



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

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

---

Complainant: Seven Towns Ltd  
Respondent: Yuchi Industrial Limited  
Case Number: DHK-1000055  
Contested Domain Name: <rubik.com.hk>  
Panel Member: 张玉林 先生 (Mr. Jerry Yulin Zhang)

---

## **1. Parties and Contested Domain Name**

The Complainant is Seven Towns Ltd, with its business address at 7 Lambton Place, London, W11 2SH, United Kingdom (hereinafter referred to as “Complainant”). The authorized representative of the Complainant in this matter is Mayer Brown JSM with its business address at 19/F, Prince's Building, 10 Chater Road, Central, Hong Kong.

The Respondent is Yuchi Industrial Limited.

The contested Domain Name is <rubik.com.hk> (the “Disputed Domain Name”) registered by the Respondent with Hong Kong Domain Name Registration Company Limited (HKNDR) on 6 February 2009.

## **2. Procedural History**

On May 19, 2010, the Complainant filed the Complaint against the Respondent in respect of the Disputed Domain Name with the Hong Kong International Arbitration Centre (the “Centre”) and paid the required administrative filing fee. On the same day, the Centre responded to the authorized representative of the Complainant, acknowledging receipt of the Complaint and the payment of the required administrative filing fee, and confirming that it would forward the Complaint to the Respondent once the Complaint has been reviewed to be in administrative compliance with the Hong Kong Domain Name Dispute Resolution Policy.

Also on May 19, 2010, the Centre requested the HKDNR to provide the registration information of the Disputed Domain Name. The next day, May 20, 2010, the HKDNR provided the registration information of the Disputed Domain Name and confirmed that the domain name holder is an organization in Hong Kong called “Yuchi Industrial Limited”. The Billing Contact is as follows: Organization Name: Intersoft Web Services Limited; Contact Name: Billing Admin, Address: 13/Fl., Tong Sun Commercial Centre, 200 Lockhart Road, Hong Kong; Phone No.: +852-23907573; Fax No.: +852-26825465; Email Address: admin@intersoft.com.hk.

On the same day, May 20, 2010, the Centre sent the Notification of Commencement of Proceedings to the Respondent and gave the Respondent fifteen (15) business days (before June 11, 2010) for the Respondent to provide a Response in accordance with the HKDNR Domain Name Dispute Resolution Policy (the Dispute Resolution Policy), the HKDNR Domain Name Dispute Resolution Policy Rules of Procedure (the Rules of Procedure) and the HKIAC Supplemental Rules (the HKIAC Supplemental Rules).

The Respondent did not respond to the Centre after receiving the Notification of Commencement of Proceedings. The Centre sent a Default Notice on June 3, 2010, indicating that a Response has not been received by the date of the Default Notice and the Centre will proceed to appointment of the panelist shortly.

On June 4, 2010, the Centre asked the Panelist in this case whether he was available and if so, whether he was in a position to act independently and impartially as between the parties in this case. Following an affirmative response to both questions, the Centre appointed Mr. Jerry Yulin Zhang as the sole panelist in this case on June 8, 2010. According to the Rules of Procedure, unless otherwise determined by the Panelist in its sole discretion, the case was to close by June 30, 2010.

Given the Default Notice was provided earlier than the expiry date of the Response period set out in the Notification of Commencement of Proceedings, the Panelist subsequently gave procedural direction to allow additional seven days for the Respondent to respond to the Complaint and seven days for the Complainant to reply to any defense (if any) submitted by the Respondent, and extended the time limit to July 16, 2010 for rendering the award. The Respondent failed to give any Response during the time period required by the said procedural direction.

### **3. Factual Background**

The Respondent registered the Disputed Domain Name with HKDNR on 6

February 2009. The dispute arose out of the Respondent's registration and use of the Disputed Domain Name.

The Complainant Seven Towns Limited is incorporated in the United Kingdom, and owns the intellectual property rights (including copyright) subsisting in the Rubik's Cube as well as the trade marks "RUBIK" and "RUBIK'S CUBE" in many countries and regions, including China and Hong Kong Special Administration Region.

