



Asian Domain Name Dispute Resolution Centre

hong kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2101445
Complainant:	Shede Spirits Co., Ltd.
Respondent:	zhao sheng li
Disputed Domain Name:	<tuopaishede.com>

1. The Parties and Disputed Domain Name

The Complainant is Shede Spirits Co., Ltd., of 999 Tuopai Avenue, Tuopai Town, Shehong County, Sichuan Province.

The Respondent is zhao sheng li, of jiang su dong peng shang mao you xian gong si su cheng qu, su qian shi, su su gong ye yuansu qian shi, jiang su 223800.

The Disputed Domain Name is tuopaishede.com, registered by Respondent with DropCatch.com 785 LLC, of 2635 Walnut Street Denver, CO 80205.

2. Procedural History

On 7 April 2021, the Complainant filed a Complaint in the English language with the Hong Kong Office (“HK Office”) of Asian Domain Name Dispute Resolution Centre (“ADNDRC”) and elected a single member panel for the dispute in this matter, pursuant to the Uniform Domain Name Dispute Resolution Policy (the “Policy”) and the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”) approved by the Internet Corporation for Assigned Names and Numbers (“ICANN”), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the ADNDRC Supplemental Rules) approved by ADNDRC.

On 8 April 2021, the HK Office sent to the Complainant by email an acknowledgement of the receipt of the Complaint. All correspondence to and from the HK Office described herein was in the English language. On the same day, the HK Office transmitted by email to the Registrar a request for confirmation of the WHOIS records of the Disputed Domain Name and other related information. On 9 April 2021, the Registrar confirmed by email: (i) that it is the registrar of the Disputed Domain Name, (ii) that the Policy is applicable to the dispute relating to the Disputed Domain Name; and (iii) that language of the registration agreement for the Disputed Domain Name is English. The Registrar also provided the registrant information and the WHOIS information of the Disputed Domain Name.

On 13 April 2021, in accordance with paragraphs 2(a) and 4 of the Rules, the HK Office issued in English the notice of commencement of proceeding and formally notified the Respondent of the Complaint. In accordance with paragraph 5(a) of the Rules, the due date for the Respondent to submit the Response was 3 May 2021. The Respondent did not submit any response to the Complainant. On 4 May 2021, the HK Office issued a Notice of the Respondent in Default in English. On 6 May 2021, the HK Office sent a Notice of Panelist Appointment to Dr. Lulin GAO as Panel candidate for the current case. The Panel candidate submitted on 7 May 2021 a Statement of Acceptance and Declaration of Impartiality and Independence to the HK Office in compliance with paragraph 7 of the Rules.

On 10 May 2021, the HK Office notified both parties and Dr. Lulin GAO by email that Dr. Lulin GAO be the sole panelist in this matter (the "Panel"), and then formally transmitted the file in this matter to the Panel. The Panel finds that it was properly constituted and should render the Decision within 14 days, i.e., on or before 24 May 2021.

The Panel notes that the Respondent did not respond to the Complaint that was written in English that was transmitted by email to the Respondent under cover of a notice in English language issued by the HK Office. If the Respondent objected to the use of English by the Complainant in this proceeding, the Respondent should have raised his/her objections. Pursuant to Paragraph 11 (a) of the 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. The language of the current Disputed Domain Name Registration Agreement is English, thus the Panel determines English as the language of the proceedings.

3. Factual background

The Complainant in this case is Shede Spirits Co., Ltd.. The authorized representative in this case is Chofn Intellectual Property Services Co., Ltd.

The Respondent in this case is zhao sheng li. The Respondent is the current registrant of the Disputed Domain Name <tuopaishede.com>, which was registered on 25 July 2020 according to the WHOIS information. The registrar of the Disputed Domain Name is DropCatch.com 785 LLC.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

The Complainant began to file trademark applications for "tuopai/沱牌", "shede/舍得" to the China Trademark Office in 1981.

