

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

First Complainant: **M & M Company Limited (御美株式会社)**

Second Complainant: **Waimanly International Limited**

Respondent: **Mini Pit Limited**

Case Number: **DHK-1400109**

Contested Domain Name: **<iimo.com.hk>**

Panel Member: **David L. Kreider**

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**1. Parties and Contested Domain Name**

The First Complainant in this administrative proceeding is M & M Company Limited (御美株式会社), whose address is 1-Chome, 10-14, Kozu, Chuo-ku, Osaka City, Osaka, Japan. The Second Complainant is Waimanly International Limited, whose address is Room 1003, Hillwood Centre, 17-19 Hillwood Road, Tsimshatsui, Hong Kong. The Complainants' authorized representative is William Law of ATL Law Offices, whose address is 15/F, Fook Lee Commercial Center, 33 Lockhart Road, Wanchai, Hong Kong.

The Respondent is Mini Pit Limited, whose address is G/F., Shop A, Phase 1, Siu Ying Industrial Building, 1 Yuk Yat Street, To Kwa Wan, Kowloon, Hong Kong.

The domain name at issue is <iimo.com.hk>, registered by Respondent with Web Commerce Communications Limited DBA Webnic.cc.

**2. Procedural History**

On 6 August 2014, the Complainants submitted a Complaint to the Hong Kong Office of the Asian Domain Name Dispute Resolution Center (“ADNDRC”), pursuant to the Domain Name Dispute Resolution Policy, effective on 22 February 2011 (the “DNDRP” or “Policy”), the HKIRC Domain Name Dispute Resolution Policy Rules of Procedure (the “Rules of Procedure”), and the HKIAC Supplemental Rules (the “Supplemental Rules”). The Complainants elected that this case be dealt with by a one-person panel.

On 7 August 2014, the ADNDRC transmitted by email to the Registrar, Webnic.cc, a request for registrar verification in connection with the disputed domain name. On the same day, 7 August 2014, the Registrar transmitted by email to the ADNDRC its verification response, confirming that the Respondent is listed as the registrant and providing email contact details as [asgardwong@gmail.com](mailto:asgardwong@gmail.com).

On 14 August 2014, the ADNDRC transmitted the Complaint and evidence to the Respondent, by email addressed to [asgardwong@gmail.com](mailto:asgardwong@gmail.com); [info@iimo.com.hk](mailto:info@iimo.com.hk); [joewong@minipit.com](mailto:joewong@minipit.com); and to [postmaster@iimo.com.hk](mailto:postmaster@iimo.com.hk), and notified the Respondent of the commencement of the action, requesting that the Respondent submit a Response within 15 calendar days, and further specifying the due date as being on or before 4 September 2014 (“Notification”).

On 5 September 2014, the ADNDRC replied to the Complainants, advising that a Response to the Complaint had not been submitted to the ADNDRC within the required period of time. Since the Respondent defaulted and did not mention the Panel selection in accordance with the time specified in the Rules, the ADNDRC Supplemental Rules, and the Notification, the ADNDRC informed the Complainants and Respondent that the ADNDRC would appoint a one-person panel to proceed to render the decision.

On 5 September 2014, having received a Declaration of Impartiality and Independence and a Statement of Acceptance, the ADNDRC notified the parties that the Panel in this case had been selected, with Mr. David KREIDER acting as the sole panelist.

Also on 5 September 2014, the Panel received the file from the ADNDRC and should render the Decision on or before 29 September 2014, if there are no exceptional circumstances.

### **3. Factual Background**

The 1st Complainant, M& M Company Limited (“M&M”), was founded in 1948 and incorporated in Japan in 1986, principally engaging in the business of developing, manufacturing, selling and distributing children’s bicycles and tricycles as well as bike accessories and other child care products under the brand “iimo” all over the world. Since its incorporation, it has been expanding its sales network and channels as a comprehensive manufacturer of children vehicles and child-care supplies in Japan and throughout the world, including China, Taiwan and Hong Kong.

