

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

Complainant: Meizu Technology Co., Ltd.
Respondent: OSAMA BINLADEN
Case Number: DHK-1300101
Contested Domain Name: meizu.hk
Panel Member: Lian Yunze

1. Parties and Disputed Domain Name

The Complainant is Meizu Technology Co., Ltd. of Meizu Technology Building, Technology & Innovation Coast Zhuhai, Guangdong Province, China. The authorized representative of the Complainant in this matter is Zhang Xiling.

The Respondent is Osama Binladen.

The Disputed Domain Name is <meizu.hk>, registered by the Respondent via ERANET INTERNATIONAL LIMITED with Hong Kong Domain Name Registration Company Limited.

2. Procedural History

A complaint in respect of <meizu.hk> was filed with the Hong Kong International Arbitration Centre (“HKIAC”) on 29 August 2013 pursuant to the Hong Kong Domain Name Registration Company Limited (“HKDRN”) Domain Name Dispute Resolution Policy (“the Policy”), the HKDRN Domain Name Dispute Resolution Policy Rules of Procedure (“the Rules”) and the HKIAC Supplemental Rules therefore (“the Supplemental Rules”). On the same date, the HKIAC transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name.

On 31 August 2013, the Registrar transmitted by email to the HKIAC its verification response disclosing registrant and contact information for the Disputed Domain Name.

On 2 September 2013, the HKIAC received payment for the Domain Name Dispute Complaint fee in connection with the case.

On 18 September 2013, the Respondent was notified of the commencement of the proceedings and was requested to submit a response within 15 business days.

On 10 October 2013, the Respondent sent its response to the HKIAC.

On 16 October 2013, the HKIAC informed by email the Parties that Mr. Lian Yunze would be the sole Panelist in this matter and transferred the files of this case to the Panel formally on the same day.

On 31 October 2013, the Complainant submitted supplemental materials, and the Respondent responded to the said supplemental materials on 20 November 2013.

The Panel should render the Decision by 4 December 2013.

3. Factual Background

For the Complainant

According to the Complainant, it is a corporation incorporated in China with its registered office at Meizu Tech Bldg., Technology & Innovation Coast, Tangjia Bay, Zhuhai 519085, Guangdong, P.R.C. The Complainant's product is provided under the trademark "Meizu" and "MEIZU". The Complainant is the owner of the trademark "Meizu" and "MEIZU" (trademark number: 301153700 and 300688140 in Hong Kong), the Complainant also holds the above trademark rights in numerous countries. The Complainant starts doing business in Hong Kong in 2007.

For the Respondent

According to the WHOIS information, the Respondent is Osama Binladen. The disputed domain name <meizu.hk> was registered on 23 April 2013 via the Registrar, ERANET INTERNATIONAL LIMITED.

4. Parties' Contentions

The Complainant

1. The Disputed Domain Name <meizu.hk> is identical with or confusingly similar to the Complainant's "MEIZU" trademark and the Complainant's website <www.meizu.com>.

2. The Respondent has no right or legitimate interests in respect of the Disputed Domain Name on the grounds that (i) the Respondent has never been authorized to register the disputed Domain Name, (ii) the Respondent has no connection or affiliation with the Complainant, and (iii) the Complainants has never give the Respondent any consent, expressed or implied, to use its mark in a domain name or in any other manner.

3. The Respondent has registered the Disputed Domain Name in bad faith due to the Respondent's purpose in selling and creating a likelihood of confusion with the Complainant's trade mark.

4. The current holder of <meizu.hk> is Osama Binladen which also the Company Name of <meizu.hk> on who is. That is not meet with the requirements of domain registration.

The Complainant requests the transfer of the domain name <meizu.hk> to the Complainant.

The Respondent

1. The name of our site is "MEIZU victim's home"(Chinese name: 魅族維權之家), it's our personal blog without any business activities, so the domain "meizu.hk" is very suitable for us.

2. The purpose of our blog is to tell people how we got entrapped by the company "Meizu Technology Co., Ltd." with its so-called "Dreamlike Phone", meanwhile, we wish we can help other victims to protect their legal rights. Moreover, I will never sell this domain or the site to anyone or any company, and also will never accept any commercial sponsorship, their is only personal activities on our site. All these are clearly stated on our site.

3. The quality of MX series phones are really very bad, many problems widely occurred but few victims got satisfactory treatment. Such as the problem called "water print", thousands of people or more encountered this problem again and again, and hope to get refund, but the manufacturer only said "Just take it back and repair, and repair, and repair", then silence. No victim get refund and waste a lot of time and effort to complain and repair. Besides, poor signal, high temperature, poor battery, and so on are also very common for MX series phones.