The Respondent is a company registered in Hong Kong, and resides in China. It does not have a trade mark registration for "Rubik" in Hong Kong or China.

#### **4. Parties Contentions**

##### **a) The Complainant**

The Complainant has the following principal legal grounds in support of their complaint:

##### **1. The Disputed Domain Name is identical and/or confusingly similar to trade or service marks in which Complainant has rights (paragraph 4(a)(i) of the HKDNR DNDRP)**

The Complainant submits that the Disputed Domain Name is identical to the Complainant's trade mark registrations for "Rubik" in Hong Kong and many other countries and regions. In respect of trademark rights, the Complainant provided documents of trademark registrations in many countries and regions, including the following in relation to China and Hong Kong:

- Hong Kong Trade Mark No. 301440855 for "RUBIK'S CUBE 扭計骰" in Classes 9, 28 & 41 in the name of Seven Towns Limited;
- Hong Kong Trade Mark No. 2000B09093 for "RUBIK'S CUBE" in Class 28 in the name of Seven Towns Limited;
- Hong Kong Trade Mark No. 301143611 for "RUBIK" in Classes 9, 28 & 41 in the name of Seven Towns Limited;
- Hong Kong Trade Mark No. 301143620 for "RUBIK'S CUBE" in Classes 9 & 41 in the name of Seven Towns Limited;
- PRC Trade Mark No. 4733264 for "RUBIK'S & Device" in Class 28 in the name of Seven Towns Limited;
- PRC Trade Mark No. 4733265 for "RUBIK" in Class 28 in the name of Seven Towns Limited;
- PRC Trade Mark No. 4733266 for "RUBIK" in Class 9 in the name of Seven Towns Limited;
- PRC Trade Mark No. 4733267 for "RUBIK'S & Device" in Class 9 in the

name of Seven Towns Limited;

These documents show that the Complainant has trademark rights for the “Rubik” and “Rubik’s Cube” trademarks in China and Hong Kong.

**2. Respondent has no rights or legitimate interest in respect of the Disputed Domain Name (paragraph 4 (a) (ii) of the HKDNR DNDRP)**

The Complainant submits that the Respondent has no rights or legitimate interest in respect of the Disputed Domain Name.

The Complainant confirms that they have not, nor have they ever, granted the Respondent any right, license, authorisation or consent to use its “Rubik” trade mark, in Hong Kong or elsewhere.

**3. The Disputed Domain Name has been registered and is being used by the Respondent in bad faith**

The Complainant submits that the Disputed Domain Name has been registered and is being used by the Respondent in bad faith

The domain name *rubik.com.hk* registered by the Respondent contains and features exactly the trade mark "RUBIK" owned by Seven Towns Limited and registered in many places including Hong Kong. The Respondent registered the disputed domain name *rubik.com.hk* on 6 February 2009. At the time of filing the Complaint, the domain *rubik.com.hk* was used as a homepage of Yuchi Industrial Limited to promote various types of cube puzzles under the name "magic square" which items are blatant imitations of the Complainant's Rubik's Cube products.

By registering the disputed domain name *www.rubik.com.hk*, the Respondent is intentionally trying to attract, for commercial gain, Internet users to the Respondent's website in which cube puzzles being blatant imitations of the Complainant's Rubik's Cube products are sold and/or promoted.

Based on the above grounds, the Complainants request that the Panel decide that the Disputed Domain Name shall be transferred to the Complainant.

**b) The Respondent**

The Respondent did not file a Response to the Centre within the required time or the additional time granted by the procedural direction of the Panelist.

## 5. Discussion and Findings

Upon review of the documents and evidence submitted by the parties, the following points are of particular interest to this Panel in dealing with the issues in contention.

### a) Identical or confusingly similar

The Complainant has established that it has registered trademarks “Rubik” in Hong Kong, including the registration of “Rubik” in classes 9, 28 and 41 with trademark number 301143611. The date of registration is June 19, 2008.

