



Hong Kong International Arbitration Centre

香港國際仲裁中心

.hk Domain Name Dispute Resolution

ARBITRATION PANEL DECISION

Case No.	0207-0003
Claimant:	Banyan Tree Limited
Respondent:	Home Essentials (H.K.) Limited

1. Decision Submission

Decision ID	DE-0200002
Case ID	DN-0200003
Disputed Domain Name	www.banyantree.com.hk
Case Administrator	Iris Wong
Submitted By	Paul Stephenson
Participated Panelist	Paul Stephenson

2. The Parties Information

Claimant	Banyan Tree Limited
Respondent	Home Essentials (H.K.) Limited

3. Procedural History

On 10th July 2002 the Complainant filed an application on Form A to the Hong Kong International Arbitration Centre (HKIAC) claiming that it is the rightful owner of the domain name <www.banyantree.com.hk> Materials in support of the claim were filed on the respondent, Home Essentials (H.K.) Limited, by registered post on 3rd September 2002. A letter dated September 6, 2002 was sent by Christopher Exline to the Complainant which effectively acknowledged receipt of the Complaint. This letter was forwarded to the HKIAC by the Complainant.

4. Factual Background

For Claimant

1. The Complainant has submitted documentary evidence consisting of advertisements, invoices, letterheading and copies of a Trade Mark Registration Certificate to show that at least since 1990, it has been trading under the name 'Banyan Tree' in Hong Kong and has been using a trade mark that contains those two words which has been registered in class 35 dating with effect from 19th July 2000. The services of interest taken from trade mark registration certificate no. B07527 of 2002 are in respect of the

"retail and wholesale of furniture, mirrors, picture frames, textiles, cushion covers and curtains (textile goods), bed covers, table covers, carpets, rugs, mats and matting, games, playthings, decorations for Christmas trees; all included in Class 35".

2. The Complainant's letterheading indicates that they operate from showrooms situated in Princes' Building in Central and from Repulse Bay.

For Respondent

The Respondent by letter dated September 6, 2002 addressed to the Complainant asserted that the Complaint was "frivolous" and "constitutes harrasment". No justification was given for such assertions. The Respondent did not reserve the right to submit any additional arguments or otherwise indicate that a Response was to be filed. I therefore take it that the said letter dated September 6, 2002 was the total response to be filed by or on behalf of the Respondent.

5. Parties' Contentions

Claimant

I consider the evidence provided by the Complainant provides a prima facie claim to its being the true owner of the trade mark BANYAN TREE at least in respect of the goods and services recited in paragraph 1 above and, consequently, they can lay an ex-facie claim to ownership in Hong Kong of a domain name that consist of, or contains, the word 'banyantree', or, at least, validly raise an objection to another's registration of such a domain name.

Respondent

The Respondent has chosen not to file any evidence in this matter either to refute the assertions made by the Claimant or otherwise to justify their claim to registration of the domain name <www.banyantree.com.hk>.

6. Findings

Identical / Confusingly Similar

N/A

Rights and Legitimate Interests

I do not know the trading activities or intended trading activities of the Respondent although in the light of the evidence filed by the Complainant there is at least a possibility that the Respondent's activities may constitute passing off particularly (but not necessarily) if those activities are in the same field as that of the Complainant. The Complainant can assert that there is a potential for the Respondent misrepresenting that they are connected with the Complainant in the course of trade when no such connection exists. This assertion would rest on the proposition that a member of the trade or the public who accesses the domain name <www.banyantree.com.hk> would expect to go to the web site of the Complainant but instead is directed to the web site of the Respondent. No evidence has been provided by the Respondent to contradict this potential for misrepresentation.

Bad Faith

The Respondent has failed to answer any of the assertions made and evidence provided by the Complainant. This is not bad faith per se, but the Claimant has, in the absence of any submission to the contrary, justified a claim to ownership of the domain name <www.banyantree.com.hk>.

7. Status

Domain Name Transfer

8. Arbitration Decision

From the information made available to me by the parties, my decision is that the Domain Name <www.banyantree.com.hk> shall be transferred to the Complainant.