

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

Complainant: Spring International (HK) Development Limited

Respondent: Zeng Fan Jian

Case Number: DHK-1600127

Contested Domain Name: <houseofhello.hk>

Panel Member: Raymond HO

1. Parties and Contested Domain Name

The Complainant is **Spring International (HK) Development Limited** of 7/F, SPA Centre, No. 53-55 Lockhart Road, Wanchai, Hong Kong and its authorized representative is Messrs. Benny Kong & Tsai of 19B, OTB Building, 160 Gloucester Road, Wan Chai, Hong Kong.

The Respondent is **Zeng Fan Jian** of Room A716, No. 818, Congyun Road Baiyun District, Guangzhou, China

The domain name at issue is <**houseofhello.hk**> (the “Disputed Domain Name”). The Disputed Domain Name is registered with **Chengdu West Dimension Digital Technology Co., Ltd.** (the “Registrar”), the email address of which is domain@west263.com.

2. Procedural History

On 12 January 2016 the Hong Kong International Arbitration Centre (“the Centre”) received the Complaint filed by the Complainant pursuant to the Domain Name Dispute Resolution Policy, adopted by the Hong Kong Domain Name Internet Registration Corporation Limited (HKIRC) on 22 February 2011 (the “Policy”), the HKIRC Domain Name Dispute Resolution Policy Rules of Procedure, approved by HKIRC on 22 February 2011 (the “Rules”) and the HKIAC Supplemental Rules (the “Supplemental Rules”) effective from 1 March 2011.

On 12 January 2016, the Centre transmitted by email to the Registrar, a request for registrar verification in connection with the registrant of the Disputed Domain Name.

On 12 January 2016, the Registrar confirmed that the Respondent is the registrant or holder of the Disputed Domain Name; and that the Policy is applicable to the current dispute; and provided the Centre with the WHOIS information regarding the Disputed Domain Name, including the administrative and technical contacts of the Respondent.

On 19 January 2016 the Centre served on the Respondent by email the notification of commencement of proceedings (“NCP”) and that the Respondent had 15 business days, on or before 12 February 2016, to submit a Response to the Complaint in accordance with the Policy, the Rules and the Supplemental Rules. The Complaint and its annexures were attached to the NCP.

A Response was received from the Respondent by the Centre within the required period of time on 11 February 2016; and the Centre acknowledged receipt of the Response on 12 February 2016.

On 1 March 2016, the Centre appointed Mr. Raymond HO as sole Panelist in the proceeding who had submitted the Statement of Acceptance and Declaration of Impartiality and Independence in compliance with the Rules.

3. Factual Background

The Complainant is a company incorporated in Hong Kong engaging in the business of designing, manufacturing and marketing fashion items, such as handbags, apparel, accessories and footwear in Hong Kong; and is the holder of “HouseOfHello HouseOfHello”, “ House Of Hello HouseOfHello”, and “ HouseOfHello HouseOfHello” etc. (“collectively referred to as the “Registered Hong Kong Trademarks of the Complainant” or the “House of Hello” trademarks), registered at the Trade Marks Registry in Hong Kong.

As confirmed by the Registrar, the Respondent is the registrant or holder of the Disputed Domain Name that was registered on 8 July 2014 expiring on 8 July 2018. It is not in dispute that the Disputed Domain Name resolves to a product website known as "HOUSE OF HELLO" operated by HK House of Hello Group Co., Limited.

The Complainant had on 2 July 2015 filed a court action at the High Court in Hong Kong under HCA Action No. 1494 of 2015 against HK House of Hello Group Co., Limited, a company incorporated in Hong Kong (the “Hong Kong Court Action”), for infringement of the Registered Hong Kong Trademarks of the Complainant and obtained an injunction order from the Court (the “Injunction Order”) restraining HK House of Hello Group Co., Limited from, inter alia, using the domain name “houseofhello.hk”.

4. Parties' Contentions

A The Complainant

The Complainant's contentions are as follows:

- (1) The Disputed Domain Name is identical to the "House of Hello" trade marks

The Complainant claims that in addition to the Registered Trademarks of the Complainant with search records shown at Exhibit 3 of the Complaint, it has further registered similar trademarks worldwide as listed on Exhibit 2 of the Complaint.

