



香港國際仲裁中心

Hong Kong International Arbitration Centre

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

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Case No.	DN-0500016
Complainant:	Hallmart Limited
Respondent:	Yat Fung Company

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**1. THE PARTIES AND CONTESTED DOMAIN NAME**

The Complainant is **Hallmart Limited** of Room 1308, 13F, Belgian Bank Building, 721-725 Nathan Road, Mongkok, Kowloon, Hong Kong.

The Respondent is **Yat Fung Company** of Room 806, 8/F, New Commerce 19 On Sum ST Siu Lek Yuen Shatin NT, Hong Kong.

The domain name at issue is "**hallmart.com.hk**", registered by the Respondent with the Hong Kong Domain Name Registration Co. Ltd. or HKDNR of 306A, HKITC, 72 Tat Chee Avenue, Kowloon Tong, Hong Kong.

**2. PROCEDURAL HISTORY**

A Complaint in respect of "**hallmart.com.hk**" was filed with the Hong Kong International Arbitration Centre ("HKIAC") in terms of the prescribed Form A on 21 March 2005.

The undersigned arbitrator was contacted by the HKIAC on 26<sup>th</sup> September 2005 and confirmed his acceptance of the case and declaration of impartiality and independence to the HKIAC on 20<sup>th</sup> October 2005. The Form A Complaint and supporting documents were sent to the Panel on 25<sup>th</sup> October 2005.

Following a review of the Complaint, the Panel requested further clarification of certain issues and invited the Complainant to provide further evidence to support its claim. The Panel also granted an extension of time for the Complainant to submit further evidence as to the use of the trademark or service mark by the Complainant in Hong Kong. At the expiry of the extended time, the

Panel did not receive any evidence on use of “hallmart” as a trademark or service mark in Hong Kong.

### **3. FACTUAL BACKGROUND**

#### **For Claimant**

The Complainant states that it is a company registered in Hong Kong in January 1999. Its company registration number is 665819. It specializes in the Europe-China commercial and industrial relationship.

The Complainant provided its Company Registration Certificate to support this registered right.

The Complainant also states that it is the owner of the domain names “hallmart.com.cn” and “hallmart.net”. It provided the Certificate for Registration of Top-Level Domain Name in China, showing the registration of the domain name “hallmart.com.cn” in the name of the Complainant on March 3, 2003.

In respect of the domain name “hallmart.net”, the Complainant provided an Administrative Panel Decision of Asian Domain Name Dispute Resolution Centre (Beijing Office) dated December 21, 2004 regarding Case No. CN0400034, which awarded the domain name “hallmart.net” to be transferred to the Complainant. The Complainant also provided a copy of the Complaint in respect of the domain name “hallmart.net” and evidence showing the word mark “hallmart” was being applied for by the Complainant in China as a trademark in Class 9. In particular, the Complainant provided a Notice of Acceptance of Trademark Application issued by the PRC Trademark Office, which shows the trademark application date July 13, 2004 and application number 4167710.

#### **For Respondent**

The Respondent was informed of the Complaint on April 7, 2005. On May 8, 2005, the Respondent indicated to HKIAC that it would not renew the registration and would give up the domain name registration. The Complainant then contacted the Respondent regarding the possible assignment of the domain name to the Complainant.

On May 10, 2005, the Complainant requested HKIAC to suspend the proceedings to allow the parties to negotiate an assignment of the domain name. HKIAC then suspended the case until September 23, 2005, when it was informed that the negotiation failed to reach

any concrete results.

The Respondent has not filed any documents, except the above email communications.

#### 4. PARTIES' CONTENTIONS

##### **The Complainant**

The Complainant contends that the registration of the domain name should be transferred to it. The Complainant contends that it owns the prior right to "Hallmart" as a trade name in Hong Kong. The Complainant states that in accordance with the provisions of Article 8 of the Paris Convention for the Protection of Industrial Property, a trade name shall be protected in all member countries of the Union without the obligation of filing or registration, whether or not it forms part of a trademark. Accordingly, the Complainant contends that it enjoys the prior right to the business name "Hallmart".

