misunderstand as "zq" can be regarded as the abbreviation of the term "zheng quan" (i.e. "证券" meaning "securities"). Therefore, the disputed domain name would easily mislead consumers into thinking that the website pointed to by the domain name is the official website of the Complainant to provide financial services for investments such as securities brokerage services, or is otherwise connected with the Complainant, its business and/or services.

The disputed domain name resolves to a website that is claimed to be operated by a Hong Kong company, Fuda Securities International (Hong Kong) Company Limited:

富达证券国际（香港）有限公司, © 2018-至今

According to Complainant, Company searches against Fuda Securities International (Hong Kong) Limited (“Fuda Securities”) revealed that Fuda Securities is a company registered on December 27, 2019, instead of 2018 as stated on its website.

The Director of Fuda Securities is a PRC individual named Lin Feilong [林妃龙] with an address in Guangdong, China. Preliminary search reveals that Lin Feilong does not have any registration for the "FUDA" nor "富达" trademarks in China.

Accordingly, Complainant argues that the Respondent is using the disputed domain name in bad faith as it resolves to a website that shows fake information and may be used fraudulently.

The Complainant submits that the Respondent has registered the disputed domain name primarily for the purpose of disrupting the Complainant’s business.

Complainant contends that the Respondent is a "competitor" for the purposes of Paragraph 4(a)(iii) of the Policy, because the disputed domain name: (i) is confusingly similar to the Complainant's Fuda Marks and the Respondent is capitalizing on confusion and competing for online traffic destined for the Complainant, and (ii) appears to be promoting and/or offering securities investment or brokerage-related services similar to those offered by the Complainant.

According to the Complainant, the Respondent's ownership of the disputed domain name is disrupting the Complainant's business and harming the Complainant’s brand by creating consumer confusion and preventing the Complainant’s customers or potential customers from easily accessing its official website to obtain information about its services. Given the high reputation and recognition that the Complainant enjoys globally, Complainant suggests that the Respondent must be aware of the high risk of confusion by using the disputed domain name. The Complainant further notes that the obvious inference and conclusion is that the Respondent registered the disputed domain name to create a likelihood of confusion to and/or intentional mislead Internet users, including prospective customers, into believing that it is connected to, endorsed by and/or otherwise associated with the Complainant, and thereby disrupting the Complainant's business and directing legitimate traffic away from the Complainant.

B. Respondent

The Respondent’s contentions may be summarized as follows:

The Respondent did not submit a reply.

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.

Preliminary Issue: Language of Proceedings

Prior to the Panels consideration of the application of Paragraph 4(a) of ICANN's Uniform Domain Name Dispute Resolution Policy to the facts in this case, a preliminary issue must be addressed, namely the language of the proceedings.

With regard to the language issue, according to Article 11(a) of the UDRP Rules, "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."

While the Panel observes that the language of the registration agreement is Chinese, in accordance with the Rules of UDRP, the Panel has the authority to determine the language of the proceedings, having regard to the totality of circumstances. Having reviewed the Complainants submission, for reasons of efficiency, the Panel determines that the language of the proceedings is English.

A) Identical / Confusingly Similar

The Complainant has established its right to the "富达" trademark by submitting trademark registration certificates and records in a number of jurisdictions including in Hong Kong and China. The transliteration of Chinese language mark "富达" is FUDA in English. While the Complainant registered the Chinese language mark, prior URDP cases have established that "domain names comprising phonetic transliterations of Chinese language trademarks are confusingly similar to such trademarks under the Policy" (Pierre Fabre Dermo-Cosmetique v. Simon Chen/personnal/jinpingguo, WIPO Case No. D2011-0769). Indeed, there are a number of WIPO Panel decisions that have held that the use of an English phonetic transliteration of the complainant's registered trade mark in Chinese in a disputed domain name is confusingly similar to the Chinese trade mark, and would fulfil the requirement of Paragraph 4(a)(i) of the Policy. These decisions include but are not limited to: Aktiebolaget Electrolux v. Xu Zhenkang, WIPO Case No. D2013-1715; Sanofi v. Mi Zhang/ li qianfang, WIPO Case No. D2013-0682; La Roche-Posay Laboratoire Pharmaceutique v. Domain Whois Protection Service, WIPO Case No. D2012-1606; McDonald's Corporation v. Fundacion Private Whois, WIPO Case No. D2012-1435; Kabushiki Kaisha Toshiba d/b/a Toshiba Corporation v. Liu Xindong, WIPO Case No. D2003-0408.

The disputed domain name < fudazq.com > contains three elements: "Fuda" "zq" and the top-level domain ".com". Numerous UDRP precedents have established that the top-level domain does not have trademark significance, conferring no distinctiveness to the domain name sufficient to avoid user confusion.