The Complainant asserts that by reason of the substantial sales and extensive advertising of goods under the "House of Hello" trademarks of the Complainant, these trademarks have become well known and distinctive throughout the world including in Hong Kong as the goods of the Complainant. The Complainant adds that members of the trade and public throughout the world including in Hong Kong, have recognized and understood that goods sold under or by reference to the "House of Hello" trademarks of the Complainant are those of the Complainant.

The Complainant submits that the Disputed Domain Name <houseofhello.hk> contains the word components of "house of hello"; and that "houseofhello" is the only distinctive component in the Disputed Domain Name, and it is identical to the "House of Hello" trade mark in which the Complainant has acquired and enjoys legitimate rights and interests.

- (2) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name

The Complainant refers to a copy of the incorporation document of HK House of Hello Group Co., Limited submitted to the Companies Registry in Hong Kong on 25 July 2014 at Exhibit 4 of the Complaint and also to a snapshot of the "HOME" section of the website www.houseofhello.hk at Exhibit 5 of the Complaint. It is the Complainant's case that the Respondent has incorporated HK House of Hello Group Co., Limited to operate the website www.houseofhello.hk and to offer for sale goods identical and in direct competition to those of the Complainant under and by reference to the "House of Hello" trademarks of the Complainant. The Complainant submits that the Respondent has not made any legitimate or active use of the Disputed Domain Name except the infringing activities referred above.

Furthermore, the Complainant asserts that the Respondent does not own any trade mark registrations reflecting or corresponding to the Disputed Domain Name, and has

not made any legitimate non-commercial or fair use of the Disputed Domain Name anywhere in the world.

The Complainant says that the Respondent has no connection or affiliation with the Complainant and has received no authorization, license or consent from the Complainant to use the “House of Hello” trademarks or any other trademarks of the Complainant.

(3) The Disputed Domain Name has been registered and is being used in bad faith

The Complainant submits that based on matters set out in the preceding paragraph above, the Respondent clearly has registered and used the Disputed Domain Name in bad faith in order to mislead the public into the mistaken belief that his services or goods are in some way related to or associated with the Complainant.

In accordance with the Policy, the Complainant therefore asks the Panel to make an order that the Disputed Domain Name be transferred to the Complainant.

B. The Respondent

The Respondent’s contentions are as follows:

(1) The Respondents claims that the website www.houseofhello.hk is the Respondent’s official website of the “houseofhello” brand bags and luggage products produced by Guangzhou KeYiSheng Trading Co., Ltd (“KeYiSheng Co.”). The Respondent adds that the Disputed Domain Name is based on the “houseofhello” brand bags and luggage products produced by KeYiSheng Co. The Respondents says that KeYiSheng Co. has been commercially using the “houseofhello” business logo for production, marketing, publicity of the bags and luggage products on a long and stable basis since 2011; and that the “houseofhello” logo has established a solid and single connection with the bags and luggage products produced by KeYiSheng Co.. Therefore, the Respondents argues that the Respondent was not malicious in the registering and using of the Disputed Domain Name; and that the Respondent has not damaged the interests of the Complainant. The Respondent says on the contrary, the Complainant has maliciously registered the trademark "houseofhello" not only in the mainland of China but in Hong Kong. The Respondent adds that KeYiSheng Co. has

made an application for invalid declaration against the trademark  held by the Complainant with the Trademark Office of the State Administration for Industry & Commerce Trademark of the People's Republic of China; and filed a lawsuit of non- infringement with regard to the trademark held by the Complainant and the business logo “houseofhello” used by KeYiSheng Co. with Guangzhou Baiyun District People's Court of Guangdong, which currently is in the trial process;

(2) The Respondent claims that the “houseofhello” brand bags and luggage produced by KeYiSheng Co. have been popular in the vast consumers, attracting consumers with excellent quality and novel design, and have had loyal consumer groups in the process of production and sale. The Respondent adds that there has been no confusion against consumers between the goods of the Complainant and those of the Respondents caused by website www.houseofhello.hk involved in this case.

(3) The Respondent submits that the business logo “houseofhello” used by KeYiSheng Co. and the registered trademark  used by the Complainant does not constitute an approximation from the point of composition and font, and the two have already formed the inherent consumer groups in the long-term commercial use, with no possibility of confusion at all.

