



香港國際仲裁中心

Hong Kong International Arbitration Centre

.hk Domain Name Dispute Resolution

ARBITRATION PANEL DECISION

Case No. HK 07000024

Complainant: Atmel Corporation

Respondent: Tom Ku

Case Number: DHK-07000024

Domain Name: <atmel.hk>

Panelist: M. Scott Donahey

I. Procedural History

The complainant in this case is Atmel Corporation, a limited liability company organized under the laws of the State of Delaware, United States of America, whose address is 2325 Orchard Parkway, San Jose, California, United States of America (“Complainant”). Its authorized representative in these proceedings is Jason Ma, Heller Ehrman LLP.

The respondent is Tom Ku, an individual located in the People’s Republic of China whose address is not listed in Whois (“Respondent”). Respondent has not appointed any representative in these proceedings.

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

On 8 October 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 24 October 2007 the HKIAC notified the Respondent of the commencement of the action.

As 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 on 29 January 2008, 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 29 January 2008, the Panel received the file from HKIAC.

II. Factual Background

A. For the Complainant

Complainant is the holder of a trademark registrations with the Trademark Registry, Intellectual Property Department, the Government of the Hong Kong Special Administrative Region for the mark ATMEL, the earliest of which registrations issued 29 November 1991. Complaint, Annex F. The marks are registered in connection with semiconductor integrated circuits and related products. Complaint, Annex F. Complainant also has registered the mark ATMEL in more than 50 countries around the world. Complaint, Annex G.

Complainant is one of the world's leading designers and manufacturers of advanced semiconductors. Complainant provides electronics systems manufacturers with complete systems solutions. Complainant is traded on the NASDAQ Exchange and employs more than 8,000 people worldwide and sells its products in more than 60 countries. Complainant's revenues for the year 2006 were in excess of US\$ 1.6 billion.

Respondent registered the domain name at issue on 10 March 2007. Complaint, Annex C. Respondent has used the domain name at issue to resolve to a web site at which Complainant's famous logo is featured prominently. Complaint, Exhibit J. The web site contains the statement: "Atmel Corporation – Industry Leader in the Design and Manufacture of Advanced Semiconductors." *Id.* Complainant has not authorized Respondent to use its trademarks or business identity. The web site also features an email address for sales@atmel.hk. *Id.*

Complainant registered the domain name <atmel.com> on 3 March 1992. Complainant has used the domain name <atmel.com> to resolve to a web site on which its products and services are offered. Complaint, Annex I.

On 4 September 2007, Complainant sent Respondent a cease and desist letter, to which Respondent did not reply. Complaint, Annex K.

B. For the respondent

Respondent has failed to file a response in this matter.

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III. Parties' Contention

A. The Complainant

Complainant asserts that the domain name at issue is identical to Complainant's ATMEL mark, in that the domain name at issue is comprised of the ATMEL mark with the addition of the ccTLD *.hk* and incorporates the ATMEL 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 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 <atmel.hk> is identical to Complainant's registered Atmel 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 trademark at issue and long after Complainant's mark had attained worldwide notoriety. Respondent has used the domain name at issue to resolve to a web site at which Complainant's logo and corporate name are prominently featured. Respondent clearly hopes to profit from this confusion with Complainant, as the web site features an email address for sales@atmel.hk. The Panel finds that this constitutes both bad faith registration and bad faith use.

VI. Decision

For all of the foregoing reasons, the Panel decides that the domain name registered by Respondent is virtually identical 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

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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 <atmel.hk> be transferred to the Complainant.

M. Scott Donahey
Sole Panelist

DATED: 16 February , 2008