

.hk Domain Name Dispute Resolution
ARBITRATION PANEL DECISION

Complainant: NBA Properties , Inc

Respondent: Zhao Ke

Case Number: DHK-1500125

Contested Domain Name: <nbastore.hk>

Panel Member: Adam Samuel

1. Parties and Contested Domain Name

The Complainant is NBA Properties, Inc, a US corporation based in New York, NY. It is represented by Rouse Legal, Hong Kong.

The Respondent is Zhao Ke of the People’s Republic of China.

The disputed domain name is <nbastore.hk> was registered on 21 August 2013. The registrar is 1API GmbH.

2. Procedural History

The Complaint was filed with the Hong Kong International Arbitration Center (the “Center” or “HKIAC”) on 12 November, 2015. On 23 November 2015, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On 23 November 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 24 November 2015. In accordance with the Rules, paragraph 5(a), the due date for Response was 15 December 2015. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on 16 December 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 Complainant

The Complainant is the registered owner of a number of Hong Kong trademarks for NBA which represents the National Basketball Association ("NBA"), the oldest of which is number 1995B02094 which was registered on 28 August 1992. The Complainant is the marketing and licensing arm of the NBA and the holding company responsible for the international registration and licensing of the NBA's trademarks. The NBA is a global sports and media business, featuring three professional basketball leagues, the National Basketball Association, the Women's Basketball Association and the NBA development League.

NBA Media Ventures LLC which is responsible for the registration of domain names and the operation of websites for the NBA first registered the domain <nba.com> in 1994 and <nbastore.com> in 1998.

For the Respondent

The Respondent registered the disputed domain name on 21 August 2013.

4. Parties' Contentions

These are the parties' contentions with which the Panel may or may not agree.

The Complainant

The disputed domain name will be read and perceived as a simple combination of the Complainant's trademark NBA followed by the ordinary English word "store" which commonly means a shop or location where goods may be stacked. The Complainant's trademark is the familiar, well-known, coined and distinctive acronym

of the Complainant's sister company. The Complainant has also registered the trademark, "NBASTORE" in the USA.

The Respondent has never been authorized to register the disputed domain name. To the best of the Complainant's knowledge, the Respondent does not hold any "NBA" trademarks or trademarks incorporating the term "NBA".

Using a domain name to post a parking page would not of itself confer rights or legitimate interests arising from a bona fide offering of goods or services or from legitimate non-commercial or fair use of a domain name.

The Respondent must have known or ought to have known of the Complainant's rights in NBA around the world including but not limited to Hong Kong. The Respondent registered the disputed domain name well after the Complainant had obtained the trade mark registrations of NBA in Hong Kong with the bad faith intention of exploiting the Complainant's goodwill in those trademarks.

A simple search through Google using the keywords "NBA" and "NBA Store" demonstrate that the "NBA" term is exclusively connected with the Complainant. The disputed domain name is obviously connected with the Complainant and its services.

The Respondent is presumably receiving some click-through remuneration from the parking page to which his website resolves. He is trying to profit from the diversion of Internet users through the confusion between the disputed domain name and the Complainant.

The Respondent has registered a number of other domain names which are identical or confusingly similar to other well-known international trade names. He is engaged in a pattern of cybersquatting, something reflected in a number of cases decided against him on this subject.

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 generic word "store" and ".hk". The Complainant's trademark, does not have an alternative ordinary meaning. The addition of the generic word "store" and the necessary ccTLD does not prevent the dispute domain name from being confusingly similar to the dominant feature of the domain name, the Complainant's trademark.

(2). Rights or Legitimate Interests of Respondent

The Respondent is not called "NBA" 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 Complainant has ever authorized the Respondent to use its trademarks. 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 disputed domain name was registered almost two decades after the Complainant's first NBA trademark was registered in Hong Kong. The website to which the dispute domain name resolves has always been a parking site.

The Complainant's mark is extremely well-known worldwide. However, it is difficult to imagine that the Respondent was unaware of the Complainant's trademark. This view is reinforced by the list of other domain names registered by the Respondent, a number of which are similar to well-known international brands such as "GUCCI".

It is impossible to know why the Respondent registered the disputed domain name without a response to the Complaint. 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 Complainant's relationship with their customers or potential customers, attempt to attract Internet users for potential gain or persuade the Complainant 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 "NBASTore" or anything similar. Consequently, the Registrant 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 the Complainant has proved the necessary four elements of the Policy. The Complaint requests transfer of the disputed domain name to the Complainant. In the circumstances, the Panel orders the transfer of <nbastore.hk> to the Complainant.



Adam Samuel
Sole Panellist

Dated: 18 December 2015