



香港國際仲裁中心

Hong Kong International Arbitration Centre

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

Complainant:	Las Vegas Sands Corporation
Respondent:	XIAO PAN
Disputed Domain Name:	venitian.hk
Registrar:	Hong Kong Domain Name Registration Company Limited
Case ID:	DHK-0800033

PROCEDURAL HISTORY

1. The Complainant is Las Vegas Sands Corporation of 3355 Las Vegas Blvd, South, Las Vegas, Nevada 89109, United States of America. The Respondent is named Xiao Pan giving an address “XM 524000 FJ”. The contested domain name is <venitian.hk>.
2. A Complaint in this matter was filed with the Hong Kong International Arbitration Centre (“HKIAC”), the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (“ADNDRC”), dated 23 April 2008 in the prescribed ‘Form A’, received by HKIAC on the same date together with the prescribed fee.
3. The HKIAC notified the Registrar of the Disputed Domain Name of the proceedings by email on 25 April 2008. The Registrar acknowledged this notification by email of 29 April 2008 confirming its registration of the Disputed Domain Name and including its WHOIS information.

4. On 20 June 2008, the HKIAC sent the Complaint to the Respondent. The means of transmission was the via the email address provided for the registration of the Disputed Domain Name. A Response was demanded within 15 calendar days. No Response was filed with the HKIAC by 7 July 2008 (being the first working day after the expiry of the 15 days' period). A single-member Panel was appointed on 15 July 2008.

FACTUAL BACKGROUND

5. Xiao Pan is registered as the holder of the domain name <venitian.hk> The Complainant filed a complaint with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre on 23 April 2008 asserting that it is the true and rightful owner of that domain name and that the dispute as to ownership of the domain name shall be determined in accordance with the ICANN Uniform Domain Name Dispute Resolution Policy (“UDRP”).
- 6 The Complainant has elected to have the case decided by a single-member panel who has confirmed that there is no impediment upon him acting impartially in determining this case.
- 7 On 20 June 2008, the Complaint was served upon the Respondent who did not choose to file any submissions within the period of 15 days allowed for this purpose. No submissions of any kind have been received from the Respondent.

THE COMPLAINANT'S SUBMISSIONS

- 8 The Complainant submits that it has extensive common law rights in the service mark VENETIAN with the date of first use of that trade mark being at least as early as 1997 in the United States. Las Vegas Sands Corporation has registered trade marks in Hong Kong and Macau dating back to 2006 and 2003 respectively and the registration numbers of the trade marks are 300470141 for Hong Kong and N/25968 & N/25969 for Macau. There is a pending trade mark application in the PRC. The trade mark VENETIAN is registered or applied for registration by the Complainant or subsidiary or related companies in many jurisdictions. The form of registration is either in the plain words THE VENETIAN or THE VENETIAN & Device. I disregard those trade marks that consist purely of a logo as being irrelevant to the complaint.
- 9 Las Vegas Sands Corporation states that the 'VENETIAN MACAU' casino, hotel and resort celebrated its grand opening on August 28, 2007 and the complex attracted more than one million visitors within the first seventeen days of opening. The law of passing off in Hong Kong has tended to take a so-called 'soft line' with regard to the need to show reputation connected with a business such that even "spill over" advertising has been held to be sufficient to give rise a protectable common law right: see *Tenichi v. Jancar* [1990] FSR 151. It would, in any case, be a reasonable inference that many of those one million visitors came from Hong Kong bearing in mind the relatively small size of the permanent population of Macau.
- 10 The Complainant also asserts that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name

<venetian.hk>. In this regard, the Complainant submits that (i) the Disputed Domain Name is being used in a manner that is fraudulent in that the Complainant's web pages have been copied by the Respondent; (ii) the Respondent has no license or other authorisation entitling the Respondent to use the domain name <venetian.hk> and (iii) the respondent has engaged previously in other so-called cybersquatting activities

THE RESPONDENT'S RESPONSE

11 The Respondent has not filed a response.

DISCUSSION AND FINDINGS

12 Under the heading 'Mandatory Administrative Proceeding', Rule 4 of the Policy sets out the necessary elements which a complainant must satisfy in order to obtain the necessary locus standi to successfully bring a complaint under the Policy, which is set out in full:

***“a. Applicable Disputes.** You [the Respondent] are required to submit to a mandatory administrative proceeding in the event that a third party (a “complainant”) asserts to the applicable Provider, in compliance with the Rules of Procedure, that*

(i) your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

(ii) you have no rights or legitimate interests in respect of the domain name; and

(iii) your domain name has been registered and is being used in bad faith.”

In the administrative proceeding, the complainant must prove that all of these three elements are present.

13 I take the view that it is unarguable that VENETIAN and VENITIAN are so similar as to be likely to lead to deception and confusion when used by parties that are not connected and operate in the same or similar areas of commercial activity. There is only one letter difference between the two marks.

RIGHTS AND LEGITIMATE INTERESTS

14 The panellist is satisfied that having regard to the extensive trade mark applications, registrations and use of the name VENETIAN as described above, Las Vegas Sands Corporation has sufficient rights in that name to bring this claim for transfer of the domain name within the meaning of paragraph 4(a)(i) of the Policy.

BAD FAITH

15 The panellist takes the view that there is sufficient evidence of bad faith through the similarity of the respective domain names <venetian.com> and <venitian.hk> and trade marks VENETIAN and VENITIAN. Moreover, it is incumbent upon the Respondent in this case to proffer a credible explanation as to how the web pages on the web site <venitian.hk> are so close to those of the Complainant’s web site since the inference of copying

is considerable to say the least. I adopt here the remarks of the Panel in HK-0200015 *Law Society of Hong Kong v. Domain Strategy Inc*:

A respondent is not obliged to participate in a domain name dispute and its failure to do so does not constitute an admission of the facts and propositions asserted by a complainant, but a failure to participate leaves a respondent vulnerable to the inferences that flow naturally from the assertions of the complainant that are not unreasonable.

- 16 The activity of registering a domain name that is very similar in spelling to a legitimately registered domain name is sometimes colloquially described as “typo-squatting” wherein the registrant of the illegitimate name hopes to attract traffic through typewriting or spelling errors. This seems to be a classic case of “typo-squatting”.

DECISION

- 17 The Panellist accordingly decides that the Complainant does have the locus standi to bring this complaint as required by paragraph 4(a)(i) of the Policy. Further, that the Respondent has no legitimate right to the domain name <venitian.hk> Therefore, the Panellist rules and decides that the Complaint in respect of the domain name <venitian.hk> succeeds.
- 18 The Complainant has asked for the remedy that the domain name <venitian.hk> be transferred to the Complainant “...so as to protect the legitimate interest of the Complainant as well as to prevent further harm being done to innocent consumers”. There is no evidence of any other possible third party having a legitimate claim to the domain name

<venitian.hk> and I see no other reason not to comply with the Complainant's requested remedy.

ORDER

19 The domain name <venitian.hk> shall be transferred to the Complainant.

Dated this the 22nd day of July 2008

PAUL STEPHENSON

(SOLE PANELLIST)