



香港國際仲裁中心

Hong Kong International Arbitration Centre

.hk Domain Name Dispute Resolution

ARBITRATION PANEL DECISION

Case No. DHK-0700018

Complainant:	AOL LLC
Respondent:	Kristopher-Kent Harris
Case Number:	DHK-07000018
Domain Name:	<aol.hk>
Panelist:	M. Scott Donahey

I. Procedural History

The complainant in this case is AOL LLC, a limited liability company organized under the laws of the State of Delaware, United States of America, whose address is 22000 AOL Way, Dulles, Virginia, United States of America (“Complainant”). Its authorized representative in these proceedings is Blake R. Bertagna, Arent Fox LLP.

The respondent is Kristopher-Kent Harris, whose address in Whois is PO Box 7461, Bellevue, Washington, United States of America (“Respondent”). Respondent has not appointed any representative in these proceedings.

The domain name in dispute is <aol.hk>. The Registrar of the domain name is HKDNR/NKIRC, which is located in Hong Kong.

On 18 June 2007, pursuant to the Hong Kong Domain Name Registration Company Limited (“HKDNR”) Domain Name Dispute Resolution Policy (“the Policy”), the HKDNR Domain Name Dispute Resolution Policy Rules of Procedure (“the Rules”) and Hong Kong International Arbitration Centre Supplemental Rules (“the HKIAC Supplemental Rules”), the Complainant submitted a complaint in the English language to the Hong Kong International Arbitration Centre (the “HKIAC”), and elected this case to be dealt with by a one-person panel. On that same date, the HKIAC sent to the complainant by email an acknowledgement of the receipt of the complaint and reviewed the format of the complaint for compliance with the Policy, the Rules and the HKIAC Supplemental Rules. All correspondence to and from the HKIAC described herein was in the English language.

On 27 June 2007 the HKIAC notified the Respondent of the commencement of the action.

On 19 July 2007, the HKIAC notified the Complainant that the Respondent had failed to submit a Response.

Since the Respondent did not file a response in accordance with the time specified in the Rules the HKIAC Supplemental Rules, and the Notification, the HKIAC informed Complainant and Respondent by email about the default, stating that, as Respondent did not file a response within the required time, the HKIAC would appoint the panelist to proceed to render the decision, in the absence of a response by Respondent.

On 16 August 2007, the HKIAC notified the parties that the Panel in this case had been selected, with M. Scott Donahey acting as the sole panelist. The Panel determines that the appointment was made in accordance with the Supplemental Rules.

On 20 August 2007, the Panel received the file from HKIAC.

II. Factual Background

A. For the Complainant

Complainant is the holder of service mark registrations with the United States Patent and Trademark Office for the mark AOL, which registrations issued as early as June 4 1996. Complaint, Annex 1. Complainant also is the holder of service mark registrations with the Trademark Office of the State Administration for Industry and Commerce of the People's Republic of China, which registrations issued as early as April 7, 1997. Complaint, Annex 1. The marks are registered in connection with telecommunications services, electronic storage and retrieval services, and have been used in commerce since October 1989. Complaint, Annex 1. Complainant uses its mark in conjunction with a variety of Internet services and trademarked goods. The AOL mark has been used continuously and extensively in international commerce since June 1996, and has advertised the mark extensively.

Complainant is one of the world's largest and most well-known online service providers, having millions of subscribers worldwide, including in Hong Kong. AOL's network of Web properties attracts millions of unique visitors each month. During the quarter that ended December 31, 2006, page views for the AOL network of Web properties totaled 44 billion.

Respondent registered the domain name at issue on May 28, 2004. Respondent has also registered the domain names <starbuck.hk> and <verisign.hk>. Complaint, Annex 7. On December 5, 2006, Complainant's counsel sent a cease and desist letter to Respondent. Complaint, Annex 8. Respondent replied that a company, Air or Land Models (AOL) was using the domain name at issue. Complaint, Annex 9. Counsel for Complainant responded, asserting prior rights in the AOL mark. Complaint, Annex 10. Respondent eventually agreed to transfer the domain name to Complainant. Complaint, Annex 11. Respondent initially promised to attend to the transfer, but later failed to reply to emails and failed to make the transfer. Complaint, Annex 12.

B. For the respondent

Respondent has failed to file a response in this matter.

III. Parties' Contention

A. The Complainant

Complainant asserts that the domain name at issue is identical or confusingly similar to Complainant's marks, in that the domain name at issue is comprised of the AOL mark with the addition of the ccTLD *.hk* and incorporates the AOL mark.

Complainant further alleges that Respondent has no rights or legitimate interests in respect of the domain name, and that Respondent's domain name has been registered in bad faith and is being passively used in bad faith.

B. The Respondent

The respondent did not file a response within the stipulated time.

IV. Findings

A. Respondent in Default

Rules, ¶ 5(e) provides that "[i]f a Respondent does not submit a timely Response, in the absence of exceptional circumstances as determined by the Provider at its sole discretion, the Arbitration Panel shall decide the dispute based upon the Complaint and the evidence submitted therewith." The Panel finds that no exceptional circumstances exist. Accordingly the Panel will decide the dispute based upon the Complaint and the evidence submitted therewith.

B. The Language of the Proceedings

Paragraph 11(a) of the Rules provides:

Unless otherwise agreed by the Parties, the language of the arbitration proceedings shall be the language of the Registration Agreement, subject always to the authority of the Arbitration Panel to determine otherwise, having regard to all the circumstances of the arbitration proceeding.

The Registration Agreement is in the English language. Complaint, Annex 13. The correspondence in the case, including emails from Respondent, is in the English language. Both Complainant and Respondent are nationals of the United States of America, where the English language is spoken. The Panel determines that the language of the arbitration proceedings shall be English.

C. *Burden of Proof*

Under paragraph 4(a) of the Policy, Complainant has the burden of proving

- 1) that the domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- 2) that the Respondent has no rights or legitimate interests in respect of the domain name; and
- 3) that the domain name has been registered and is being used in bad faith.

V. Analysis

A. *Identical or Confusing Similarity*

The Panel finds that the domain name <aol.com> is identical to Complainant's registered AOL mark.

B. *Rights or Legitimate Interests of the Respondent*

Complainant has in a credible way alleged that Respondent has no rights or legitimate interests in respect of the domain name at issue. Respondent has failed to show that Respondent has any rights or legitimate interests in respect of the domain name at issue. This entitles the Panel to infer that Respondent has no rights or legitimate interests in respect of the domain name at issue. *Alcoholics Anonymous World Services, Inc. v. Lauren Raymond*, WIPO Case No. D2000-0007; *Ronson Plc v. Unimetal Sanayi ve Tic. A.S.*, WIPO Case No. D2000-0011. Accordingly, the Panel finds that Respondent has no rights or legitimate interests in respect of the domain name.

C. *Bad Faith*

In the present case, Respondent registered the domain name at issue years after Complainant registered the service mark and trademark at issue and long after Complainant's mark had attained worldwide notoriety. Moreover, Respondent acknowledged in emails that he was obligated to transfer the domain name at issue to Complainant. Accordingly, the Arbitration Panel determines that the domain name at issue was registered and is being used in bad faith.

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VI. Decision

For all of the foregoing reasons, the Panel decides that the domain name registered by Respondent is confusingly similar to the mark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the domain name at issue, and that

the Respondent's domain name has been registered and is being used in bad faith. Accordingly, pursuant to Paragraph 3 of the Policy, the Panel requires that the registration of the domain name <aol.com> be transferred to the Complainant.

M. Scott Donahey
Sole Panelist

DATED: August 21, 2007