Up to now, the Complainant has the exclusive right to use the trademark "tuopai/沱牌", "shede/舍得" in the Class 33 and other fields.

trademark	Application date	Trademark number	Class	To be given
沱牌	2003-09-01	3698161	33	Yes

沱牌	2006-01-10	5110700	33	Yes
沱牌	2006-01-10	5110701	33	Yes
舍得	2003-02-28	3470723	33	Yes
舍得	2007-06-19	6118379	33	Yes
舍得	2007-06-19	6118380	33	Yes

- i. The Disputed Domain Name(s) is/are identical or confusingly similar to a trademark or service mark in which the Complainant has rights

As mentioned above, the Complainant is located in Shehong County, Sichuan Province. According to historical records, wine-making in this region began in the Western Han Dynasty, prospered in the Tang and Song Dynasties, prospered in the Ming and Qing Dynasties, and became stronger today. The Complainant originates from the "Taian Workshop", which was built in the Tang Dynasty and went through several dynasties until the end of the Qing Dynasty. However, the name of "Taian Workshop" was obtained by Li Mingfang, a businessman in the late Qing Dynasty, from the ancient wine workshop. Therefore, the name before the late Qing Dynasty is hard to be verified.

In the early years of the Republic of China, the descendants of the Li family reformed the brewing process, and the wine produced obtained the reputation of "Tuo Springs Brew Good Wine, Brand Reputation Forever", which was named "Tuo". Due to the limited production capacity, the wooden plate was specially set to make an appointment to get the wine, which made a good story. Therefore, "Tuopai" has been used to this day.

"shede" is a high-end brand created by the Complainant. The word "shede" is derived from the essence of Buddhist scriptures and the core thought of Confucianism, Buddhism and Taoism in traditional Chinese culture. It is a motto for entering the World Trade Organisation with deep philosophical thoughts and contains extensive Chinese cultural connotations. The Complainant firmly implements the dual brand strategy to create the image of "Shede" high-end liquor and the image of "Tuopai" famous Chinese liquor, which complement each other and realize the double growth of revenue and profit. In the list of "China's 500 Most Valuable Brands" released by World Brand Lab on August 5, 2020, the combined value of the two Complainants' brands reached 100 billion, "Tuopai" ranked 160 and "Shede" ranked 108. The Complainant has been on the list for many years, and the ranking has been increasing year by year.

Based on the above information, it can be seen that the Complainant's brand has received extensive attention from all walks of life along the way and has accumulated high popularity and influence. In addition, if you type "tuopaishede" on mainstream search engines, the search results will all point to the Complainant and its brand. It can be seen that "tuopaishede" has established a unique corresponding relationship with the Complainant. Apart from the ".com", the main

identifying part of the Disputed Domain Name is "tuopaishede", which is exactly the same as the Chinese pinyin corresponding to the two "China Famous Trademarks" owned by the Complainant. According to the screenshot of the Disputed Domain Name previously retained by the Complainant, the Disputed Domain Name points to a website with similar content to the Complainant's official website. Therefore, it is difficult to explain this as coincidence. In this case, the Complainant's trademark "Tuopaishede" has already gained a high profile and the major features of the trademark can be identified in the Disputed Domain Name, which, in the opinion of the Complainant, is likely to cause confusion among consumers.

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

The Complainant investigated on the official website of China Trademark Office in the name of the Respondent "zhao sheng li" in this case, but no trademark application was found under the name of the Respondent.

According to Complainant's feedback, Complainant has never directly or indirectly authorized Respondent to use the "Tuopai", "Shede" trademark and domain name in any form.

The Respondent is referred to as "zhao sheng li", and obviously it is impossible for him to have the relevant right of name with respect to "Tuopai" and "Shede".

In summary, the Respondent does not have any legitimate interest in the domain name.

- iii. The Disputed Domain Name(s) has/have been registered and is/are being used in bad faith