(4) The Respondent says that KeYiSheng Co. has attached logo for distinguishing to the "houseofhello" brand bags and luggage products produced, the specific image of which is as follows:



And the Complainant has also added logo for distinguishing in the bags and luggage products, the specific image of which is as follows:



Thus, the Respondent submits that there is a big difference between the above two logos, which is unable to be confused.

(5) The Respondent asserts that since the registration of <houseofhello.hk>, KeYiSheng Co. has always treated it as an important window for advertising for the products, investing considerable manpower and material resources for the construction and the promotion of the brand and the website; and adds that the Respondent has never had the intention of clinging to the Complainant.

(6) The Respondent claims that there are the following litigation cases related to this matter:

(a) An application made by KeYiSheng Co. for invalid declaration against the

trademark  held by the Complainant with the Trademark Office of the State Administration for Industry & Commerce Trademark of the People's Republic of China; and

(b) The dispute over the trademark ownership and infringement between KeYiSheng Co. and the Complainant at the Baiyun District People's court of Guangzhou, Guangdong (Case No.(2015)SYFZMCZ424).

5. Findings

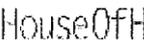
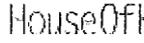
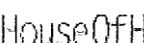
According to Paragraph 4(a) of the Policy which is applicable hereto, the Complainant has the burden of proving that:

- (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

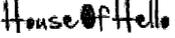
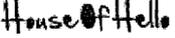
The first question that arises is whether the Complainant has a trademark or service mark in Hong Kong on which it can rely.

Based on the documentary evidence provided by the Complainant, the Panel finds that the Complainant is the registered holder of the following trademarks registered at the Trade Marks Registry of Hong Kong:

- (a) “HouseOfHello  ”trademark, registration no. 303020057, class 18. Registration valid from 5 June 2014 to 4 June 2024.
- (b) “HouseOfHello  ” trademark, registration no. 303021542, class 25. Registration valid from 5 June 2014 to 4 June 2024.
- (c) “HouseOfHello  ”trademark, registration no. 303022947, class 18. Registration valid from 6 June 2014 to 5 June 2024.
- (d) “HouseOfHello  ”trademark, registration no. 303022965, class 25. Registration valid from 6 June 2014 to 5 June 2024.
- (e) “House Of Hello  ”trademark, registration no. 303117852, class 9, 14, 20, 21, 26, 35 and 43. Registration valid from 28 August 2014 to 27 August 2024.
- (f) “HouseOfHello  ”trademark, registration no. 303020057, class 18. Registration valid from 5 June 2014 to 4 June 2024.

As regards the other “House of Hello” trademarks registered elsewhere that are referred to in the Complaint, the Panel finds no evidence in support of the

Complainant's contention that these trademarks are also owned or registered by the Complainant.

The second question that arises is whether the Disputed Domain Name may be said to be identical or confusingly similar to the "House of Hello" trademarks of the Complainant. Given that the Registered Hong Kong Trademarks of the Complainant contain respectively the words "House of Hello" and the logo "", the Panel rejects that the Respondent's contention that the Complainant's trade mark merely contains the device "". What is required for determination under paragraph 4(a)(i) of the Policy is whether the Disputed Domain Name is identical or confusingly similar to a trade mark or service mark in Hong Kong in which the Complainant has rights, the Panel therefore considers that the submission by the Respondent that there are distinguishing additional logos on the products of the marks in question, namely, "I'm not HERMES" and "I'm not LUXURY" to be irrelevant.

The Panel accepts the Complainant's submission that that the Disputed Domain Name contains the word components of "house of hello"; and that "houseofhello" is the only distinctive component in the Disputed Domain Name, and it is identical to the Registered Hong Kong Trademarks of the Complainant. It is established that the suffix ".hk" can be ignored in making this comparison. The Panel therefore finds that the Disputed Domain Name is identical to the "House of Hello" trademarks of the Complainant.

Accordingly, the Complainant has satisfied the requirement of paragraph 4(a)(i) of the Policy.

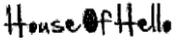
(2) Rights or Legitimate Interests of Respondent

It is well established that the Complainant must first make a prima facie case that Respondent lacks rights and legitimate interests in the Disputed Domain Name under paragraph 4(a) (ii) of the Policy and then the onus of proof shifts to the Respondent to show it does have rights or legitimate interests.