Apparently, the trade mark “Rubik” is the same as the distinctive part of the Disputed Domain Name in question. Therefore the Panel is of the view that the Complainant has discharged the burden of proof on its part to establish the element of identical and confusingly similar mark under Paragraph 4 (a) (i) of the HKDNR Domain Name Dispute Resolution Policy.

### b) Respondent’s rights or legitimate interest

The Respondent did not make a reply nor provide any evidence to establish its prior rights or legitimate interest in the Disputed Domain Name.

Given that there is no evidence from the Respondent on its right and/or interest in the Disputed Domain Name, this Panel concludes that the Respondent has no rights and/or legitimate interest in the Disputed Domain Name.

### c) Bad Faith

Paragraph 4(b) of the HKDNR Domain Name Dispute Resolution Policy sets forth four factors that the Panel will need to examine to determine the Respondent has registered or used a domain name in bad faith. These are understood to be non-exclusive factors as follows:

- (i) 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 documented out-of-pocket costs directly related to the Domain Name;
- (ii) the Respondent has 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 has intentionally attempted to attract, for commercial gain Internet users to the Respondent's web site 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 web site or location or of a product or service on the Respondent's web site or location.

Rubik's Cube is a world famous 3D playing puzzle. The Cube composes of six faces, each of which is covered by 9 stickers, among six solid colours. Traditionally, the solid colours are white, yellow, orange, red, blue, and green. With a built-in pivot mechanism, each face can turn independently, thus mixing up the solid colours. For the puzzle to be solved, it is understood that each face must be a solid colour. Consumers who have played with Rubik's Cube would know that it is fairly difficult to solve the puzzle, and the experience of trying to solve the puzzle would leave lasting memories of Rubik's Cube.

As described in Wikipedia the free encyclopedia online, "the Rubik's Cube is a mechanical puzzle invented in 1974 by Hungarian sculptor and professor of architecture Erno Rubik. Originally called the "Magic Cube" by its inventor, this puzzle was renamed "Rubik's Cube" by Ideal Toys in 1980 and won the German Game of the Year special award for Best Puzzle that year. It is said to be the world's best-selling toy, with over 300,000,000 Rubik's Cubes and imitations sold worldwide." Given the history of the Complainant's use of the trade mark "Rubik" in relation to the Rubik's Cube puzzle, toys, games and playthings, and gaming services in classes 9, 28 and 41, the extensive trademark registrations of "Rubik" or "Rubik's Cube" in many countries and regions, including China and Hong Kong SAR, and in light of the evidence submitted by the Complainant regarding the fame of the Rubik's Cube, the Panel accepts that the Complainant's trade mark "Rubik" is a famous trade mark and the Complainant has reputation and goodwill to the "Rubik" trade mark.

In appropriate circumstances where the domain name reflects a famous trade mark owned by a third party with whom the registrant has no relationship, bad faith can be concluded – *Pfizer Inc. v. NA, WIPO Case No. D2005-0072*. Given the fame of the Complainant's trade mark "Rubik", it is difficult to imagine that the Respondent registered the Disputed Domain Name without having been aware of the fame of the trade mark "Rubik". As such, it is inferred that the Respondent had knowledge of the Complainant's trade mark rights in Hong Kong when it registered the Disputed Domain Name. Accordingly, the Panel finds that the Respondent has registered and/or used the Disputed Domain Name in order to create a likelihood

of confusion with the Complainants' mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site or location or of a product or service on the Respondent's web site. Therefore, it is clear that bad faith is established under Paragraph 4 (b) (iv).

Based on the above discussions, it is the Panel's view that the Complainant has established bad faith according to Paragraph 4 (b) (iv).

## **6. Decision**

In view of the above findings, the Panelist concludes that the relief requested by the Complainant shall be granted and hereby orders that the Disputed Domain Name registration <rubik.com.hk> shall be transferred to the Complainant Seven Towns Limited.

Jerry Yulin Zhang  
Sole Panelist

---

July 14, 2010