

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

Complainant: **Guess?, Inc.**

Respondent: **Kristopher-Kent Harris**

Case Number: **DHK-1400111**

Contested Domain Name: **<guess.hk>**

Panel Member: **M. Scott Donahey**

I. Procedural History

The complainant in this case is Guess?, Inc., a company organized under the laws of the United States of America, whose address is 1444 South Alameda Street, Los Angeles, California 90021, United States of America (“Complainant”). Its authorized representative in these proceedings is Hogan Lovells, 11th Floor, One Pacific Place 88, Queensway, Hong Kong .

The respondent is Kristopher-Kent Harris, an individual, whose address is not listed in Whois and whose email address is given as info@harris.hk (“Respondent”). Complaint, Annex 1. Respondent has not appointed any representative in these proceedings.

The domain name in dispute is <guess.hk>. The Registrar of the domain name is Hong Kong Domain Name Registration Company Limited (the “Registrar”).

On 16 October 2014, pursuant to the Hong Kong Internet Registration Corporation Limited (“HKIRC”) Domain Name Dispute Resolution Policy (“the Policy”), the HKIRC Domain Name Dispute Resolution Policy Rules of Procedure (“the Rules”) and Hong Kong International Arbitration Centre Domain Name Dispute Supplemental Rules (“the HKIAC Supplemental Rules”), the Complainant submitted a complaint in the English language to the Hong Kong International Arbitration Centre (the “HKIAC”), and elected this case to be dealt with by a one-person panel. On 17 October 2014, the HKIAC sent to the complainant by email an acknowledgement of the receipt of the complaint and reviewed the format of the complaint for compliance with the Policy, the Rules and the HKIAC Supplemental Rules. On the same date the HKIAC sent a copy of the complaint to the Registrar, and requested that the Registrar verify that the Respondent was the registrant of the domain name at issue and that the Registrar confirm the contact details. Also on the same date the Registrar confirmed that the Respondent was the registrant of the domain name at issue. All correspondence to and from the HKIAC described herein was in the English language.

On 24 October 2014 the HKIAC notified the Respondent of the commencement of the action, informing Respondent that a response must be filed no later than 14 November 2014.

On 14 November Respondent sent an email to the HKIAC requesting a five day extension of time in which to file his response, which request was made because Respondent was allegedly unable to receive emails for a period of time. On 17 November 2014, HKIAC sent an email to Complainant, notifying Complainant of Respondent's request and inviting comment thereon. On the same date Complainant responded to the HKIAC by email asking whether the HKIAC had received notification of a failure of its attempts to email Respondent. On 18 November the HKIAC responded to Complainant that it had not received any notification that its emails had failed to be delivered. On the same date, Complainant notified the HKIAC that it objected to any extension.

On 24 November 2014, the HKIAC notified the parties of Respondent's default, stating that, as Respondent did not file a response within the required time, the HKIAC would appoint the panelist who will proceed to render the decision, in the absence of a response by Respondent.

On 25 November 2014, the HKIAC notified the parties that the Panel in this case had been selected, with M. Scott Donahey acting as the sole panelist. The Panel determines that the appointment was made in accordance with the Supplemental Rules. On that same date, the Panel received the file from HKIAC.

II. Factual Background

A. For the Complainant

Complainant is the holder of numerous trademark registrations including Hong Kong trademark registrations for the marks GUESS and GUESS? and related marks, which marks have been in continuous use in Hong Kong since at least the 1980s. Complaint, Annex 2. Complainant is a manufacturer, distributor, designer and licensor of fashion apparel and accessories established in California in 1981. Complainant sells such fashion items as denim and cotton apparel clothing, glasses, handbags, jewelry and intimate apparel. The marks are registered in connection with these types of goods. Complaint, Annex 2. Complainant has advertised the mark extensively in Hong Kong and in Asia generally, has advertised and extensively in Hong Kong. Complaint, Annexes, 7, 9, 10, 11, 12, 13, and 14. Because of the long history of sales and advertising using the GUESS mark (Complaint, Annexes 4 and 5), the Complainant is known as the source of the luxury goods associated with the mark to the general public around the world, including in Hong Kong. Complainant opened its first outlets in Hong Kong in 1992 and since has opened a total of ten stores in Hong Kong. Complaint, Annexes 6 and 8.

