



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2001356
Complainant:	ZHEJIANG CFMOTO POWER CO., LTD
Respondent:	KK Chen
Disputed Domain Name(s):	<cfmotogroup.com>

1. The Parties and Contested Domain Name

The Complainant is ZHEJIANG CFMOTO POWER CO., LTD, of 116 Wuzhou Road, Yuhang Economic Development Zone, Hangzhou 311100, Zhejiang Province, China.

The Respondent is KK Chen, of Double dragon, Pasay, PH.

The domain name at issue is <cfmotogroup.com>, registered by the Respondent with DYNADOT, LLC, of 210 S Ellsworth Ave #345 San Mateo, CA 94401 US.

2. Procedural History

The Complaint was filed with the Asian Domain Name Dispute Resolution Centre (the “Centre”) on May 19, 2020 and the Complainant chose a sole panelist to review this case in accordance with the Uniform Domain Name Dispute Resolution Policy (the “Policy”) which was adopted by the ICANN and came into effect on October 24, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”) which came into effect on September 28, 2013 and the Supplemental Rules thereof which came into effect on July 31, 2015.

On May 19, 2020, the Centre confirmed the receipt of the Complaint and Annexures, and transmitted by email to DYNADOT, LLC (the Registrar of the domain name) a request for registrar verification in connection with the domain name at issue. On August 2, 2020, the said Registrar verified to the Centre that, the Policy applies to the domain name at issue, the Respondent should be KK Chen and the language used in the registration agreement was English.

On August 2, 2020, the Centre sent a deficiency notice to request the Complainant, requiring it to update the Respondent information in the Complaint on or prior to August 7, 2020. On August 3, 2020, the Complainant sent the amended Complaint to the Centre. On the same day, the Centre confirmed receipt of the improved Complaint.

On August 3, 2020, the Centre sent the formal Complaint Notice to the Respondent and requested the Respondent to reply within 20 days (on or prior to August 23, 2020) in accordance with the Rules and Supplement Rules, and forwarded the Complaint as well as all the Annexures thereto, to the Respondent. The procedures for this case formally commenced on August 3, 2020.

On August 26, 2020, the Centre sent a notice of default to the Respondent, which confirmed that the Respondent had not filed any formal reply with the Centre, within the required time limit.

On August 28, 2020, the Centre sent the Panelist candidate, Mr. Matthew Murphy, a Panelist Appointment Notice. On the same day, the Panelist candidate, Mr. Matthew Murphy, considered that it was properly constituted and submitted the acceptance notice as well as a statement of impartiality and independence. On August 31, 2020, the Centre notified both parties and the Panelist, Mr. Matthew Murphy, by email, that Mr. Matthew Murphy was to be the sole panelist for arbitrating this case. The Centre then formally transferred the case to the Panelist. The Panelist agreed to deliver his decision with respect to the disputed domain name on or prior to September 14, 2020.

3. Factual background

For the Complainant

The Complainant, ZHEJIANG CFMOTO POWER CO., LTD, claims that, it was founded in 2003 and is a Shanghai Stocks Exchange listed company headquartered in Hangzhou; and it manufactures motorcycles, all-terrain SUVs (ATVs, UTVs), and has formed a complete set of core components (water cooling engines, chassis, etc.), product research and development, manufacturing and sales to large international companies. The Complainant claims that its products have been sold in more than one hundred countries and regions, with a network of more than three thousand distributors; and its export quantity of ATV has ranked first in the industry in Russia, Canada and other fourteen countries. The Complainant also claims that its market share of more than 650 emission units ranked first in China in the past three years, and its official vehicles rank the first in the police procurement sequence, with an obvious dominant position in the industry.

The Complainant claims that, its core brand “CFMOTO” and its products have won many national, provincial and municipal honors, including but not limited to the “Hangzhou Famous Trademark” in 2013 and the “Zhejiang Famous Trademark” in 2015. The Complainant claims that it has participated in various domestic and foreign exhibitions and motorcycle races in recent years, such as the “Beijing Police Exhibition” in May 2015, the “Milan Exhibition” in Italy in 2015-2016 and the “Chongqing International Motorcycle Expo” in 2017. The Complainant has also claimed that it placed advertisements in competitions run by the NBA in 2017.