The only distinctive part of the disputed domain should be "Fuda", which is the Chinese pinyin of the Complainant's "富达" (Fuda) trademark and trade name. This striking resemblance alongside the overall similarity of Respondents website and services will no doubt mislead consumers into believing that the website is operated by or associated with the Complainant. The Disputed Domain Name incorporates the Complainant's Fuda Mark in its entirety, and adds only the qualifier "zq." This qualifier does nothing to reduce the likelihood of confusion with the Disputed Domain Name. In this regard, there is consensus view that the threshold test for confusing similarity under the UDRP involves a comparison between the trademark and the domain name itself to determine likelihood of Internet user confusion. In order to satisfy this test, the relevant trademark would generally need to be recognizable as such within the domain name, with the addition of common, dictionary, descriptive, or negative terms typically being regarded as insufficient to prevent threshold Internet user confusion. As "zq" is commonly known in China as an abbreviation of the term "zheng quan" (i.e. "证券" meaning "securities"), it cannot be considered distinctive. Thus, the only distinctive part of the disputed domain name should be "fuda", which is the transliteration / Chinese pinyin of the Complainant's "富达" mark.

Accordingly, Internet users who see the domain name <fudazq.com> are bound to mistake it for or confuse it with the Complainant's Fuda Marks.

In conclusion, the Panel finds that the Complainant has satisfied the Paragraph 4(a)(i).

B) Rights and Legitimate Interests

As the owner and/or proprietor of the "富达" trademarks, the Complainant has confirmed that it has no prior connection with the Respondent in any way, nor has it licensed or authorized the Respondent to use its trademarks in the Disputed Domain Name.

In determining whether the Respondent has any legal right and interest in the Disputed Domain Name, the mere registration of the Disputed Domain Name by the Respondent itself is not sufficient to prove that it owns legal rights and interests thereof; otherwise, "all registrants would have such rights or interests, and no complainant could succeed on a claim of abusive registration" - See: Adobe Systems Incorporated v. Domain OZ, WIPO Case No.: D2000-0057.

According to the WHOIS records, the Respondent registered the disputed domain name on November 16, 2019, long after the registration dates of the Complainant's Fuda Marks. After years of extensive use by the Complainant and its affiliates, the "富达" Fuda Marks have acquired significant recognition in China and globally.

In the present case, the Respondent failed to provide evidence indicating that it has been commonly known by the Disputed Domain Name, nor has been making a legitimate noncommercial or fair use thereof. On the contrary, the Complainant has pointed out screenshots of the Disputed Domain Name website that the Disputed Domain

Name resolves to a website that links to financial services similar to those offered by Complainant. The Complainant notes that this company has nothing to do with the Complainant and therefore it is clear that Respondent is using the disputed domain name in a deliberate attempt to take advantage of the "富达" mark for commercial gain.

The foregoing is sufficient to establish a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name and therefore the burden of proof shifts to the Respondent to produce evidence demonstrating its rights or legitimate interests in respect of the disputed domain name, which it has not done.

In conclusion, the Panel finds that the Complainant has satisfied the Paragraph 4(a)(ii).

C) Bad Faith

In determining whether the Respondent has registered or used the Disputed Domain Name in bad faith, paragraph 4(b) of the Policy sets down four (4) factors which the Panel will need to examine. The four (4) factors are as follows:

“Evidence of Registration and Use in Bad Faith. For the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(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 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.”

The Respondent, domiciled in China, must have been aware of the Complainant's prior rights and interest in the Disputed Domain Name given the Complainant's reputation in the “富达” Fuda marks within Hong Kong and China as of the date that the Respondent registered the Disputed Domain Name.

No evidence has been provided showing that the Respondent sought the permission of the Claimant to use its mark, nor any evidence showing that the Claimant gave such permission to the respondent.

The disputed domain name "fudazq.com" resolves to a website operated under the name of a Hong Kong company, “富达证券国际（香港）有限公司”.

This Chinese company name appearing on the website contains the Complainant's Chinese mark “富达” in its entirety and is similar to the Complainant’s affiliate in Hong Kong, 富达基金（香港）有限公司.

The Respondent registered the “fuda” as the main part of the domain name followed by “zq”, which is very easy for consumers to confuse and misunderstand as “zq” can be regarded as the abbreviation of the term “zheng quan” (i.e. “证券” meaning “securities”). Therefore, the disputed domain name can easily mislead consumers into thinking that the website pointed to by the domain name is the official website of the Complainant providing financial services for investments such as securities brokerage services, or is otherwise connected with the Complainant, its business and/or services.

Given that the disputed domain name: (i) is confusingly similar to the Complainant's Fuda Marks and the Respondent is capitalizing on confusion and competing for online traffic destined for the Complainant, and (ii) appears to be promoting and/or offering securities investment or brokerage-related services similar to those offered by the Complainant, it is clear that the Respondent's ownership of the disputed domain name is disrupting the Complainant's business and harming the Complainant’s brand by creating consumer confusion. It is also preventing the Complainant’s customers or potential customers from easily accessing its official website to obtain information about its services and disrupting the Complainant's business and directing legitimate traffic away from the Complainant.

Given the above findings, the Panel is of the view that the Respondent registered and used the contested domain name in bad faith.

6. Decision

Pursuant to Paragraph 4(i) of the Policy and Article 15 of the Rules, the Panel orders that the disputed domain name <fudazq.com> be transferred to the Complainant.



Dr. Shahla F. Ali
Panelist

Dated: 25 August 2020