

.hk Domain Name Dispute Resolution

ARBITRATION PANEL DECISION

Complainant: Conair Corporation

Respondent: Tom Lee CCTV Limited

Case Number: DHK-1400108

Contested Domain Name: <babylisspro.com.hk>

Panel Member: Adam Samuel

1. Parties and Contested Domain Name

The Complainant is Conair Corporation of One Cummings Point Road, Stamford, CT06902, USA

The Respondent is the Tom Lee CCTV Limited of A2, 12/F Hung Fuk Factory Building, 60 Hung To Road, Kwun Tong, Kowloon, Hong Kong.

The contested domain name is <babylisspro.com.hk>, registered by Respondent with the Hong Kong Domain Name Registration Company Limited on 26 December 2013.

2. Procedural History

The Complaint was filed with the Hong Kong International Arbitration Center (the "Center") on 4 June 2014. On the same date, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On 5 June 2014, 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 6 June 2014. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on 30 June 2014.

The Center appointed Adam Samuel as the sole panelist in this matter on 11 July 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 US corporation that manufactures small appliances, personal care, health and beauty products. It sells professional hair care products and appliances under the trademark BABYLISPRO. The Complainant is the legal owner of Hong Kong trademark registration 301292715 for BABYLISPRO dated 24 February 2009. The Complainant registered <babylispro.com> in 1999.

For the Respondent

The Panel has no information about the Respondent.

4. Parties' Contentions

The Complainant

The disputed domain name is identical to the Complainant's BABYLISPRO trade mark registration in Hong Kong. The Respondent has no connection or affiliation with the Complainant and has not received any licence or consent from the Complainant to use its mark in any manner. The Respondent has never been authorized to register the dispute domain name. The Respondent has no rights in the disputed domain name and is not making a legitimate non-commercial or fair use of the dispute domain name.

The Respondent must have known or ought to have known of the Complainant's exclusive rights in the BABYLISPRO trademark worldwide including Hong Kong where the Respondent is located. The Respondent chose to register the dispute domain name well after the Complainant had obtained registration of its BABYLISPRO trademark in Hong Kong.

The Respondent has used the disputed domain name to mislead the public into believing that its website is an official website of the Complainant by using a BABYLIS'PRO trademark which is confusingly similar to the Complainant's BABYLISPRO trademark and by copying and/or depicting images and content closely resembling material that appears on the Complainant's corporate group's websites. This is being done to promote or sell hair care appliances under the brand

name, BABYLISPRO, on the Respondent's website without the Complainant's permission.

In March 2014, following a request from the Hong Kong Customs and Excise Department, the Complainant's legal representative tested the hair care appliances bearing the name BABYLISPRO offered by the Respondent following complaints received from the public. The test purchase showed that the goods concerned were counterfeit. This resulted in the Hong Kong Customs and Excise taking enforcement action against the Respondent and seizing the suspected counterfeit good in early May 2014.

The Complainant requested the transfer of the disputed domain name to its Hong Kong subsidiary.

The Respondent

The Respondent did not reply 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 consists of the Complainant's trademark, the standard internet suffix ".com" and the country code suffix ".hk". The addition of these suffixes does not draw a reasonable internet user's attention away from the fact that the rest of the domain name is identical to the Complainant's trademark. This is further emphasized by the way in which the Complainant's trademark consists of the generic word "baby" followed by the meaningless "liss" and the word "pro" which

relates to the professional marketplace for the Complainant's products sold under the trademark concerned. For all these reasons, the Panel concludes that the disputed domain name is confusingly similar to a trademark in Hong Kong in which the Complainant has rights.

(2). Rights or Legitimate Interests of Respondent

The Respondent is not called "Babylisspro". 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, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

(3). Bad faith

The dispute domain name consists of the Complainant's trademark and some standard internet suffixes. The trademark concerned is a made-up name with no independent significance. It seems implausible that the Respondent was unaware of the Complainant's brand and trademark. Indeed, all the evidence notably the attempt to sell similar products to the Complainant using its trade name, suggests that the Respondent knew of the Complainant's trademark and was happy to use it to make money by diverting business from the Complainant. The evidence that the Respondent used the domain name to sell counterfeit goods purporting to be of the Complainant's brand is further evidence of bad faith use.

For all the above reasons, the Panel concludes that the Respondent registered the Disputed Domain and has been using it in bad faith. The fact that the website to which the disputed domain name resolves is no longer available makes no difference. The failure to give up the domain name in spite of clearly knowing of the Complainant's rights is itself 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

The evidence suggests that the disputed domain name was not registered by an individual person.

6. Conclusions

The Complainant requested that the domain name be transferred to its Hong Kong subsidiary. Paragraph 4(i) of the Policy says:

“The remedies available to a Complainant pursuant to any proceeding before an Arbitration Panel shall be limited to requiring the cancellation of the Registrant’s Domain Name or the transfer of the Registrant’s Domain Name registration to the Complainant.”

This precludes the transfer of the disputed domain name to anyone other than the Complainant. The Hong Kong Internet Registration Corporation Limited has indicated in what is effectively fresh evidence that it is unable to transfer the domain name to the Complainant since it is not a Hong Kong corporation. The alternative remedy in the circumstances is the cancellation of the disputed domain name. If this is implemented at a time notified to the Complainant, it can immediately ensure that its Hong Kong subsidiary can apply to register the domain name as it falls vacant.

So, 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 <babylisspro.com.hk> be cancelled.



Adam Samuel

Dated 23 July 2014