



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

.hk Domain Name Dispute Resolution  
ARBITRATION PANEL DECISION

Case ID: DHK - 0400005  
Disputed Domain Name: kf.hk  
Case Administrator: Dennis Choi  
Submitted by: Mark Lin  
Participating Panelist: Mark Lin  
Date of Decision: 11th January 2005

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COMPLAINANT: 景豐电子有限公司 (King Fung Electronics Company Limited)  
RESPONDENT: 甘楓 (Kam Fung)

**1. THE PARTIES AND THE CONTESTED DOMAIN NAME**

The Complainant is a limited company 景豐电子有限公司 (King Fung Electronics Company Limited) of Rooms 10-12, 6th Floor, Flat A, New Trade Plaza, On Ping Street, Shatin, New Territories, Hong Kong.

The Respondent is an individual 甘楓 (Kam Fung) of 28A, Block 9, Ocean Shores, Tseung Kwan O, New Territories, Hong Kong. His contact email addresses are domain@kamfung.net and kam\_dlrn@yahoo.com.

The domain name in dispute ("Disputed Domain Name") is "kf.hk".

**2. PROCEDURAL HISTORY**

The Complainant submitted its complaint by email on 23rd November 2004. A revised complaint was later resubmitted by email to the Hong Kong International Arbitration Centre (the "HKIAC") on 25th November 2004 by the Complainant. On 26 November 2004, the HKIAC received a hard copy of the complaint together with the filing fee required to submit the complaint. The Complainant elected in its complaint for one Panelist. On 27th November 2004, the HKIAC acknowledged receipt of the complaint. On the same day, the HKIAC notified Hong Kong Domain Name Registration Co Ltd ("HKDNR") regarding the complaint, and the Respondent was then notified by HKDNR that a complaint had been filed regarding the Disputed Domain Name.

On 29 November 2004, the Respondent provided the HKIAC with his postal address by email pursuant to an email request from the HKIAC for the purpose of forwarding documents regarding the complaint. While it is not clear from the copy courier receipt when the documents were sent to the Respondent, I am satisfied that the service was effective as the Respondent did submit a response dated 8 December 2004. On 4 December 2004, the HKIAC notified the Respondent that he had 20 days to submit his response. Further on 6 December 2004, the HKIAC forwarded by email a Form of Response to the Respondent. The Respondent subsequently submitted a response dated 8 December 2004.

On 21 December 2004, I received the Notification of Appointment from the HKIAC together with documents relating to the domain name dispute.

In accordance with the HKDNR Domain Name Dispute Resolution Policy Rules of Procedure ("Rules of Procedure") and the HKIAC Domain Name Dispute Supplemental Rules ("Supplemental Rules"), I find that the Panel has been properly constituted and appointed.

### 3. **FACTUAL BACKGROUND**

#### 3.1 **Complainant**

The Complainant is a limited company holding a Hong Kong business registration certificate to conduct general trading activities. It conducts business in relation to electronic products and has registered a trademark "KF" in device form, with the Trade Marks Registry in Hong Kong and also in the PRC. The Complainant has also been the registered owner of the domain name "kingfung.com.hk" since 28th October 1996. No further information was filed by the Complainant to support that it has acquired any right in the mark "KF" in its textual form through usage.

#### 3.2 **Respondent**

The Respondent is an individual. According to HKDNR's WHOIS records, the Respondent has been the registered owner of the Disputed Domain Name since 22nd May 2004. He claims that he is a programmer and intends to use the Disputed Domain Name as a personal website and for personal email purposes. He claims that the reason for him registering the Disputed Domain Name is that "kf" is the short form of his English name on his Hong Kong Identity Card.

### 4. **PARTIES' CONTENTIONS**

#### 4.1 **Complainant**

The Complainant's contentions can be summarised as follows:

- (a) The Complainant registered the trademark "KF" (in device form) in Class 9 (including computer peripheral devices; display cards, read only memories for computers; electronic and electrical apparatus; video and telecommunication apparatus) with the Hong Kong and PRC Trade Marks Registries on 19th July 2001 and 28th July 2000 respectively. The Hong Kong Trade Marks Registry copy records submitted by the Complainant dated 13th November 2004 clearly showed a disclaimer stating 'Registration of this Trade Mark shall give no right to the exclusive use of letters "KF"'.
- (b) "KF" is the short form of the Complainant's name "King Fung" and the Complainant provided a copy invoice dated 15th December 1994 to show that it had been using "KF" for many years.
- (c) The Complainant asserts that the Disputed Domain Name is related to "kingfung.com.hk", to which the Complainant is the registered owner according to HKDNR WHOIS records.
- (d) The Complainant has a legitimate right to the Disputed Domain Name because the Complainant should be allocated the Disputed Domain Name "no matter in terms of timing at registration and in terms of preference given to registration by companies over individuals". Moreover, the Complainant "applied for the Disputed Domain Name as a company whilst the Respondent applied as an individual". It is "unfair for the Complainant not to be allocated the Disputed Domain Name as it was forced to apply during the Sunrise Period (as defined in the HKDNR Soft Launch Rules for Second Level Domain Names (the "Soft Launch Rules")) since it

failed to obtain the third level domain name of the Disputed Domain Name" enabling it to apply prior to the Sunrise Period.

