



Hong Kong International Arbitration Centre

香港國際仲裁中心

.hk Domain Name Dispute Resolution

ARBITRATION PANEL DECISION

Case No.	DN-0300011
Respondent	L.T.D. Trading Company
Domain Name	ltd.com.hk
Registrar	Hong Kong Domain Name Registration Company Limited

1. Procedural History

On July 23, 2003, the Hong Kong International Arbitration Centre [HKIAC] received the hardcopies of the Complaint form from the Complainant. On July 28, 2003, the HKIAC sent a Notification to the Registrar. On August 14, 2003, the HKIAC received the Complaint form in electronic format filed by the Complainant, as well as payment from the Complainant in the correct amount for a single-member panel. On August 15, 2003, the HKIAC forwarded the Complaint to the Respondent by double registered post. On August 19, 2003, the HKIAC served a Notification of the Commencement of the Proceedings on Respondent. On September 11, 2003, the HKIAC requested that the parties rank the three candidates for Panelist in order of preference. On September 13, 2003, the HKIAC received from the Complainant the ranking of the three candidates in order of preference. On September 15, 2003, the HKIAC appointed Mr. Leon Trakman, as the highest mutually ranked candidate, to serve as Panelist and notified the parties of the Panel's appointment on September 17, 2003.

2. Factual Background

For the Complainant

The Complainant, Infolink Limited was incorporated in 1999. Its business activity includes the development of software, internet telephony, interactive voice response system, intranet, e-commerce applications, online directories service and hosting. In 2000, it began research and development into online directories and hosting services. The word "LTD" was the service mark of its services, which means "Local Trade Directors." Its business partners in China, Taiwan, Australia, Singapore and Malaysia had acquired the "ltd" domain name locally, except for the Complainant in Hong Kong.

The Respondent, the L.T.D. Trading Company registered its domain name www.ltd.com.hk. The Complainant alleges that it became aware of the L.T.D. Trading Company [L.T.D. Trading] and Respondent domain name; and that it tried to contact the owner of L.T.D. Trading via email, but that the email could not be delivered.

The Complainant thereafter contacted the Hong Kong Domain Name Registration Company Limited 'WHOIS'. It ascertained from that Registration Company that Homepage HongKong was the Technical Contact of the domain name www.ltd.com.hk. The

Complainant alleges that it called and establishes that it wrote to Homepage Hong Kong on 24 August 2001 to request that the latter check its database in order to contact L.T.D. Trading. Homepage HongKong responded that it could not find any applicable information in their database. However, it did provide the address of L.T.D. Trading, as well as the addresses of two individuals, the Administrative Contact and Technical Contact, at Homepage HongKong.

On the same day, the Complainant wrote to the Administrative and Technical contacts of Homepage HongKong requesting that they verify ownership of the domain name. The addressees replied that the information requested was public. On 13 September 2001, the Complainant alleges that it again called Homepage HongKong to enquire about the domain name. An individual responded in writing to the request, offering to sell the domain name provided that the Complainant made a good offer. The letter also asserted that the domain name was owned by one of Homepage HongKong's directors.

Towards the end of September 2001, the Complainant alleges that its Director flew to Hong Kong to find L.T.D. Trading Company and its Administrative and Technical Contacts. The Complainant contends that neither the Company, nor the Administrative Contacts could be found.

The Complainant alleges further, that it ascertained the name of the Administrative and Technical Contacts of HomePage HongKong from the records of the Inland Revenue Department.

The Complainant also establishes that Homepage HongKong was registered in the name of an individual at the same residential address as L.T.D. Trading Company. However, the Complainant alleges there was no trace of L.T.D. Trading Company in the records of the Inland Revenue Department.

The Complainant alleges that it waited until 31 May 2002, anticipating that the domain name owner would re-register the domain name and that the Hong Kong Domain Name Registration Company Limited would release the domain if the owner did not re-register it before that date. However, at the time of filing the Complainant, the domain name was not re-registered and had not been in use for more than a year.

The Complainant alleges that it has spent considerable time and effort in planning and developing the software applications of its services, with a view to creating awareness of the same.

It alleges further that it has withheld launching its plan in order to secure the hk domain name, so as to service Hong Kong, just as China and Taiwan are already in the service list.

The Complainant apologizes for not disclosing much about its online directories services in its Complaint but that this is due to the need for confidentiality.

The Complainant indicates, as well, that it has refrained from providing information about the Complaint because of its concern that the Respondent would use such information to the Complainant's disadvantage. The Complainant elaborates that, if the original concepts of its services are made known to the Respondent, the latter might use the domain name for its own use to provide services similar to those of the Complainant and that this would

disadvantage the Complainant.

For the Respondent

No facts are available from the Respondent..

3. Parties' Contentions

The Complainant

The Complainant contends that the L.T.D. Trading Company is non-existent, that the Administrative Contact or person-in-charge of the domain name could not be found, that the owner of the domain name is a domain squatter, and that the domain name www.ltd.com.hk is being used in bad faith.

The Complainant alleges, in support of its contention that the L.T.D. Trading Company is non-existent, that the LTD Trading Company could not be traced through the records of the Inland Revenue Department and that even the representative of the Hong Kong Domain Name Registration Company Limited could not trace it.

