

.hk Domain Name Dispute Resolution

ARBITRATION PANEL DECISION

Complainant: Huntsman Advanced Materials (Switzerland) GmbH

Respondent: Jun Wei

Case Number: DHK- 1300102

Contested Domain Name: <araldite.hk>

Panel Member: Ike Ehiribe

1. Parties and Contested Domain Name

1.1 The Complainant is Huntsman Advanced Materials (Switzerland) GmbH with its registered office at Klybeckstrass 200 CH-4057 Basel Switzerland (the “Complainant”) and represented by Clifford Chance LLP in Hong Kong.

1.2 The Respondent is Jun Wei whose address is at 39/F Island Place Tower, 510 Kings Road, North Point Hong Kong (the “Respondent”) and unrepresented.

1.3 The disputed domain Name is <araldite.hk>, which was registered with the Hong Kong Domain Name Registration Company Ltd (the “Registrar”).

2. Procedural History

2.1 The Complaint was filed with the Hong Kong International Arbitration Centre (the “HKIAC”) on 12 September, 2013. On 12 September, 2013, the HKIAC transmitted by email to the Hong Kong Domain Name Registration Company Ltd a request for registrar verification in connection with the disputed Domain Name. On 13 September, 2013 the Hong Kong Domain Name Registration Company Ltd transmitted by email to the HKIAC its verification response confirming that the Respondent is listed as the registrant and that the HKIRC Dispute Resolution Policy for .hk domain names is applicable to this complaint.

2.2 The HKIAC formally notified the Respondent of the Complaint and the attached exhibits by email of 18 September 2013 and advised the Respondent of the stipulated fifteen days deadline within which to file a response; being on or before 11 October 2013. The Respondent did not file a response.

2.3 By email of 17 October 2013, the HKIAC advised the parties that Ike Ehiribe had been appointed as a sole panelist in this matter.

3. Factual Background

For the Complainant

3.1 The Complainant is a limited liability company, with its registered office at Klybeckstrass 200 CH-4057 Basel Switzerland and is said to be part of the Huntsman group of companies in the business of seeking new technological solutions for creating advanced materials. The Complainant is said to be among the world's largest global manufacturers of different chemical products with "Araldite" being the leading adhesive line of products. The "Araldite" adhesive is said to be a comprehensive series of high-strength epoxy and polyurethane adhesives for the encapsulation, insulation and bonding of electronic components. The brand name is said to have been originally created in 1946 by Ciba-Geigy Corporation and for 40 years Araldite adhesives have provided manufacturers all over the world with superior adhesive handling and performance properties in industries ranging from aerospace to sporting goods. The Complainant's "Araldite" trademark is also well known worldwide by both the industrial and consumer market and has had a long history in Hong Kong having been registered in 1949. In 2009, the Complainant generated approximately US\$8 billion revenue in product sales and apart from in Hong Kong, the Araldite products are sold in other markets in the Asia Pacific region such as in Japan, Malaysia, Singapore, Korea, Indonesia, Taiwan, Vietnam, Thailand and India etc.

For the Respondent

3.2 The Respondent is based in Hong Kong at 39/F Island Place Tower, 510 Kings Road North Point Hong Kong and is said to also be based in Qingpu Industrial Park No.3690 Suite 480 Shanghai China. The Respondent registered the disputed Domain Name <araldite.hk> on 20 July 2012 according to the WhoIs Record disclosed in these proceedings.

4. Parties' Contentions

The Complainant

4.1 The Complainant asserts that the disputed Domain Name <araldite.hk> is clearly identical or confusingly similar to the Complainant's "Araldite" trademark. The Complainant states further that the "Araldite" name and mark is a brand and trade name which is extremely well known in the retail, chemical and manufacturing

industries world wide. The Complainant submits that the Respondent clearly used the disputed Domain Name to mislead the public into believing that the Respondent and his website is associated with the Complainant. The Complainant argues that the Respondent will continue to use the disputed Domain Name to mislead the public into believing that the Respondent is an official or associated with the Complainant's operations in Hong Kong; considering that it cannot be a coincidence that the prominent part of the disputed Domain Name is identical to the Complainant's "Araldite" trademark.

4.2 The Complainant further asserts that the Respondent has no rights or legitimate interests in the disputed Domain Name as the Respondent has no connection with the Respondent whatsoever nor has the Respondent been authorized, licensed or permitted by the Complainant to use its trademark. The Complainant observes that the Respondent has not applied for, nor registered the disputed Domain Name as a trademark and notes that the company name used by the Respondent in China namely, Araldite Epoxy Resin (China) Co., Ltd., is not registered as a company name. Furthermore, the Complainant submits that there is no evidence that the Respondent has been commonly known by the disputed Domain Name. Therefore, the Complainant concludes that the Respondent cannot assert a legitimate interest or fair use of the disputed Domain Name.