In the Hong Kong Court Action the Complainant has obtained the Injunction Order restraining HK House of Hello Group Co., Limited "whether acting by itself, its directors, officers, employees, servants or agents or any of them or otherwise howsoever" from infringing the Registered Hong Kong Trademarks of the Complainant and from using the domain name "houseofhello.hk". Furthermore, HK House of Hello Group Co., Limited was required by the Injunction Order, among other things, to forthwith de-register the domain name "houseofhello.hk" and to

remove the words “House of Hello” from the name of HK House of Hello Group Co., Limited. As a shareholder of HK House of Hello Group Co., Limited, the Respondent must abide by the Injunction Order. Obviously, a prima facie case has made out by the Complainant against the Respondent that he lacks rights and legitimate interests in the Disputed Domain Name; and it is then up to the Respondent to rebut the case.

The Panel has examined carefully the grounds on which the Respondent maintains that he has a right or legitimate interest in the Disputed Domain Name and finds that the Respondent has not rebutted the prima facie case against him on the following reasons:

- (a) The Respondent does not dispute the Hong Kong Court Action and the Injunction Order obtained by the Complainant under which the Respondent as a shareholder of HK House of Hello Group Co., Limited is subject to the restraint.
- (b) Contrary to the confirmation provided to the Centre by the Registrar, the Respondent purports to rely on a certification of Generic Top Level Domain Name at the Respondent’s Exhibit 14 to show that Guangzhou KeYiSheng Trading Co., Ltd. (rather than the Respondent himself) is the registrant of the Disputed Domain Name. The Panel prefers the evidence of the Registrar and rejects the Respondent’s contention that the Respondent is not the registrant or holder of the Disputed Domain Name
- (c) The Respondent’s Exhibits 5 and 7 show that KeYiSheng Co. was only set up on 9 January 2015 and there is no evidence to support the Respondent’s claim that KeYiSheng Co. has been commercially using the “houseofhello” business logo for production, marketing, publicity of the bags and luggage products on a long and stable basis since 2011. The copied invoices on the Respondent’s Exhibit 17 showing two orders placed in 2011 for the material of “House of Hello” mark does not demonstrate the Respondent nor KeYiSheng Co. was connected to these transactions. The lease contract on the Respondent’s Exhibit 15 only shows that Peng Li Xia, the co-shareholder of the Respondent in KeYiSheng Co. , had leased certain shop stall in Guangzhou in 2011 for use. It is irrelevant to the issues under consideration in the present case.
- (d) At the Respondent’s Exhibit 6 there is an authorization letter by KeYiSheng Co. dated 2 May 2015 appointing a Heibei company to apply for the registration of the “House of Hello” trademark and also to apply for an invalid declaration of the “House of Hello” trademark registered by 温州迦特贸易有限公司. Therefore, by the Respondent’s own admission, it is clear that the Respondent has not been holding any “House of Hello” trademark neither registered in the mainland of China nor in Hong Kong.
- (e) The Respondent’s Exhibit 12 shows a class 18 “  ” trademark , registration no. 11919780, registered by 温州迦特贸易有限公司 but not by the

Complainant as the Respondent alleges. The Panel considers that mere acceptance of the application to invalidate this trademark registration dated 16 June 2015 by the Trademark Office of the State Administration for Industry & Commerce Trademark of the People's Republic of China as shown at the Respondent's Exhibit 1 does not demonstrate the Respondent has any right in the "House of Hello" trademark.

- (f) On the Respondent's Exhibits 3 and 2, there are court notices showing the trademark ownership and infringement action filed by 温州迦特贸易有限公司 against KeYiSheng Co. against KeYiSheng Co. at the Baiyun district people's court of Guangzhou, Guangdong (Case No.(2015)SYFZMCZ424), But there is no information of the outcome of the hearing fixed on 18 August 2015 that the Respondent claims to be still in the trial process. The Panel finds such a dispute to be irrelevant to the question whether the Respondent has rights in the Disputed Domain Names as different parties are involved and no definitive ruling has been made by the court.