The Complainant requests that the disputed domain name be transferred to it.

The Respondent

The Respondent did not respond to the Complaint or participate in the proceedings.

4. Findings

Identical or Confusing Similarity

The domain name in issue is confusingly similar to the trade mark of the Complainant. In particular, the word "LTD" is the service mark for the Complainant's services. The word has a specific meaning which relates directly to the services provided by the Complainant, namely "Local Trade Directories." The services include research and development into online directors and hosting services.

It is apparent that an Internet user might be confused as between the Respondent's domain name, namely, www.ltd.com.hk, as well as by the Respondent's trading name "L.T.D. Trading Company." The use of the word "LTD" in both that the Respondent's trading and domain name, the fact that such registration is in Hong Kong, contribute to that confusion.

It is reasonable to conclude, therefore, that an individual who identifies the domain name www.ltd.com.hk would reasonably confuse that name with the service mark of the Respondent.

Rights or Legitimate Interests of the Respondent

The Respondent has no rights or legitimate interests in the domain name in dispute.

While it is not self-evident that the Respondent is non-existent, as the Complainant

contends, it is unlikely that it engages in business activity, or that it engages in an activity that is related to its domain name. It is certainly conceivable that the domain name consists of the initials of the Registrant, or some intended activity. However, in the absence of any evidence of such activity, and the apparent absence of business activity in the public domain, it is reasonable to conclude that the Respondent has secured a domain name for some unknown business activity which has not been pursued, or that no such activity was ever intended other than to sell the domain name for significant profit.

It is negative reasoning to argue only that, by in not responding to the Complainant about its business activity, the Respondent lacks a legitimate interest. Indeed, the Respondent could decline to disclose the nature of its business, not unlike the Complainant, for reasons of confidentiality and for fear of sustaining unfair disadvantage as a result of such a disclosure.

However, the absence of evidence in public records about the Respondent's business and its readiness to sell its domain name to the Complainant for a "good offer" provides further testimony, viewed ex post facto, that Respondent has neither a right to nor a legitimate interest in that domain.

Bad Faith

Complainant has not established that Respondent has actually used the disputed domain name on an ongoing basis for the purpose of promoting an illegitimate activity, such as to trade in goods or services. However, Respondent's registration of a confusingly similar domain name to the Complainant's service mark, the apparent absence of any business activity being conducted by the Respondent, and the Respondent's response – apparently through a third party intermediary -- expressing a willingness to offer to sell the domain name in response to a "good offer" cumulatively support the contention that the Respondent registered and is using the domain name in bad faith. The Respondent's conduct in such circumstances constitutes "cybersquatting", specifically the registration and use of a domain name as a means of "squatting" in cyberspace in order to sell that name for a substantial profit.

There is strong evidence, in contrast, that the Complainant is in good faith in trying to protect its service mark from cybersquatting by a bad faith registrant and/or bad faith user, that the Complainant has devoted time, energy and money to developing its products and services, and that Respondent is now seeking to exploit the Complainant's good faith in order to secure a significant profit beyond the purchase price of the domain.

This is not a self-evident case of bad faith cybersquatting by the Respondent. In particular, the Complainant does not have a famous domain name that was obviously the subject of exploitation by the Respondent for profit from the outset. The Complainant's business activity is clearly fledgling and far from established. Indeed, the Complainant has not yet launched its business. It is also not apparent that the Respondent registered its domain name specifically to cybersquat when the Respondent conceivably was unaware at the time of registering the domain name of the Complainant's trade service.

However, it is apparent that the Complainant has conducted its business in good faith in relation to the Respondent, while the latter has not acted similarly. Of note, the Complainant sent the Complaint Form to the Respondent's address as shown in the whois

database, thereby complying with its [Complainant's] responsibility. The Complainant also made a significant effort to find the Respondent, but without success. The HKIAC, too, sent email and hardcopy notifications of the Complaint Form to the Respondent by double registered post. The Respondent did not respond to these communications. It is conceivable that the Respondent did not receive all of these communications, for example, in the event that Complainant's notification to Respondent contained an address error. However, the Complainant did make reasonable efforts to notify the Respondent in accordance with the address contained in the whois database. The failure of Respondent to reply infers either that the Respondent chose not to do so, or failed to provide a correct or forwarding address by which it could receive mail. While such inaction by the Respondent does not constitute per se bad faith, it does infer bad faith by the Respondent when viewed cumulatively in light of other evidence in this case.

Finally, the Complainant expressed legitimate concern that, should it disclose confidential information, the Respondent might purport to exclude or replicate Complainant's services. The Complainant exercised a reasonable precaution here considering the Respondent's evident attempt to extort a significant profit by trying to sell a low-cost domain name to the Complainant.

5. Decision

The Respondent's domain name www.ltd.com.hk is confusingly similar to the Complainant's service mark. The Respondent does not have a right to or legitimate interest in that domain name. The Respondent has registered and used it in bad faith. Accordingly, the Panel orders that the domain name be transferred to the Complainant.

Leon Trakman
Sole Panelist
September 24 2003