



香港國際仲裁中心
Hong Kong International Arbitration Centre

**.hk Domain Name Dispute Resolution
ARBITRATION PANEL DECISION**

Case ID: DHK-0400004
Disputed Domain Name: adidas.hk
Case Administrator: Dennis Choi
Submitted by: Jeffrey Elkinson
Participating Panelist: Jeffrey Elkinson
Date of Decision: 14th December 2004

COMPLAINANT: Adidas-Salomon AG
RESPONDENT: Chan Ma Lee

PROCEDURAL HISTORY

On the 19th October 2004, the Complainant, through its authorized representative, Cheung Tong and Rosa, submitted a Complaint to the Hong Kong International Arbitration Centre in accordance with 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 the HKIAC Domain Name Dispute Supplemental Rules ("the Supplemental Rules").

The Complainant elected to have the Complaint decided by one Panelist. On the 19th October 2004, HKIAC received a hard copy of the Complaint concerning the domain name together with the required filing fee. HKIAC acknowledged receipt of the Complaint on the 20th October 2004 by email.

On the 21st October 2004, the Respondent was notified that a Complaint had been filed and subsequently, on the 26th October 2004, an official copy of the Complaint was

forwarded to the Respondent and the Respondent was notified of the 20 calendar days, from the date of receipt of the Complaint, in which a Response could be submitted.

No response having been received, on the 18th November 2004 the domain name case administrator informed the Complainant that a Panelist would be appointed and, on the 2nd December 2004, I was appointed.

HKIAC had received on the 17th November 2004 a Declaration of Impartiality and Independence from me.

On the 2nd December 2004, HKIAC transferred the case to me.

I find that the Panel has been properly constituted and appointed in accordance with the Rules and the HKIAC Supplemental Rules.

COMPLAINANT'S POSITION

The Complainant sets out that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; the Complainant says that its name is internationally well known and that the name Adidas is a contraction of the name of the company's founder, Mr. Adolf Dassler. The Complainant is the parent of Adidas Hong Kong Limited and that company distributes to more than 200 wholesalers and retailers in Hong Kong. In addition, that company runs 5 "Adidas" shops in various locations in Hong Kong.

The Complainant is the owner of the mark "Adidas" which has been registered worldwide and the Complainant has provided evidence of its registration, not only worldwide, but also in Hong Kong. The Complainant and/or its subsidiaries also maintain several websites and domain names including 'adidas.com' and 'adidas.com.hk.'

The Complainant says that as a consequence of the extensive use of the mark Adidas and its substantial investment in advertising and the promotion of goods associated with Adidas, substantial goodwill has been established in the mark and that it has become generally known to the public and to the trade to have substantial connection with the products of the Complainant and with no other. The registration by the Respondent on the 27th May 2004 of the domain name, 'adidas.hk,' was without the Complainant's consent and is identical to the trademark in which the Complainant has the absolute right and interest. The Complainant set out that the Respondent has no rights or legitimate interests in the disputed domain name and that it was inoperative for some months after registration. Subsequent to a letter from the solicitors of the Complainant, it became operative to the extent that there were some cartoon characters on the page, references to Adidas and to Adidas fan clubs websites and a hyper-link to the Complainant's own website.

The Complainant says that the disputed domain name was registered and is being used in bad faith. The Complainant sets out grounds for its belief of this, including the contention that the Respondent registered the disputed domain name in order to prevent the Complainant from obtaining this domain name, that it will disrupt the business of the Complainant or that the Respondent is seeking to create a likelihood of confusion with the Complainant's mark.

RESPONDENT'S POSITION

The Respondent did not provide any Response or participate in any way.

FINDINGS

I find that:-

- (i) The disputed domain name which was registered by the Respondent is identical and confusingly similar to a trademark or service in which the Complainant has rights;
- (ii) The Respondent has no right or legitimate interest in respect of the disputed domain name;
- (iii) The disputed domain name has been registered and used in bad faith by the Respondent.

(i) **Identical and confusingly similar**

The Complainant has provided substantial evidence of its right in the mark “Adidas.” I have been provided with evidence of the trademark registrations for Adidas held by the Complainant worldwide, some of which date back to the 1950’s. I have in particular been provided with documentary evidence of the Certificates of Registration in Hong Kong under the Trademarks Ordinance and that the marks have been registered for many years. I find that the domain name registered by the Respondent is identical to the registered trademark of the Complainant in which the Complainant has long established rights.

(ii) **Respondent Has No Right or Legitimate Interest in Respect of Domain Name**

The Complainant has alleged that the Respondent has no such rights or legitimate interests and there is no contest to this allegation. The use by the Respondent to date of the domain name gives support to the Complainant’s position and certainly from viewing the website, I cannot discern any legitimate interest held by the Respondent in this name.

(iii) **Bad Faith**

Bad faith can be held to exist in circumstances where the Panel can determine that the Respondent registered the domain name in order to prevent the Complainant from doing so. The Complainant by its attorneys wrote at length on the 9th September 2004 to the

Respondent indicating that it was the owner of the Adidas mark and requesting the Respondent to desist within seven days of the date of the letter. The Complainant's solicitors did not receive a response to that letter. In that letter, it was pointed out that the Complainant had several websites and domain names, in particular Adidas.com and Adidas.com.hk. The fact that the Respondent has registered the named adidas.hk in the face of these other registrations and the ownership of the mark by the Complainant for so many years, is a circumstance which indicates to me that the Respondent has registered the domain name in order to prevent Adidas from obtaining this name. I do not have to go so far as to determine whether or not the Respondent was seeking to sell the same to the Complainant for profit as it is sufficient for the purposes of paragraph 4(b) of the Policy that I make the determination as set out above.

STATUS

www.adidas.hk

Domain Name Transfer

DECISION

From what has been set out above, I conclude that the disputed domain name 'adidas.hk' is identical to the mark used by the Complainant in the course of its business, that the Respondent has no rights or legitimate interests in respect of the domain name and that that domain name has been registered and used in bad faith. Therefore, pursuant to paragraph 4(i) of the Policy, I hereby order that the registration of the domain name 'adidas.hk' be transferred to the Complainant, Adidas-Salomon AG.

Dated this 14th day of December 2004.

JEFFREY P. ELKINSON
PANELIST