Paragraph 4(d) of the Policy provides as follows:

"Any of the following circumstances, in particular but without limitation, if found by an Arbitration Panel to be proven based on its evaluation of all evidence presented to it, shall demonstrate the Registrant's rights or legitimate interests to the Domain Name for purposes of Paragraph 4(a)(ii):

- (i) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a bona fide offering of goods or services in Hong Kong; or
- (ii) the Registrant (as an individual, business, or other organisation) has been commonly known by the Domain Name, even if the Registrant has acquired no trade mark or service mark rights in Hong Kong; or
- (iii) the Registrant has trademark or service mark rights that the mark is identical to the Domain Name the Registrant is holding; or
- (iv) the Registrant is making a legitimate non-commercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue; or
- (v) If the Domain Name is registered in one of the Individual Domain Name Categories, the Domain Name registered must be the Registrant's own "individual name", which can be either (1) the Registrant's legal name, or (2) a name by which the Registrant is commonly known and can include, for example, a pseudonym the Registrant uses if the Registrant is an author or a painter, or a stage name if the

Registrant is a singer or actor, or the name of a fictional character if the Registrant has created or can otherwise show it has rights in such fictional character.”

Having considered all the evidence presented, the Panel finds none of the circumstances in paragraph 4(d) has been established. The Respondent has thus not rebutted the prima facie case against him.

Accordingly, the Complainant has satisfied the requirement of paragraph 4(a)(ii) of the Policy.

(3) Bad Faith

It is clear that to establish bad faith for the purposes of the Policy, the Complainant must show that the disputed domain name was registered in bad faith and has been used in bad faith.

Paragraph 4(b) of the Policy provides:

“For the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by an Arbitration Panel to be present, shall be evidence of the registration and use of a Domain Name in bad faith:

- (i) circumstances indicating that the Registrant has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to the Complainant who is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant’s documented out-of-pocket costs directly related to the Domain Name; or
- (ii) the Registrant has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding Domain Name, provided that the Registrant has engaged in a pattern of such conduct; or
- (iii) the Registrant has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the Domain Name, the Registrant has intentionally attempted to attract, for commercial gain, Internet users to the Registrant’s web site or other on-line location, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the Registrant’s web site or location or of a product or service on the Registrant’s web site or location.”

However, those criteria are not exclusive and the Complainant may also rely on conduct that is bad faith within the generally accepted meaning of that expression.

Having regard to these principles, the Panel finds that the Disputed Domain Name was registered and used in bad faith for the following reasons.

- (a) The Respondent and his co-shareholder, Peng Li Xia, submitted the incorporation document of HK House of Hello Group Co., Limited in Hong Kong on 25 July 2014 for the incorporation of this company to operate the "HOUSE OF HELLO" product website shortly after the registration of the Disputed Domain Name on 8 July 2014.
- (b) It is the Respondent's case is that KeYiSheng Co. (owned by the Respondent and his co-shareholder, Peng Li Xia) is in the business of a wholesaler of brand bags and luggage products that it produces in Guangzhou; and that there are additional logos, "I'm not HERMES" and "I'm not LUXURY" distinguishing the "House of Hello" mark of the Respondent from that of the Complainant on the products. That would give rise to a reasonable inference that the Respondent knew of the existence of the Registered Hong Kong Trademarks of the Complainant at the time when the Respondent registered the Disputed Domain Name, in particular, when five of the Registered Hong Kong Trademarks of the Complainant were originally registered by 温州迦特贸易有限公司 and later transferred to the Complainant on 15 April 2015. It is therefore inconceivable to imagine that the Respondent believed on reasonable grounds that he was entitled to take the "House of Hello" trademarks of the Complainant without permission, use it to register the Disputed Domain Name and to use it to resolved to the website www.houseofhello.hk operated by HK House of Hello Group Co., Limited.
- (c) The Respondent has continued to use the Disputed Domain Name in disregard of the Injunction Order is by itself clearly bad faith.

Based on the above, the Panel finds that Respondent registered and used the Disputed Domain Name in bad faith under paragraph 4(b)(iii) and within the generally accepted meaning of bad faith.

Accordingly, the Complainant has satisfied the requirement of paragraph 4(a)(iii) of the Policy.

(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

As the Disputed Domain Name is not a 個人.hk domain name as referred to in Paragraph 4(c) of the Policy, Paragraph 4(a)(iv) of the Policy is therefore not applicable.

6. DECISION

For all the foregoing reasons, in accordance with paragraphs 4(a) of the Policy, the Panel orders that domain name <houseofhello.hk> be transferred to the Complainant.

Raymond HO
Sole Panelist
Dated 9 March 2016