The domain name in question "tuopaishede.com" was registered on July 25, 2020, well after the Complainant filed and used the trademark "Tuopai" and "Shede". In the opinion of the Complainant, in determining whether the Respondent has bad faith, full consideration should be given to the originality, distinctiveness and popularity of the name or mark associated with the Complainant. The stronger the originality and significance of the logo, the smaller the chance of its coincidence, and the higher the popularity of the logo, it means that the logo contains huge commercial value, and the intention of others to seize the domain name to obtain improper interests is stronger. Under the circumstance that the Complainant's trademark has strong distinctiveness and popularity, the respondent's registration of the Disputed Domain Name cannot be called coincidence. Moreover, based on the fact that the Disputed Domain Name functions to direct visitors to the web page where the contents are similar to the Complainant's official website, Respondent substantially acknowledges that the primary identification part of the Disputed Domain Name, i.e. "tuopaishide" corresponds to the Complainant's trademarks "Tuopai" and "Shede". Therefore, Respondent's application for the domain name was made in bad faith when he knew or should have known the Complainant's trademark. In light of the above circumstances, Complainant considers that Respondent's application for the domain name is subject to Paragraph b of Article 4 of the Policy, the fact that the domain name in dispute was "registered in bad faith".

At the same time, as has been mentioned many times before, the Disputed Domain Name functions to direct visitors to the web page where the contents are similar to the Complainant's official website for the purpose of selling the Complainant's products for profit. Although the Respondent has rectified the website at present, this does not affect the judgment that the Respondent's use of the Disputed Domain Name is in bad faith. The Respondent has not been authorized by the Complainant, and therefore, the Complainant maintains that the Respondent's use of the Disputed Domain Name has been consistent with the description in Policy 4b (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 Complainant contends that the Respondent acted in bad faith with regard to the use of the domain name in dispute.

To sum up, the main identification part of the Disputed Domain Name is very similar to the Complainant's trademarks of "Tuopai" and "Shede", which is enough to cause confusion among consumers; the Respondent does not have a legitimate interest in the Disputed Domain Name; and the Respondent has demonstrated bad faith in the registration or use of the Disputed Domain Name. The Respondent has seriously violated the legitimate rights and interests of the Complainant. In accordance with the relevant provisions and for the above reasons, the Complainant requests the Panel to determine that the domain name in question "tuopaishede.com" be transferred to the Complainant.

B. Respondent

The Respondent was duly notified by the HK Office of the Complaint filed by the Complainant and asked to submit a Response in accordance with the relevant stipulations under the Policy, the Rules and the ADNDRC Supplementary Rules. The Respondent failed to give any sort of defense in any form against the Complaint.

5. Findings

Paragraph 15(a) of the Rules sets out the principles that the Panel shall follow in deciding the complaint: "A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

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 is a wine-making company in China and owns trademarks “沱牌”, “舍得”, and “沱牌舍得” relating to wine [beverage], liquors, baijiu, etc. in Class 33, including the trademarks listed below.

Trademark	Number	Application Date	Registration Date	Valid to
沱牌	3698161	2003-09-01	2005-04-14	2025-04-13
沱牌	5110700	2006-01-10	2008-11-14	2028-11-13
沱牌	5110701	2006-01-10	2008-11-14	2028-11-13
舍 得	3470723	2003-02-28	2004-07-21	2024-07-20
舍得	6118379	2007-06-19	2009-12-28	2029-12-27
舍 得	6118380	2007-06-19	2009-12-28	2029-12-27
	16976692	2015-05-18	2016-07-21	2026-07-20

Given the present evidence, “沱牌” was first registered as trademark in China in 2005, “舍得” in 2004, and “沱牌舍得” in 2016, all earlier than the registration of the Disputed Domain Name (i.e. 25 July 2020). The Panel has no problem in finding that the Complainant enjoys the prior rights in the trademarks “沱牌”, “舍得”, and “沱牌舍得”.

The Disputed Domain Name is <tuopaishede.com>. The suffix “.com” only indicates that the domain name is registered under this gTLD and is not distinctive. The main part of the domain name “tuopaishede” has the identical pronunciation of “沱牌舍得” and is the same as the Chinese pinyin of the Complainant’s said trademark.

However, considering the combination of Latin letters may refer to different Chinese characters and terms, the Panel refrains from finding the domain name identical or confusingly similar to the Complainant’s trademarks merely based on such phonetic identity. Instead, to find similarity/identity, the Panel shall determine whether “tuopaishede” refers only to “沱牌舍得”, rather than any other Chinese terms or character combinations.