You know in China it's often very difficult for consumers to protect their legal rights when they encountered poor quality products, because it's very easy for the manufacturers to fabricate reasons proving that the inferior product is qualified. For example, the handset Meizu MX2 white version, some people found that the LCD of the handset they bought is not in the middle of panel and the margin looks obviously one side narrow one side wide, but Meizu quibbled that such ugly appearance is qualified and doesn't matter. Besides, the handset MX3 was found that the touch panel always be out of order, but Meizu also quibbled that it's caused by the contamination or the software. Similar examples are numerous, but nearly no problems got satisfactory treatment. So, what can the victims do? Just only unite together and expose the true face of Meizu Technology, in order to get a satisfactory answer.

All the examples posted on my site are attached with the original source, they are true and authentic.

Therefore, my domain "meizu.hk" is legally used and there is no doubt that the domain belongs to me! Besides, I will also delete any inappropriate content of my blog if anyone tells me.

5. Findings

According to Paragraph 4(a) of the HKDNR Domain Name Dispute Resolution Policy ("the Policy") which is applicable hereto, the Complainant has the burden of proving that:

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

(1). Identical/confusing similarity

According to the evidence provided by the Complainant and also the information revealed in the database of Trade Marks Registry of Hong Kong Intellectual Property Department, the Panel notes that the Complainant is the owner of the Hong Kong trademarks No. 300688140 & No. 301153700 for "MEIZU" in class 9. The Complainant therefore enjoys exclusive trademark right to "MEIZU".

The disputed domain name is <meizu.hk>, composed of ".hk" and "meizu", the former being the generic top-level domain suffix, which may be disregarded when evaluating the similarity between a domain name and a trade or service mark, and the latter obviously being identical with the Complainant's registered trademark.

The Panel therefore finds that the disputed domain name is identical with the Complainant's registered trademark "MEIZU". Accordingly, the Complainant has proven that the first element is present under paragraph 4(a) of the Policy.

(2). Rights or Legitimate Interests of Respondent

The Complainant asserts that the Respondent has no rights or legitimate interests and the Complainant has never authorized the Respondent to register the disputed domain

name or use the Complainant's trademark in any manner, nor does the Complainant has any connection or affiliation with the Respondent. To the Complainant's allegation regarding the Respondent having no right in the disputed domain name, there is no submission from the Respondent or evidence to the contrary.

Paragraph 4(d) of the Policy provides that the respondent may demonstrate its rights to or legitimate interests in a domain name by proving any one of the following circumstances:

- (i) before any notice to the respondent of the dispute, the respondent's use of, or demonstrable preparations to use, the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a bona fide offering of goods or services in Hong Kong; or
- (ii) the respondent (as an individual, business, or other organization) have been commonly known by the Disputed Domain Name, even if the respondent has acquired no trade mark or service mark rights in Hong Kong; or
- (iii) the respondent has trademark or service mark rights that the mark is identical to the domain name the respondent is holding; or
- (iv) the respondent is making a legitimate non-commercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

According to the Respondent, the purpose of the website that the disputed domain name is directed to is to protect consumers' legal rights. It appears to the Panel that the Respondent is seeking to rely on the fourth circumstance in Paragraph 4(d) of the Policy as aforesaid. The panel has visited the website that the disputed domain name is directed to only to find the aforesaid website inaccessible. Given the few screen shots of the website provided by the Respondent, the Panel cannot find any reason to believe that the Respondent has rights to or legitimate interests in the Disputed Domain Name.

Accordingly, the Complainant has proven the second element required by paragraph 4(a) of the Policy.

(3). Bad faith

Under paragraph 4 (b) of the Policy, the following are relevant examples a Panel may take as evidence of registration and use 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

The Complainant asserts that the Respondent has registered the Disputed Domain Name in bad faith with the purpose of selling and creating a likelihood of confusion with the Complainant's trademark while the Respondent contends that the Disputed Domain Name is used to protect consumers' legal rights. Both parties have provided screen shots of the website that the Disputed Domain Name is directed to, which, in the Panel's opinion, are far from sufficient to support the Complainant's assertion regarding the bad faith of the Respondent in registering and using the Disputed Domain Name.

However, the supplemental screen shot of the online conversation between the Complainant and the Respondent shows that the Respondent did ever ask the Complainant for USD \$10,000 to assign the Disputed Domain Name, which falls in the first circumstance that the Policy has provided for the Panel to consider when deciding on bad faith, i.e. "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".

The Panel therefore finds the disputed domain name has been registered and is being used in bad faith. Accordingly, the Complainant has proven the third element required by paragraph 4 (a) of the Policy.

(4). If the Disputed Domain Name is registered by an individual person, the Registrant does not meet the registration requirements for that individual category of domain name

The Disputed Domain Name is not registered under an Individual Category of Domain Name and therefore Paragraph 4(a)(iv) of the Policy is not applicable in this case.

6. Conclusions

For all foregoing reasons, in accordance with Paragraph 4(a) of the Policy and Paragraph 15 of the Rules, the Panel orders that the Disputed Domain Name “meizu.hk” be transferred to the Complainant, Meizu Technology Co., Ltd.

LIAN Yunze

Dated December 2, 2013