

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

**Complainant:** MetaQuotes Software Corp.  
**Respondent:** Lai Zhongjun  
**Case Number:** DHK-1200082  
**Contested Domain Name:** <metatrader.hk>  
**Panel Member:** Ms Karen Mills

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**1. The Parties and Contested Domain Names**

The Complainant is MetaQuotes Software Corp., addressed in #28 Parliament Street, P.O. Box SP-63142 Nassau, Bahamas represented by Lee Sau Kin Eric.

The Respondent is Lai Zhongjun, addressed in Unit 2 7/F Trans Asia Centre 18 Kin Hong Street Kwai Chung N.T., whose representative is unknown at the issuance of this Decision.

The Disputed Domain Name is <metatrader.hk>.

**2. Procedural Matters**

12 July 2012

The Complainant filed a Complaint, with the Hong Kong International Arbitration Centre (“HKIAC”).

13 July 2012

HKIAC confirmed receipt of the Complainant’s Complaint, as well as notification to the Hong Kong Domain Name Registration Company Ltd to be reviewed.

26 July 2012

HKIAC requested that the Complainant re-submit the complete Complaint form. On the same date, the Complainant filed the form.

31 July 2012

HKIAC sent Notification of Commencement of Proceedings (“NCP”) to the Respondent. In the same correspondence, the Respondent was also informed that he was bound to submit a Response to the Complaint in fifteen (15) business days which would due on 21 August 2012.

22 August 2012

HKIAC informed the Complainant that the Respondent had not submitted a Response to HKIAC. HKIAC pointed out that it would shortly appoint Panelist for the matter.

31 August, 2012

HKIAC wrote to Karen Mills to enquire whether she was in a position to act independently and impartially between the parties, and on the same date Ms. Mills replied in the affirmative. Within less than an hour from Ms. Mills' response, HKIAC advised the Complainant that it had appointed Ms. Karen Mills ("Panelist") as sole-panelist to adjudicate the matter and that she shall render a decision by 21 September 2012; and sent the Complaint and other relevant documents to this Panelist.

### **3. Parties' Contentions**

#### **A. Complainant**

- (i) The Complainant's contentions may be summarized as follows: the Respondent/Registrant's Domain Name <metatrader.hk> is identical to the Complainant's trademark "MetaTrader", of which the Complainant is the sole owner, exclusive and rightful user of the trademark under World Intellectual Property Organization ("WIPO") certificate No. 957372 dated 31 January 2008. The content in the Respondent's webpage is also confusingly similar to that of Complainant's corporate website <[www.metaquotes.net](http://www.metaquotes.net)>.
- (ii) the Respondent has no rights or legitimate interests in respect of the Domain Name for the reason that the Respondent, Lai ZhongJun (TODAYNIC.COM INTERNATIONAL LIMITED), had registered and used the domain name of <[metatrader.hk](http://metatrader.hk)> which is identical to the Complainant trademark ("MetaTrader") and copied the Complainant's website's layout, contents, graphical logos, pictures and products, without any authorization of rights and permission to use the Complainant's materials, contents, logos and trademark.
- (iii) the Respondent's Domain Name has been registered and is being used in bad faith since Lai ZhongJun (TODAYNIC.COM INTERNATIONAL LIMITED) had registered this domain to disrupt the Complainant's business by attempting to attract Internet users to <[metatrader.hk](http://metatrader.hk)> and other on-line location by using the Complainant's company trademark, contents and copyright materials, and thus making an illegitimate use of the domain <[metatrader.hk](http://metatrader.hk)>

to gain misleadingly diverts consumers by impersonating the Complainant's company.

- (iv) if the Domain Name is registered by an individual person, the Registrant does not meet the registration requirements for that individual category of Domain Name where in this case, the domain name is registered under registrar TODAYNIC.COM INTERNATIONAL LIMITED, and the Registrant holder name is Lai ZhongJun.

#### **B. Respondent (Registrant)**

The Respondent did not submit a Response to the Hong Kong International Arbitration Centre within the required period of time nor, to the knowledge of this Panelist, at any time thereafter.

### **4. Discussion and Findings**

#### **Substantive matters**

The HKIRC Domain Name Dispute Resolution Policy (the "Policy") provides, at Paragraph 4 (a), that the Complainant must prove that all of the four following elements are present in order for a Complainant to prevail:

- (i) the Registrant's Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Registrant has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Registrant's Domain Name has been registered and is being used in bad faith, and
- (iv) if the Domain Name is registered by an individual person, the Registrant does not meet the registration requirements for that individual category of Domain Name.

Analysis on whether those conditions set out by Paragraph 4(a) of the Policy were proven in Complainant's allegation are elaborated as follows:

#### **A) Whether the Registrant's Domain Names is identical or confusingly similar to a trademark or service mark in which the Complainant has rights**

A Complainant is required under Paragraph 4(a)(i) of the Policy to prove that the domain name is identical or confusingly similar to a trademark in which the Complainant has rights.