The Complainant claims that, it is the owner of a series global registrations of “CFMOTO” trademarks, including but not limited to, Registration No.’s 5621209, 5954438 and 5954439 for “CFMOTO” trademark in China; No.864731 for “CFMOTO” in the EU; No. 3012927 for “CFMOTO” in the USA; No. 1107167 for “CFMOTO” in Australia; and No. 4-2012-007179 for “CFMOTO” in the Philippines. The Complainant further claims that, its official website “CFMOTO.COM” has been registered and used since April 25, 2001, and it has also registered other domain names containing “CFMOTO”, such as “CFMOTO.NET”,

“CFMOTO.CN”, “CFMOTO.COM.CN”, “CFMOTOMALL.COM”, and “CFMOTOPARTS.COM”.

For the Respondent

The Respondent, KK Chen, is located in Double dragon, Pasay, PH. The Respondent’s email is domain@ytrhg.com. The Respondent did not file any information with the Centre to reveal its identity and/or background information.

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 the Complainant’s trademark or service mark, which easily causes confusion.

The Complainant claims that, its brand “CFMOTO” is shortened form of “chunfeng motorcycle” which was created to set up its global brand image and bring it closer to global users; thus, the “CFMOTO” as its English brand name has a unique creative source. The Complainant claims that its CFMOTO brand has received extensive attention from all walks of life and has accumulated high popularity and influence, and the “CFMOTO” has established a unique corresponding relationship with the Complainant. The Complainant further claims that the main identifying part of the domain name in question, “CFMOTOGROUP” combines the trademark “CFMOTO” and the English word “GROUP”, with the “GROUP” part meaning “集团” in Chinese which could describe the business organization structure of the Complainant. Thus, the Complainant believes that the core element of the main identifying part of the domain name in dispute is “CFMOTO”, which is exactly the same as the trademark applied for and used by the Complainant, and is likely to cause confusion.

- ii. The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

The Complainant claims that, it found no trademark in the name of the Respondent in the China Trademark Office database. The Complainant claims that, the Respondent is not the distributor thereof, and it has never directly or indirectly authorized the Respondent to use the “CFMOTO” trademark and domain name in any form. The Complainant claims that, directing the disputed domain name to a “gambling games and pornographic videos” site, does not constitute fair use. Further, due to the hidden registration information of the Respondent, the Complainant claims that the Respondent does not enjoy the right of name related to “CFMOTO”. Thus, the Respondent does not have any legal interest in the domain name.

- iii. The disputed domain name was registered and is being used in bad faith.

The Complainant claims that, the disputed domain name “CFMOTOGROUP.COM” was registered on October 28, 2019, which is much later than the application and use of its well-known “CFMOTO” trademark. The Complainant claims that, its products have been exported to many countries, including Philippines where the Respondent is located and probably having access to the Complainant’s goods or services. Thus, the Complainant considers that it is no coincidence that the Respondent applied for the disputed domain name, and such application was in bad faith.

The Complainant claims that, the Respondent directs the disputed domain name to a webpage that includes an APP download service of “gambling games” and “pornographic videos” for the purpose of obtaining relevant benefits, which deliberately misleads consumers for commercial interests. The Complainant claims that such malicious use of the disputed domain name by the Respondent has satisfied Paragraph 4(b)(vi) of the Policy, which provides that “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 Complainant further claims that, directing the disputed domain name to a “gambling games and pornographic videos” website has caused a negative impact to its brand, due to the similarity between the disputed domain name “CFMOTOGROUP.COM” and its official website “CFMOTO.COM”, which is easy for consumers to believe that they are related somehow. Thus, the Complainant believes that if the disputed domain name “CFMOTOGROUP.COM” remains in use, it will continue to tarnish its brand, and is used in bad faith.

B. Respondent

The Respondent did not file any 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.