- (e) The Respondent has the intention of selling the Disputed Domain Name at an unreasonably high price when the Complainant attempted to negotiate with the Respondent for a transfer of the Disputed Domain Name.

#### 4.2 Respondent

The Respondent's contentions can be summarised as follows:

- (a) He has a legitimate right to the Disputed Domain Name as it is reasonable for him to apply for the Disputed Domain Name since "kf" is the short form of his English name on his Hong Kong Identity Card. Moreover, he obtained the Disputed Domain Name legally through an application in the Sunrise Period in accordance with the Soft Launch Rules.
- (b) The Respondent points to the disclaimer (as mentioned above) at the Complainant's Hong Kong trade mark registration, asserting that he has the right to apply for the Disputed Domain Name without infringing the Respondent's trade mark rights.
- (c) The Complainant's PRC trade mark registration is not related to the Disputed Domain Name. The Disputed Domain Name is also unrelated to the fact that the Complainant is the registered owner of "kingfung.com.hk".
- (d) The Respondent intends to use the Disputed Domain Name as personal website and/or personal email purposes. Since the first use of the Disputed Domain Name, none of the contents on the website suggests association with the Complainant or its products, nor do the contents affect the image of the Complainant negatively. Therefore the Complainant's contention is without substance.
- (e) A reasonable person would not associate the Disputed Domain Name with the brand "King Fung", since "kf" can be the short form of many different brands.
- (f) The Disputed Domain Name is not important to the Complainant, as "kingfung.com.hk" was registered on 28th October 1996 whilst "kf.com.hk" by another third party was registered on 4th May 1998. If "kf" is very important to the Complainant, it would have applied for "kf.com.hk" in the first place.
- (g) The Respondent does not have the intention to sell domain names for profit since he only applied for one domain name with ".hk". Neither does he have the intention of selling the Disputed Domain Name to the Complainant. Mentioning of the "6-digit-range" price in the email negotiation was merely an attempt to dispose of the Complainant's offer.
- (h) The fact that the Complainant offered to the Respondent for a transfer of the Disputed Domain Name shows the Complainant's recognition of the Respondent as the registered owner of the Disputed Domain Name.

## 5. DISCUSSIONS AND FINDINGS

### General

According to paragraph 4(a) of the HKDNR Domain Name Dispute Resolution Policy (the "Policy"), to succeed in the complaint, the Complainant has the burden of proving all of the following: -

- (a) the Respondent's Domain Name is identical or confusingly similar to a trade mark or service mark in Hong Kong in which the Complainant has rights;
- (b) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- (c) the Respondent's Domain Name has been registered and is being used in bad faith.

### **Findings**

- (a) The Complainant does not possess the right to the exclusive use of "KF" in its textual form by its Hong Kong trade mark registration;
- (b) The Respondent has a right and legitimate interest in respect of the Disputed Domain Name; and
- (c) The Disputed Domain Name has not been registered and used in bad faith by the Respondent.

### **Analysis**

- (a) The Complainant has rights to a trade mark and the Respondent's domain name being confusingly similar to the Complainant's trade mark

Before I decide whether the Disputed Domain Name is confusingly similar with the Complainant's trade mark, I must first consider whether the Complainant does in fact have a right in the trade mark "kf".

From the Hong Kong Trade Marks Registry records submitted by the Complainant, it is clear that trade mark registration of the Complainant is "KF" in a stylized and device form, coupled with a disclaimer clearly specifying that the Complainant shall have no right to the exclusive use in the textual form of "KF". I therefore find that the Hong Kong Trade Mark registration did not assist the Complainant in establishing its trade mark rights in "KF" (see *MAHA Maschinenbau Haldenwang GmbH & Co. KG v. Deepak Rajani, WIPO Case No D2000-1816*). The Complainant's registration in the PRC also appears to me not to have conferred on the Complainant the exclusive right to use "kf" in its textual form.

The Complainant alleged that it had been using "KF" as its trademark for many years. I note that the "KF" that appeared in the copy invoice in the year 1994 submitted by the Complainant, is also in a stylized and device form and thus also fails to assist the Complainant in establishing its rights in "KF" in textual form. There is no other evidence submitted by the Complainant in establishing prior use of "KF" in its textual form, nor is there evidence submitted by the Complainant showing that its mark is well-known in its industry.

I therefore find that the Complainant fails in establishing its trade mark rights.