Respondent registered the domain name at issue on 31 May 2004. Complaint, Annex 1. Respondent has used the domain name at issue to resolve to an encrypted web site which requires a password in order to access content. Complaint, Annex 21

B. For the respondent

Respondent has failed to file a response in this matter.

III. Parties' Contentions

A. The Complainant

Complainant asserts that the domain name at issue is identical or confusingly similar to Complainant's GUESS and GUESS? and related marks, in that the domain name at issue is comprised of the GUESS mark with the addition of the ccTLD *.hk* and incorporates the GUESS mark.

Complainant further alleges that Respondent has no rights or legitimate interests in respect of the domain name, and that Respondent's domain name has been registered in bad faith and is being used in bad faith.

B. The Respondent

The respondent has not filed a response to the allegations.

IV. Findings

A. Respondent in Default

The Rules, Paragraph 5(e) provides that “[i]f a Respondent does not submit a timely Response, in the absence of exceptional circumstances as determined by the Provider at its sole discretion, the Arbitration Panel shall decide the dispute based upon the Complaint and the evidence submitted therewith.” The Panel finds that no exceptional circumstances exist. Accordingly the Panel will decide the dispute based upon the Complaint and the evidence submitted therewith.

B. The Language of the Proceedings

Rule 11,a of the *.hk* Procedural Rules provides as follows:

Unless otherwise agreed by the Parties, the language of the arbitration proceedings shall be in English for English *.hk* domain name, and in Chinese for Chinese *.hk* domain name or *.香港* domain name, subject always to the authority of the Arbitration Panel to determine otherwise, having regard to all the circumstances of the arbitration proceeding,

As the domain name is an English *.hk* domain name, and as the Registration Agreement attached as Annex 32 to the Complaint, the Complaint, and the correspondence in the file are all in English, the Panel determines that the language of the arbitration proceedings shall be English.

C. *Burden of Proof*

Under paragraph 4(a) of the Policy, Complainant has the burden of proving

- 1) the Registrant's Domain Name is identical or confusingly similar to a trademark or service mark in Hong Kong in which the Complainant has rights; and
- 2) the Registrant has no rights or legitimate interests in respect of the Domain Name; and
- 3) the Registrant's Domain Name has been registered and is being used in bad faith, and
- 4) if the Domain Name is registered by an individual person, the Registrant does not meet the registration requirements for that individual category of Domain Name.

V. Analysis

A. *Identical or Confusing Similarity*

The Panel finds that the domain name <guess.hk> is identical to Complainant's registered GUESS marks and is confusingly similar to Complainant's registered GUESS? mark and the related family of marks.

B. *Rights or Legitimate Interests of the Respondent*

Complainant has in a credible way alleged that Respondent has no rights or legitimate interests in respect of the domain name at issue. Respondent has failed to show that Respondent has any rights or legitimate interests in respect of the domain name at issue. This entitles the Panel to infer that Respondent has no rights or legitimate interests in respect of the domain name at issue. *Alcoholics Anonymous World Services, Inc. v. Lauren Raymond*, WIPO Case No. D2000-0007; *Ronson Plc v. Unimetal Sanayi ve Tic. A.S.*, WIPO Case No. D2000-0011. Accordingly, the Panel finds that Respondent has no rights or legitimate interests in respect of the domain name.

C. *Bad Faith*

In the present case, Respondent registered the domain name at issue decades after the trademarks of Complainant had been in continuous use and more than a decade after Complainant had established outlets and retail stores in Hong Kong, and long after Complainant's marks had attained worldwide notoriety. Granted, Respondent apparently has not used the domain name at issue to resolve to a web site at which commercial goods competitive with those of Complainant had been offered for sale. However, where, as in the present case, Complainant's mark is famous, the domain name at issue is identical to Complainant's mark, Respondent failed to list an address or telephone number for contact purpose in its registration information, and Respondent has failed to respond to Complainant's allegations, under the holding in *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003, this constitutes passive registration and use in bad faith. Accordingly, the Arbitration Panel determines that the domain name at issue was registered and is being used in bad faith.

VI. Decision

For all of the foregoing reasons, the Panel decides that the domain name registered by Respondent is identical to the mark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the domain name at issue, and that the Respondent's domain name has been registered and is being used in bad faith. Accordingly, pursuant to Paragraph 3 of the Policy, the Panel requires that the registration of the domain name <guess.hk> be transferred to the Complainant.

M. Scott Donahey
Sole Panelist

DATED: 27 November 2014