Over the years, the 1st Complainant has incurred substantial effort and resources, including using premium and safe materials, to ensure the quality of its products meet international standards, such as EN71 - the European Standard for Safety of Toys. The 1st Complainant takes pride in developing the core concept - “quality and innovative products with simplicity and minimalism design”- in its “iimo” products,

and has promoted the concept and products on their web-site at [www.iimo-life.com](http://www.iimo-life.com) since 24 June 2010. M&M's item "iimo tricycle #01" was an award-winning item (Award No.100194a1) at the 4th Kids Design Award 2010. The 1st Complainant, M&M, is the proprietor and registered trademark owner of the "iimo" brand in various countries and jurisdictions.

The 1st Complainant appointed the 2nd Complainant Waimanly International Limited ("Waimanly") as the exclusive agent for M&M worldwide under an Exclusive Agency Agreement entered into on 31 November 2010. After becoming the Exclusive Agent for M&M, Waimanly sold to the Respondent some tricycles for further re-sell in Hong Kong until 1 June 2014, after Waimanly found out that the Respondent had made some defamatory statement to the public regarding the quality of the products. It has come to Waimanly's attention that the website made up with Dispute Domain Name contained incorrect information. Waimanly requested the Respondent to transfer the Disputed Domain Name but the Respondent did not comply with such request.

The 1st and 2nd Complainants also registered the following relevant trademarks in various jurisdictions:

| Item No. | Country   | Reg No     | Class     | Mark  | Date of Application | Date of Registration |
|----------|-----------|------------|-----------|---|---------------------|----------------------|
| 1        | Hong Kong | 302625011  | 9, 25, 28 |  | 2013-05-31          | 2013-05-31           |
| 2        | Japan     | 5482075    | 12,20,28  | iimo  | 2010-6-24           | 2012-3-30            |
| 3        | Korea     | 40-0872517 | 12        | iimo  | 2010-07-06          | 2011-07-12           |
| 4        | China     | 8960661    | 12        | iimo  | 2010-12-16          | 2012-02-14           |
| 5        | China     | 8960751    | 12        | 御美  | 2010-12-16          | 2011-12-28           |
| 6        | Taiwan    | 01502482   | 12        | iimo  | 2011-06-30          | 2012-02-01           |

#### 4. Parties' Contentions

##### The Complainant

#### **The Disputed Domain Name Is Identical Or Confusingly Similar To the Complainant's Trademarks in Hong Kong**

The distinctive part of the Disputed Domain Name <iimo.com.hk> is "iimo" while <.com> and <.hk> are merely generic top level domains and country code top level domains respectively without significance for identifying and distinguishing origin of goods. The Disputed Domain Name is identical to the complainant's registered

trademarks because the Disputed Domain Name matches in its entirety to the Complainants' "iimo" trademark.

First, "iimo" cannot be found in any English dictionary which carries any meaning other than with reference to the Complainants' "iimo" products. When one conducts a search on google.com.hk using "iimo" as the keyword, the top matching results all refer to the Complainants' tricycle products marketed under "iimo". Secondly, the website design and layout of the Disputed Domain Name basically mirrors those of the official Japanese website www.iimo-life.com. In fact, a declaration of copyright ownership by the M&M Company for the contents and design of the Disputed Domain Name is shown at the bottom of the Respondent's website. Thirdly, given that the Respondent was once a re-seller of the iimo products, consumer confusion will be worsened if the requested relief is not granted, as consumers will likely believe that the Respondent is the Complainants' authorized branch in Hong Kong.

By reasons of the foregoing, the Disputed Domain Name will appear to be almost identical to the registered "iimo" Trademark of the Complainants in the eyes of consumers in Hong Kong or elsewhere. The continued registration of the Disputed Domain Name will likely cause confusion among consumers and cause consumers to believe that the Respondent is connected with, or is otherwise associated with, the Complainants, when in fact the Respondent is no longer an approved re-seller of the Complainants.

### **The Respondent Has No Rights Or Legitimate Interests In Respect Of The Disputed Domain Name**

A domain name registrant who at one time enjoyed a right or legitimate interest may lose it if the trademark owner legitimately withdraws its authorization, or if the registrant ceases to distribute the trademark owner's goods (Lonely Planet Publication Pty Ltd v Mike Tyler, WIPO Case No. D2004-0670). The instant Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because the Respondent has no trademark rights in, or is no longer authorized to use, the Complainants' "iimo" trademark in a domain name. As mentioned previously, the Respondent has no right to use the copyrighted contents in the Disputed Domain Name, where copyright of M&M Company is claimed and shown at the bottom of the webpage. The Complainants wish to emphasize that any business relationship or authorization (whether implied or not) in respect of distribution/re-selling rights and rights to use of the "iimo" mark, copyrighted contents and domain name were terminated with effect on 1 June 2014, pursuant to a termination notice, and any and all rights that the Respondent may have previously enjoyed reverted to the Complainants at that time.