The Complainant asserted that the Disputed Domain Name is related (or confusingly similar) to its domain name of "kingfung.com.hk". I hold that a reasonable person would not confuse "kf.hk" with "kingfung.com.hk" as "kf" can be short form of many different things, not only the short form of "kingfung".

- (b) **The Respondent's rights or legitimate interests in respect of the Disputed Domain Name**

Paragraph 4(c) of the Policy states that if I find the Respondent making a legitimate non-commercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue, it is evidence that the Respondent has rights or legitimate interests to the Disputed Domain Name. The Respondent alleged that his intention is to use the Disputed Domain Name for his personal website and email purposes, and to that I have no evidence before me to suggest that I should reject this. I visited on 7 January 2005 the Disputed Domain Name, and find that the website is redirected to a personal website of "http://kamfung.multiply.com/". The contents at the personal website do not associate with the Complainant or affect the image of the Complainant negatively. I therefore find that the Respondent does not have the intent for misleadingly divert consumers or tarnish the Respondent's trade mark at issue.

It is an established principle that a person is entitled to common law trade mark rights in his name (see *Jeanette Winterson v Mark Hogarth*, WIPO Case No D2000-0235, *Steven Rattner v BuyThisDomainName*, WIPO Case No D2000-0402). According to *Monty and Pat Roberts, Inc v Bill Keith*, WIPO Case No D2000-0299, a complainant must establish the distinctive character of the name if he wishes to base his claim on his personal name. I find it difficult to agree with the Respondent's contention that he has a legitimate right to the Disputed Domain name merely because of his English name on his Hong Kong Identity Card, especially when the Disputed Domain Name is not identical, but merely a short form of his English Name on his Hong Kong Identity Card.

The Complainant alleged that "it is unfair for it to have to apply through the Sunrise Period for the Disputed Domain Name as it failed to obtain a third level domain name" entitling it to apply prior to the Sunrise Period. This allegation is without substance as the Respondent should not be held responsible for the failure of the Complainant in obtaining a third level domain name enabling him to apply prior to the Sunrise Period. The Respondent is the registered owner of the Disputed Domain Name under the records of HKDNR WHOIS. He obtained the Disputed Domain Name legitimately through a random draw from his application in the Sunrise Period under the Soft Launch Rules.

The Complainant's complaint about the Respondent applying for the Disputed Domain Name as an individual rather than as a corporate entity is also without substance as Article 6.1 of the Soft Launch Rules allows both individuals and entities to apply for domain names during the Sunrise Period. Further, Article 6.2 of the Soft Launch Rules also specifies that where there are two or more applicants for the same Second Level Domain Name, a random draw will be conducted to allocate the Second Level Domain Name. The Respondent obtained the Disputed Domain Name in accordance with the Soft Launch Rules.

Based on the above, I find that the Respondent has rights or legitimate interests in the Disputed Domain Name.

(c) **The Disputed Domain Name has been registered and used in bad faith**

Paragraph 4(b) of the Policy state examples of the evidence of registration and use in bad faith being:

(i) the circumstances indicating that the Respondent has registered or has 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 the Respondent's out-of-pocket costs directly related to the Domain Name; or

(ii) the Respondent having 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 the Respondent has engaged in a pattern of such conduct;

(iii) the Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the Domain Name, the Respondent intentionally attempted to attract, for commercial gain, Internet users to the Respondent's 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 the Respondent's website or location or of a product or service on the Respondent's website or location.

In relation to (i), the Complainant alleged that the Respondent had the intention of selling the Disputed Domain Name at an unreasonably high price. This allegation fails as I find that the primary intention of the Respondent in using the Disputed Domain Name is for personal purposes. I find that he did not register the Disputed Domain name **primarily** for the purpose of selling, renting, or otherwise transferring it to the Complainant.

In relation to (ii), the Respondent claims that the Disputed Domain Name is the only ".hk" domain name he registered. The Complainant also fails to show that the Respondent engages in a pattern of conduct preventing the Complainant from reflecting the trade mark in a corresponding domain name.

In relation to (iii) and (iv), I fail to find these elements of bad faith on the conduct of the Respondent as the contents of the Dispute Domain Name do not associate itself with any business of the Complainant nor create any likely confusion with the Complainant's mark.

From the email exchange between the Complainant and the Respondent regarding transfer of the Disputed Domain name, I am doubtful that the Respondent lacks intention in selling the Disputed Domain Name to the Complainant. However, I am not convinced that the evidence is sufficient in satisfying the burden of proving the Disputed Domain Name being registered and used in bad faith.

## 6. **DECISION**

In view of the evidence presented to me and the findings set out above, I find that the Complainant has failed to prove all 3 limbs of Paragraph 4(a) of the Policy. I therefore dismiss this complaint.

Mark Lin

Sole Panelist

Dated: 11 January 2005