4.3 On the question of bad faith use and registration, the Complainant submits that given the Complainant's worldwide reputation, it is implausible that the Respondent would not have known of the "Araldite" trademark. The Complainant refers to the repeated reference to the Complainant's Araldite trademark and products as contained in the Respondent's website to assert that the Respondent was fully aware of the goodwill value in using the Complainant's "Araldite" trademark and submits further that the registration and use of the disputed Domain Name by the Respondent is deliberate and constitutes a dishonest misrepresentation to the public that the Respondent and his website are in some way associated with the Complainant and the sale of its Araldite products. Consequently, the Complainant argues that the Respondent is purposely engaged in acts of passing off and or trademark infringement.

The Respondent

4.5 The Respondent did not file any response within the stipulated time allowed by the Rules.

5. Findings

According to Paragraph 4a 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

This Panel is satisfied that the Complainant has since 1949, established well known world-wide rights in the trademark “Araldite” not only in Hong Kong where the Respondent is based but also in numerous other jurisdictions. In arriving at this conclusion, the Panel has taken into account various trademark registrations as specified in the complaint and in particular the trademark registrations under the trademark registry of the Intellectual Property Department of the Government of Hong Kong Special Administrative Region. The Panel is also satisfied that on a careful comparison of the disputed Domain Name <araldite.hk> with the Complainant’s trademark “Araldite”, it is patently obvious that the disputed Domain Name is identical or confusingly similar to the Complainant’s trademark and indeed the Complainant’s other domain names as listed in the complaint such as <araldite.com>, <araldite.china.cn> and <araldite.co.uk> etc. In essence, the Panel finds that the disputed Domain Name wholly incorporates the Complainant’s trademark “Araldite” and the mere fact that the disputed Domain Name includes the country abbreviation “hk” does nothing to prevent a finding of identical or confusing similarity. The Panel in support of this finding relies on a number of previous and recent .hk DNDR decisions such as *Tommy Bahama Group Inc., v. Xiaole Shen*, HKIAC Case No. DHK -1300090 and *Etude Corporation v. New Town Cosmetics Trading Company*, HKIAC Case No. DHK-1300088.

In these circumstances therefore, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a) (i) of the Policy.

(2). Rights or Legitimate Interests of Respondent

The Panel equally finds that the Respondent has failed to provide any cogent evidence to establish that it has been commonly known by or has been

making a *bona fide* use of the disputed Domain Name in connection with the offering of goods or services or has been making a legitimate non-commercial or fair use of the disputed Domain Name. In addition, the Panel accepts as is contended by the Complainant that the Respondent has not been authorized, licensed or permitted by the Complainant to use its trademark. In the circumstances and taking into account the adduced evidence against the Respondent in the form of website printouts, this Panel is satisfied that the Respondent has no rights or legitimate interests in the disputed Domain Name. In this regard, the Panel finds that unauthorized usage of the Complainant's trademark or trade name deliberately deployed towards misleading or confusing Internet visitors into believing that there is an association with the Complainant cannot be classified as a *bona fide* offering of goods and services nor a legitimate non-commercial or fair use of the disputed Domain Name. See in this regard the often-cited decision in *Oki Data Americas Inc. v. ASD Inc.*, WIPO Case No. D2001-0903.

With the foregoing in mind and considering the Respondent's failure to file a statement of defence within the stipulated time, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

(3). Bad faith

On the issue of bad faith use and registration, the Panel without any hesitation finds that the Respondent registered and continued to engage in bad faith use. The Complainant in this regard has referred extensively to the contents of the Respondent's website whereat the Respondent purports to display and comment upon the Complainant's products such as "Araldite 2000 PLUS" in addition to displaying the Complainant's logo and domain address at <araldite2000plus.com>. Just as the Complainant contends, the Panel is satisfied that the Respondent's conduct in this regard is deliberately intended to cause confusion in the minds of Internet visitors and constitutes a dishonest misrepresentation to the public that the Respondent and the Complainant are in some way associated or that the Respondent has been authorized to display for sale the Complainant's well known products. Secondly, the Panel finds that the Respondent must have been aware or must be deemed to be aware of the Complainant's exclusive rights in the "Araldite" trademark in numerous countries and in Hong Kong where the Respondent is based. The evidence adduced shows that the Respondent decided to register the disputed Domain Name on 20 July 2012, clearly, well after the Complainant had obtained registration of its trademark in different classes in Hong Kong since 1949 and latterly in 2010. Thirdly, and in the

alternative, the Panel is satisfied that the Respondent has purposely engaged in the acts of passing off and or the infringement of the Complainant's products and trademark. Fourthly, and in any event the Panel has drawn adverse inferences from the Respondent's failure and or refusal to respond to the evidence and submissions presented by the Complainant in these proceedings.

Therefore the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) of the Policy.

6. Conclusions

For all these reasons, and in accordance with paragraphs 4(1) of the Policy and 15 of the Rules, the Panel directs that the disputed Domain Name <araldite.hk> be transferred to the Complainants.

Dated 03 December 2013

A handwritten signature in black ink, appearing to read "Ike Ehiribe", with a horizontal line underneath the name.

Ike Ehiribe
Sole Panelist