“沱牌” and “舍得” bear relatively high distinctiveness, and the Complaint’s evidence can show that its trademarks have obtained great fame and influence in the relevant market; when searching for the Latin letters “tuopaishede” via search engines, most results are related to the Complainant. For consumers in China, where the Respondent is domiciled, the first impression upon sight of “tuopaishede” would be “沱牌舍得”, the Chinese trademarks owned by the Complainant.

The Panel further reviewed the use of the Disputed Domain Name. The Complainant submitted webpages of the website resolved from the Disputed Domain Name, which, are not direct printouts of the website, but rather an example showcased from a third party providing website construction services.

That being said, as the Respondent did not file any objection regarding the webpage authenticity or furnish any evidence to the contrary, the Panel considers the webpages as admissible evidence, and such webpages would be accepted by the Respondent for use or intentional use in the future.

The Panel notes that the webpages prominently demonstrate “沱牌” and “舍得”, and are inviting cooperation as the brand franchise. As such, the Panel considers these behaviors as the Respondent’s *de facto* recognition that the main part of the domain name “tuopaishede” refers to “沱牌舍得”, and that the Disputed Domain Name will be easily mistaken to be owned by the Complainant or at least have some connections with the Complainant.

Accordingly, the Panel holds that the Disputed Domain Name is confusingly similar to the Complainant’s trademarks “沱牌”, “舍得” and “沱牌舍得”, and that the Complaint fulfills the condition provided in Paragraph 4(a)(i) of the Policy.

B) Rights and Legitimate Interests

The Complainant contends that the Respondent does not have rights to or legitimate interests in the Disputed Domain Name. The Complainant has never authorized the Respondent to use its trademarks or the Disputed Domain Name. The Complainant’s assertion is sufficient to establish a *prima facie* case under Policy 4(a)(ii), thereby shifting the burden to the Respondent to present evidence of its rights or legitimate interests.

The Respondent has failed to show that the Respondent has any rights or legitimate interests in respect of the Disputed Domain Name. No evidence has shown that the Respondent is using or plans to use the Disputed Domain Name for a bona fide offering of goods or services. The Respondent is not commonly known by the Disputed Domain Name. The evidence submitted by the Complainant further shows that the Respondent is not making a legitimate non commercial or fair use of the Disputed Domain Name. The act of registering the Disputed Domain Name does not automatically endow any legal rights or interests on the Respondent.

The Panel therefore finds that the Complaint fulfills the condition provided in Paragraph 4(a)(ii) of the Policy.

C) Bad Faith

Under Paragraph 4(b) of the Policy, the following are relevant examples a Panel may take as evidence of registration and use 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 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 website 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 website or location or of a product or service on your website or location.

The Complainant is a leading baijiu manufacturer in China, and has registered the trademarks “沱牌”, “舍得”, and “沱牌舍得” in various stylizations. The Complainant has been using the trademarks for its products and corresponding promotion since as early as 2004. Through extensive use, promotion and advertisement by the Complainant, the public has come to recognize and associate the Complainant's trademarks as originating from the Complainant and no other.

The Disputed Domain Name resolves to a franchise-inviting website that uses the Complainant's trademarks “沱牌”, “舍得”, and “沱牌舍得”. Such facts are obvious to all that the Respondent is not only well aware of the existence of the Complainant and its trademarks, but also familiar with the key business operated by the Complainant. The action of registering the Disputed Domain Name per se has constituted bad faith. The above action of resolving the Disputed Domain Name to a website inviting potential franchise cooperation will mislead the consumers to believe that the website of the Disputed Domain Name is endorsed by or operated by the Complainant or has some other connections with the Complainant. This is exactly the type of bad faith use of the Disputed Domain Name as envisaged in Paragraph 4(b) of the Policy, i.e. the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the website or other on-line location, by creating a likelihood of confusion with the Complainant's trademark as to source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

The Panel concludes that the Respondent has registered and used the domain name in bad faith.

Accordingly, the Panel finds that the Complaint satisfies the condition provided in Paragraph 4(a)(iii) of the Policy.

6. Decision

Having established all three elements required under the ICANN Policy, the Panel concludes that relief should be granted. Accordingly, the Panel decides that the Disputed Domain Name <tuopaishede.com> be transferred from the Respondent to the Complainant.

Goobalins

Dr. Lulin GAO
Panelist

Dated: 18 May, 2021