A) Identical / Confusingly Similar

The Complainant, by submitting its trademark registration information regarding countries, such as, China and Philippine, has proved that it is entitled to ownership of the “CFMOTO” trademark. Obviously, the disputed domain name <cfmotogroup.com> completely incorporates the Complainant’s “CFMOTO” trademark. “The first and immediately striking

element in the domain name is the Complainant's name (Note, in the current case, it is the Complainant's trademark). Adoption of it in the domain name is inherently likely to lead people to believe that the Complainant is connected with it" - See: Dixons Group Plc v. Mr. Abu Abdullaah, WIPO Case No. D2000-0146. The addition of "group" contributes nothing to distinguish the disputed domain name from the Complainant's trademark, but merely describes the business organization structure of the Complainant. As to the gTLD ".com" in the disputed domain name, it should be ignored when it comes to decide confusingly similarity - See: Rohde & Schwarz GmbH & Co. HG v. Pertshire Marketing, Ltd., WIPO Case No. D2006-0762. Thus, the disputed domain name and the Complainant's "CFMOTO" trademark possesses the similarity that is sufficient to cause confusion.

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

B) Rights and Legitimate Interests

Upon comprehensively considering the circumstances of the case, the Panelist considers that the Respondent does not have legal rights and interests in the disputed domain name on the grounds that:

(1) Without submitting any evidence to prove that the Respondent has any legal rights and interests in the disputed domain name, the Respondent could not sufficiently prove that it "owns legal right and interest thereof" by the mere registration of the disputed domain name - See: Adobe Systems Incorporated v. Domain OZ, WIPO Case No.: D2000-0057.

(2) The Complainant has expressed that the Respondent is not its distributor, and it has never directly or indirectly authorized the Respondent to use the "CFMOTO" trademark and domain name in any form.

(3) The Complainant has evidence to show that the Respondent has fulfilled the circumstances of bad faith registration and use of domain name provided in Paragraph 4(b) of the Policy, which does not only be used as evidence to prove the Respondent's legal rights and interest to the disputed domain name, but also in the suspicious of violating the Policy as well as the relevant laws and regulation.

(4) The Respondent did not provide evidence and there is no indication shows that there is any connection or association between the Respondent and the "CFMOTO" trademark, nor any circumstances that it has legal rights and interest stated in the Paragraph 4(c) of the Policy.

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

C) Bad Faith

The Panelist has taken note of the following facts:

(1) The registration and use date of the Complainant's trademark is much earlier than those of the disputed domain name;

(2) The Complainant's "CFMOTO" branded products have been sold all over the world, including in the Philippines where the Respondent seems to be located;

(3) The Complainant and its "CFMOTO" trademarks has accumulated relatively high fame for its motorcycle products;

(4) There is similarity between the disputed domain name and the Complainant's trademark;

- (5) There is similarity between the disputed domain name and the Complainant's domain names, such as "CFMOTO.COM" and "CFMOTO.COM.CN".
- (6) The disputed domain name is attached to a website that provides downloading services involving gambling and pornography.

Accordingly, it is reasonable for the Panelist to infer that the Respondent must have been aware of the Complainant and its "CFMOTO" trademark while registering the disputed domain name based on the facts listed above, and such registration with prior knowledge of the Complainant's trademark indicates bad faith registration.

Moreover, as is stated in a previous UDRP decision, "while many adult sex sites are perfectly legal and constitute bona fide offerings of goods or services, the use of somebody else's trademark as a domain name (or even as a meta-tag) clearly does not constitute a 'bona fide' offering of goods or services when the web site owner has no registered or common law rights to the mark, since the only reason to use the trademark as a domain name or meta-tag is to attract customers who were not looking for an adult sex site, but were instead looking for the products or services associated with the trademark. Such use of a trademark can create customer confusion or dilution of the mark, which is precisely what trademark laws are meant to prevent. And actions that create, or tend to create, violations of the law can hardly be considered to be 'bona fide'" - See: *Motorola, Inc. vs NewGate Internet, Inc.*, WIPO Case No.: D 2000-0079. Thus, the Panelist concludes that the disputed domain name has been used in bad faith.

In conclusion, the Panelist finds that the Complainant has satisfied Paragraph 4 (a)(iii) of the Policy.

6. Decision

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

Matthew Murphy

Matthew Murphy
Panelist

Dated: September 7, 2020