



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

Complainant: Hysan Development Company Limited

Respondent: Lee Gardens

Case Number: DHK-1400106

Contested Domain Name: <lee-gardens.hk>

Panel Member: Adam Samuel

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**1. Parties and Contested Domain Name**

The Complainant is Hysan Development Company Limited of 49/F The Lee Gardens, 33 Hysan Avenue, Hong Kong

The Respondent is the Lee Gardens of an unknown address in Hong Kong.

The contested domain name is <lee-gardens.hk>, registered by Respondent with the Shanghai Meicheng Technology Information Development Co., Ltd on 13 December 2013.

**2. Procedural History**

The Complaint was filed with the Hong Kong International Arbitration Centre (the "Center") on 17 April 2014. On 22 April 2014, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the HKDNR Domain Name Dispute Resolution Policy (the "Policy") and the HKDNR Domain Name Dispute Resolution Rules (the "Rules").

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on 29 April 2014.

The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on 23 May 2014.

The Center appointed Adam Samuel as the sole panelist in this matter on 26 May 2014. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

### **3. Factual Background**

#### For the Complainant

The Complainant is a Hong Kong company specialising in property investment, management and development in Hong Kong. The Complainant is the legal owner of Hong Kong trademark registration 300044315 for LEE GARDENS dated 8 July 2003. An affiliated company of the Complainant owns the domain name <leegadens.com.hk>.

#### For the Respondent

The disputed domain name was registered on 13 December 2013.

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

#### The Complainant

The distinctive part of the disputed domain name is almost identical to the Complainant's mark LEE GARDENS the only difference being an extra hyphen separating the two words. Nobody has applied for a trade mark in the name LEE GARDEN or LEE GARDENS except the Complainant. Only five life companies have company names starting with "Lee Garden" on the Companies Register and none of them are connected to the Respondent. The Respondent is not related to the Complainant in any way. Nor has the Complainant ever authorized the Respondent to use its name or service marks. The Respondent, therefore has no rights or legitimate interest in respect of the disputed domain name.

It could not be a mere coincidence that the Respondent has registered a domain name which is almost identical to the Complainant's trademark. It is believed that the Registrant registered the disputed domain name with a deliberate intent to attract for commercial gain internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation or endorsement of the Respondent's website and/or is in the

circumstance calculated to deceive and so cause confusion among member of the public and lead members of the public into the belief that the Respondent's website is that of the Complainant or are in some way associated or connected with the Complainant or licensed or endorsed or approved by the Complainant.

The dispute domain name is currently linked to an online shopping website in which the Respondent uses a registered trademark of another company although it is not in any way related to the businesses that own this trademark. The Respondent has been using the disputed domain name not only to trade off the Complainant's service marks but also the name or marks of another company in which the Respondent has no rights.

### The Respondent

The Respondent did not supply a response to the Complaint.

## **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**

The disputed domain name is identical to the Complainant's Hong Kong trademark except for the addition of a hyphen and the suffix necessary to create a domain name, in this case, ".hk". The Panel concludes from this that the disputed domain name is confusingly similar to the Complainant's Hong Kong trademark.

### **(2). Rights or Legitimate Interests of Respondent**

The Respondent is called "Lee Gardens" on the whois information for the disputed domain name and on the website to which the dispute domain name resolves:

www.lee-gardens.hkGroup Limited. However, the Complainant's research has failed to identify anyone or entity with those names who could be the Respondent. Without a response to the Complaint, the Panel has to accept that the Respondent does not have a legitimate interest in the name by virtue of having that name. There is no evidence that the Complainant has ever authorized the Respondent to use its trademark. For these reasons, and in the absence of any response on this point, notably one contradicting the Complainant's claim that the Respondent has never been connected to it in any way and does not actually bear the name in question, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

### **(3). Bad faith**

The disputed domain name resolves to a website which refers to the Complainant's well-known shopping center which bears the name of its trademark, LEE GARDENS. It offers an online shop to enable customers to buy clothes, handbags and other accessories. It tells website users "And you are welcome to our physical store to shopping." However, it provides no address and there is no business with the name given on the website, "www.lee-gardens.hkGroup Limited in Lee Gardens". The site then tells users that the business is "the world's premier online 100% authentic original luxury fashion retailer local in hongkong located at the heart of Causeway Bay's Shopping District". This claim appears to be without any foundation bearing in mind the fact that the company appears to be unknown beyond its own website.

It is apparent from this that the Respondent was aware of the Complainant which owns the shopping center concerned in Causeway Bay and the distinct possibility that it had registered trademarks for the name LEE GARDENS. Nevertheless, the Respondent registered the disputed domain name which is almost identical to the Complainant's trademark. The clear impression that one gains is that the Respondent registered this domain name and continues to use it while being either well aware of the Complainant's trademark or deliberately closing its eyes to the possibility that the Complainant owns the trademark concerned.

In this Panel's view, it is impossible, at least without a full Response to the Complaint, to identify any other reason why the Respondent registered the disputed domain name except to benefit in some way from the Complainant's trademark. The only explanation of what has happened seems to be that the Respondent's motive in registering the disputed domain name was either to disrupt the Complainant's relationship with its customers or potential customers, attempt to attract Internet users for potential gain or persuade the Complainant to buy the disputed domain name for an amount in excess of the Respondent's out-of-pocket expenses. These all constitute evidence of registration and use in bad faith.

**(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**

Paragraph 4(c) of the Policy states: "For the purposes of Paragraph 4(a)(iv), the Registrant shall have violated the eligibility requirements for any Domain Name registered in the Individual Domain Name categories. These include the name incorporated in the Domain Name is not the Registrant's legal name for.hk domain names as set out in the Registration Agreement and the Registration Policies, Procedures and Guidelines and the Published Policies."

This domain name appears not to have been registered in the Individual Domain Name categories. In any event, the evidence suggests, notably the hyphen in the domain name and the statement on the website to which the dispute domain name resolves about the identity of the company which owns it, that the name incorporated in the Domain Name is not the Registrant's legal name or if it is, this is not the name of an individual person. So, the Complainant has proved this element as well.

**6. Conclusions**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <lee-gardens.hk> be transferred to the Complainant.



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Adam Samuel

Dated 5 June 2014