

## **.hk Domain Name Dispute Resolution**

### ARBITRATION PANEL DECISION

First Complainant:	PJS International S.A.
Second Complainant:	Ape & Partners S.p.A
Respondent:	Bo Xun Ke
Case Number:	DHK-1500119
Contested Domain Name:	<parajumpers.hk>
Panel Member:	Adam Samuel

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#### **1. Parties and Contested Domain Name**

The First Complainant is PJS International S.A. of Luxembourg. The Second Complainant is Ape & Partners S.p.A of Segusino, Italy. Both are represented by Tommaso La Scala, Studio Legale Perani Pozzi Associati of Milan, Italy

The Respondent is Bo Xun Ke of the People's Republic of China.

The disputed domain name <parajumpers.hk> is registered with Foshan YiDong Network Co., Ltd (the "Registrar").

#### **2. Procedural History**

The Complaint was filed with the Hong Kong International Arbitration Center (the "Center" or "HKIAC") on March 4, 2015. On March 5, 2015, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 12, 2015, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the Hong Kong Internet Registration Corporation Limited (HKIRC) Domain Name Dispute Resolution Policy (the "Policy" or "HKIRC Policy"), the HKIRC domain names Rules of

Procedure and the HKIAC Domain Name Dispute Supplemental Rules (the HKIAC “Supplemental 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 March 12, 2015. In accordance with the Rules, paragraph 5(a), the due date for Response was April 2, 2015. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 8, 2015.

The Center appointed Adam Samuel as the sole panellist in this matter on April 8, 2015. The Panel finds that it was properly constituted. On that day, the Panellist confirmed that he was in a position to act independently and impartially between the parties, as required by the Center to ensure compliance with the Rules, paragraph 7.

### **3. Factual Background**

#### For the Complainants

The First Complainant is a Luxembourg company which sells winter coats and jackets manufactured by the Second Complainant, an Italian company. The First Complainant owns a number of trademark registrations around the world for the name PARAJUMPERS (the “First Complainant’s trademark”), including the Hong Kong trademark number 302581597, registered on April 17, 2013. The First Complainant has granted the Second Complainant an exclusive license to use the trademark PARAJUMPERS on January 1, 2014. The Second Complainant has registered a number of domain names such as <parajumpers.org> to reflect the First Complainant’s trademark.

#### For the Respondent

The disputed domain name was first registered on October 11, 2014.

### **4. Parties’ Contentions**

#### The Complainants

These are the Complainants’ contentions with which the Panel may or may not agree.

The dispute domain name reproduces the First Complainant's trademark except for the Country Code top-Level domain ".hk" which can be ignored for the purpose of comparison. The disputed domain name does not correspond to a trademark registered in the Respondent's name or the Respondent's name itself.

The Complainants have not authorised the Respondent to use the First Complainant's trademark or apply for any domain name incorporating it.

The disputed domain name is currently being used to market counterfeit PARAJUMPERS goods. This can be seen from the fact that the website concerned is marketing these products at prices significantly below their usual market price. All the trademarks, images and photographs posted on the website connected to the disputed domain name have been copied from the Complainants' official websites and catalogues without any authorisation from the Complainants. When he registered the disputed domain name recently and almost immediately started trying to sell counterfeit goods using the Complainant's mark, the Respondent demonstrated his awareness of the existence and renown of the First Complainant's trademarks which are widely known and used around the world including in Hong Kong and China. The main consequence of this behaviour is that customers are led to believe that the website linked to the domain name at issue is somehow affiliated to the Complainants or owned by one or both of them.

### The Respondent

The Respondent did not reply to the Complainants' contentions.

## **5. Findings**

According to Paragraph 4a of the HKDNR Domain Name Dispute Resolution Policy (the "Policy") which is applicable hereto, the Complainants have 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 Complainants have 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 First Complainant's trademark to which the Second Complainant is the exclusive licensee and the necessary addition of the generic Top-Level Domain ("gTLD") ".hk". The disputed domain name is clearly at least confusingly similar to the First Complainant's trademark.

The Policy refers to a "trade mark... in Hong Kong in which the Complainant has rights". If only trademark owners were included within that expression, the Policy would read "which the Complainant owns" instead of "in which the Complainant has rights". The status of exclusive licensee is the highest form of right in a trademark short of ownership. So, in order to give the relevant part of the Policy any meaning, one must be able to find under the first test for an exclusive licensee of a trademark to which a dispute domain name is confusingly similar.

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

The Respondent is not called "Parajumpers" or anything similar and does not appear to engage in a legitimate trade under that or any related name. There is no evidence that the Complainants have ever authorized the Respondent to use their trademarks. For these reasons, and in the absence of any response on this point, notably one contradicting the Complainants' 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 disputed domain name was registered very recently. It currently purports to sell the Complainants' winter jackets. It is apparent from this that the Respondent when he registered the disputed domain name knew about the Complainants' goods.

In this Panel's view, one is left with three possible motives for the Respondent's decision to register the disputed domain name: to disrupt the Complainants' relationship with their customers or potential customers, attempt to attract Internet users for potential gain or persuade the Complainants to buy the disputed domain name from it for an amount in excess of the Respondent's out-of-pocket expenses. These all constitute evidence of registration and use in bad faith. The Respondent's motivation may have been more than one of these and perhaps all three.

It is unnecessary in the circumstances to reach a conclusion about the other points made in the Complaint.

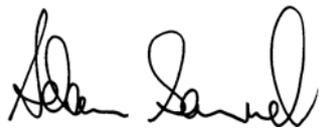
**(4). If the Disputed Domain Name is registered by an individual person, the Registrant does not meet the registration requirements for that individual category of domain name**

The Respondent is not called "Parajumpers" or anything like it. So, he does not meet the registration requirements for that individual category of domain name.

## **6. Conclusions**

For all the reasons set out above, the Panel finds that both Complainants have proved the necessary four elements of the Policy. The Complaint requests transfer of the disputed domain name to the Second Complainant. In the circumstances, the Panel must order the transfer of <parajumpers.hk> to the Second Complainant.

In the event, that there is any problem transferring the disputed domain name to the Second Complainant, the Panel orders the cancellation of the disputed domain name and urges the Registrar to inform the Complainants when this has been done to enable either of them to register the dispute domain name.



Adam Samuel  
Sole Panellist

Dated: 12 April 2015