The Complainants further submit that, since 1 June 2014, the Respondent is no longer authorized to sell and/or distribute the iimo branded products. Accordingly, the Respondent's continued use of the Complainants' trademark in the Disputed Domain

Name is not a *bona fide* offering of goods under paragraph 4 (d)(i) of the Policy. Neither has the Respondent been commonly known by the disputed domain name as envisioned by paragraph 4 (d)(ii) of the Policy; nor does the Respondent have a trademark right that is identical to the Disputed Domain Name as envisioned by paragraph 4(d)(iii) of the Policy; nor is Respondent making a legitimate non-commercial or fair use of the trademark under paragraph 4 (d)(iv) of the Policy.

### **The Respondent's Domain Name Has been Registered And Is Being Used In Bad Faith**

First, the Complainants have never authorized the Respondent or any person to register the Disputed Domain Name. The Respondent's registration of the Disputed Domain Name was done without the consent of the Complainants at the time of registration. In addition, at the time of registration, the Respondent must have known that it has no authorization from the "iimo" brand owner to register and use the Disputed Domain Name perpetually since its unauthorized registration. However, the Respondent chose to renew the Disputed Domain Name on 30 June 2014, after the right of distribution has been terminated.

Secondly, the Respondent must have knowledge since registration, in any event, at the latest, after 30 May 2014, which is the date of the Complainants' exclusive agent informed the Respondent that it would no longer be authorized to hold and/or use the Disputed Domain Name and requested for transfer of the Disputed Domain Name. Accordingly, the Respondent must have knowledge that its renewal on 30 June 2014 and use of the Disputed Domain Name has infringed the Complainants' various rights including trademark and copyright.

Thirdly, after the cessation of business cooperation relationship with the Complainants, the Respondent has not indicated on the website that it is no longer an authorized re-seller in respect of the iimo products. In fact, the Respondent has never stated clearly or revealed on the Disputed Domain Name its real relationship with the iimo brand proprietor. The Respondent merely says in the "About Us" page that M&M Company is the manufacturer, and the Respondent and its address is put underneath without stating the name and contact of Waimanly and the new locations for after-sales services. Other than that, there is nowhere in the site that states that the Respondent is a former re-seller of the Complainants.

Fourthly and most importantly, the continuous holding of a disputed domain name would prevent the genuine trademark owner, M&M from promoting and updating new products, and providing after-sale services to existing and potential customers. The Respondent's continuous use of the Complainants' "iimo" trademark and identical web design of the 1st Complainant not only will confuse consumers, but also prevent the Complainants from promoting its products in reflecting in the Disputed Domain Name in Hong Kong. In addition, header of the Disputed Domain Name is named "iimo | Official Site" (see Annexure 6), which further confuses the consumers

in Hong Kong into thinking that this is the official website operated by the Complainants, which in fact is not.

Finally, from the point of reality, if the disputed domain name holder is no longer authorized to sell/distribute the products in question, there is no commercial value left for holding the disputed domain name. Despite this, the Respondent continued to renew and hold the Dispute Domain Name with the clear intention of bad faith.

WIPO's view of the case involving re-seller or distributor of trademarked goods under "WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition ("WIPO Overview 2.0")" is as follows:-

2.3 Can a reseller/distributor of trademarked goods or services have rights or legitimate interests in a domain name which contains such trademark?

Consensus view: Normally, a reseller or distributor can be making a *bona fide* offering of goods and services and thus have a legitimate interest in the domain name if its use meets certain requirements. These requirements normally include the actual offering of goods and services at issue, the use of the site to sell only the trademarked goods, and the site's accurately and prominently disclosing the registrant's relationship with the trademark holder. The respondent must also not try to "corner the market" in domain names that reflect the trademark. Many panels subscribing to this view have also found that not only authorized but also unauthorized resellers may fall within such Oki Data principles. Pay-per-click (PPC) websites would not normally fall within such principles where such websites seek to take unfair advantage of the value of the trademark.