The Complainant has established rights in the MetaTrader trademark through registrations in WIPO. The wording of the Registrant's Domain Name <metatrader.hk> is identical to the Complainant trademark "MetaTrader".

The content in the Registrant webpage is indeed almost identical and confusingly similar to the Complainant's corporate website <[www.metaquotes.net](http://www.metaquotes.net)>. The only distinctions that seem obvious were that: (i) the text displayed in <metatrader.hk> were all written in Chinese characters, whereas it is in English on the website of the Complainant ; and (ii) the artwork of one of the logos shown in the upper section of the website differs slightly from that of the Complainant's corporate website. However, the wording under the logo is still: "MetaTrader", the trademark and other intellectual property rights of which Complainant has proven its exclusive right. The layout, menus-positioning of content, and tradenames on the disputed domain name site are virtually identical to those of the Complainant's corporate website.

For the above reasons this Panelist finds that the disputed Domain Name is identical, or at least confusingly similar, to the Complainant's trademark. Thus the condition of Paragraph 4(a)(i) of the Policy has been satisfied.

**B) Whether the Respondent has rights or legitimate interests in respect of the Domain Name**

Paragraph 4(d) of the Policy set out examples of what the Respondent may demonstrate to show that it has rights or legitimate interests to the Domain Name for purposes of Paragraph 4(a)(ii) of the Policy.

Paragraph (a)(ii) of the Policy requires the Complainant to show that the Respondent has no rights or legitimate interests in respect of the Domain Name. Once prima evidence has been adduced by the Complainant, the burden shifts to the Respondent to prove otherwise.

The Complainant has never consented, assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or make use of the Complainant's trademark in the Disputed Domain Name, on its website, nor in any other manner.

The Complainant has alleged that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Respondent has made no submission at all, and therefore has not fulfilled its burden of proof. The Respondent has thus failed to demonstrate, or even to claim, that it has any rights or legitimate interests in the Domain Name, and thus there is no evidence upon which this Panelist could make any finding that Respondent has any such rights.

Accordingly, the Panelist finds that the condition of paragraph 4(a)(ii) of the Policy has been satisfied.

**C) Whether the Respondent's Domain Name has been registered and is being used in bad faith**

Paragraph 4(b) of the Policy sets out examples of circumstances that will be considered by an Administrative Panel to be evidence of the bad faith registration and use of a domain name.

It provides that:

For the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by an Arbitration Panel to be present, shall be evidence of the registration and use of a Domain Name in bad faith:

- (i) circumstances indicating that the Registrant 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 Registrant's documented out-of-pocket costs directly related to the Domain Name; or
- (ii) the Registrant 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 Registrant has engaged in a pattern of such conduct; or
- (iii) the Registrant has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the Domain Name, the Registrant has intentionally attempted to attract, for commercial gain, Internet users to the Registrant'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 Registrant's web site or location or of a product or service on the Registrant's web site or location.

There has been no allegation, nor information, to the effect that the Respondent has attempted to sell the domain name to the Complainant, nor that Respondent engages in "cybersquatting" on any regular basis.

Reiterating the points elaborated in section B) above, the Panelist has found the impressions of similarities in the disputed domain name, judging from the site's layout, designs and some other aspects mentioned above.

The Respondent appears to use the Disputed Domain Names to intentionally attempt **to divert Internet traffic to its websites** by creating a likelihood of confusion with the Complainant's trademark by using the Complainant's company name, trademark, contents and copyright materials. This constitutes bad faith under Paragraph 4 (b)(iv) of the Policy.

For the foregoing reasons, the Panel finds that the Complainant has established the finding of bad faith registration and use within the meaning of paragraph 4(a)(iii) of the Policy.

#### **D) Whether the registrant meet the Registration Requirements for that individual category of domain name**

Paragraph 4(c) of the Policy sets out examples of circumstances that will be considered by an Administrative Panel to be evidence of registration in violation of the eligibility requirement for .idv.hk/.個人.hk / .個人.香港 Domain Names ("Individual Domain Name Categories").

The Disputed Domain Name is registered by Lai ZhongJun which is indeed an individual person. However, this requirement only applies to domain names ending in .idv.hk, which is not the case here. Thus, this requirement does not apply to the current case.

### **5. Decision**

For all of the foregoing reasons and in accordance with Paragraph 4(a) of the Policy, this Panelist has determined that the Complainant has met the applicable requirements: that the Disputed Domain Name registered by the Respondent is identical or confusingly similar to the trademark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name at issue and that the Respondent's domain name has been registered and used in bad faith.

In pursuant to Paragraph 3 of the Policy, this Panelist therefore awards and requires that the registration of the Domain Name <[metatrader.hk](http://metatrader.hk)> be transferred to the Complainant.

Dated 19 September 2012  
In Jakarta, Indonesia

A handwritten signature in black ink that reads "Karen Mills". The signature is written in a cursive style with a large initial 'K' and 'M'.

Karen Mills  
Sole Panelist