However: Some panels take the position (while subscribing to the consensus view) that it will generally be very difficult for a respondent to establish rights or legitimate interests where that respondent has no relevant trade mark rights and without the authority of the complainant has used a domain name identical to the complainant's trademark (i.e., <trademark.tld>). [See further View 1 in paragraph 2.4 below regarding impersonation.]

By reasons of the foregoing, the Complainants submit that the Disputed Domain Name has been registered and is being used in bad faith.

### The Respondent

The Respondent failed to submit a Response to the Complaint within the specified time period.

## **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 registered trademarks and incorporates in its entirety the First Complainant's "iimo" trademark. Moreover, the design and layout of the website to which the Disputed Domain Name resolves mirrors that of the First Complainant's website at URL [www.iimo-life.com](http://www.iimo-life.com). Complainants have satisfied the requirements of 4(a)(i) of the Policy.

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

The Complainants admit that the Respondent had been an authorized re-seller of the First Complainant's products, *viz.* childrens tricycles and that Respondent enjoyed a "*business cooperation relationship*" with Complainants, but does not say when the relationship commenced, or whether the commercial relationship was pursuant to a written or verbal agreement. Additionally, while the Complaint makes clear that the Respondent had been granted its "*re-selling and other rights*" in and to the iimo products from the Second Complainant pursuant to a purported Exclusive Agency Agreement entered into on 31 November 2010, the evidence submitted by Complainants does not include any written proof of such agency agreement. The record does, however, evidence that the Second Claimant is the registered owner of the "iimo" trademark in Hong Kong.

The Complaint alleges that the Respondent's "*re-selling and other rights*" were terminated on or about 1 June 2014, pursuant to a "termination notice", yet, once again, Complainants have not provided a copy of the purported termination notice (assuming that the notice was written, and not verbal); or even an email; a contemporaneous memorandum; or an item of correspondence to evidence the alleged termination.

The Complaint alleges, in vague and conclusory terms, that the Respondent had been found to have made "*some defamatory statement to the public regarding the quality of the products*"; that Respondent's website included "*incorrect*" information; and that the Respondent had failed to clearly state or reveal the Respondent's "*real relationship*" with the iimo brand proprietor.

In sum, the Complainants have provided no evidence to assist this Panelist in determining the nature and scope of the "*re-selling and other rights*", or to evidence how such rights came to vest in the Second Complainant and in the Respondent, or to

establish that the rights have been legitimately terminated. Mere allegations set out in an unsworn Complaint do not constitute evidence.

For the above reasons, this Panelist finds that Complainants have failed to satisfy the requirements of 4(a)(ii) of the Policy by proving that the Respondent has no right or legitimate interest in respect of the domain name.

**(3). Bad faith**

For sake of completeness, this Panelist observes that the Respondent's website (to which the Disputed Domain Name resolves), presents the First Complainant's products in a commercial and positive manner. The website clearly identifies the First Complainant as the manufacturer of the relevant products.

The Complaint asserts that, on 30 May 2014, the Second Complainant had told the Respondent that the Respondent would not be permitted to continue using the Disputed Domain Name and that the Respondent, accordingly, "*must have known*" that it could not continue using the Disputed Domain Name at time of renewal. In this regard it should be noted that a number of WIPO Panel decisions have held that the renewal of a domain name is not equivalent to a new registration: see for example WIPO Cases Nos D2000-1528; *Weatherall Green & Smith v Evermedia.com*, D2001-0748; *Spirit Airlines, Inc. v Spirit Airlines Pty Limited*, D2002-0896; *Verint Systems Inc. v CRYSTALSTEVENS*, and D2004-0338; *PAA Laboratories GmbH v Printing Arts America*.

Having found that Complainants have failed to satisfy the requirements of 4(a)(ii) of the Policy, and that the Complaint must be rejected, a further ruling in relation to element 4(a)(ii) of the Policy is unnecessary.

**(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**

Not applicable.

**6. Conclusion**

The Complaint is dismissed.

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David L. Kreider

Dated: 11 September 2014