The Complainant also states that it is the owner of the domain names "hallmart.com.cn" and "hallmart.net". Further, the Complainant states that it has submitted an application for registration of "Hallmart" as a trademark in Class 9 in China.

The Complainant argued that the main part of the domain name "Hallmart" is identical to its trade name "Hallmart" in Hong Kong. The Respondent has no rights or relationship of legal interests to the trade name "Hallmart". The word "hallmart" is not the trade name or trademark of the Respondent. The Respondent's obtaining of the said domain name hampers the Complainant's registration and use of the domain name.

The Complainant further argued that the purpose of the Respondent's registration of the disputed domain name is to sell the domain name for high profit; to prevent the Complainant from reflecting the mark in a corresponding domain name in Hong Kong; and to disturb the Complainant's business. The acts of the Respondent have constituted registration in bad faith.

The Complainant has filed evidence to support its Complaint.

## The Respondent

Except the above email communications, the Respondent has not filed any response to the Complaint nor any evidence in support thereof.

## 5. DISCUSSION AND FINDINGS

### General

According to paragraph 4(a) of the Policy, the Complainant has the burden of proving that:-

- a. the Respondent's Domain Name is identical or confusingly similar to a trademark or service mark in Hong Kong in which the Complainant has rights; and
- b. the Respondent has no rights or legitimate interests in respect of the Domain Name; and
- c. the Respondent's Domain Name has been registered and is being used in bad faith.

### Identical / Confusing Similarity

The Complainant has provided evidence to substantiate that it has rights in the trade name "Hallmart" in Hong Kong in terms of registered rights through its business registration. The Complaint has not submitted any evidence to show it has rights in the trademark or service mark "Hallmart" in Hong Kong. Nor there is any evidence of the well-known degree of the trademark "Hallmart" in Hong Kong. The Complainant's submission of the Notice of Acceptance of PRC Trademark Application did not assist the Complainant in establishing its trademark rights in Hong Kong. Nor did the Complainant's domain names "hallmart.com.cn" and "hallmart.net" render any assistance to the Complainant in establishing its trademark rights in Hong Kong.

In the extended time in relation to prior use of the trademark or service mark in Hong Kong, the Panel did not receive any evidence of prior use of "Hallmart" as trade mark or service mark in Hong Kong.

The domain name in issue, namely "hallmart.com.hk", is identical to the trade name "Hallmart" in which the Complainant has rights. However, based on the evidence submitted to the Panelist, the Panel is not satisfied that the trade name

“Hallmart” has been registered or used in Hong Kong as a trademark or service mark in Hong Kong, and therefore it is protected as a trademark or service mark in Hong Kong. According to the paragraph 4(a) a of the Policy: the Respondent’s Domain Name is identical or confusingly similar to a trademark or service mark in Hong Kong in which the Complainant has rights, I find that the Complainant has not established its trademark or service mark right in “Hallmart” in Hong Kong.

I note the Complainant’s basis of protection of trade name under the Paris Convention. I also note that Article 4(a) of the Policy expressly requires the Complainant to establish a trademark or service mark right in Hong Kong in order for the Complaint to succeed. Therefore, a trade name right is not sufficient for the purpose of complying with Article 4(a) of the Policy.

Accordingly, the Panel finds the Complaint does not satisfy the requirement of 4(a) a of the Policy.

Since Article 4(a) of the Policy requires the Complainant to prove all of the three elements of the provision, and since the Complainant has failed to establish the first element under Article 4(a), the Panel believes that there is no further need to discuss the other two elements in this Decision.

## **6. ARBITRATION DECISION**

The Panel decides that the Complaint shall be rejected.

Jerry Yulin Zhang  
Arbitrator Panelist

Dated: December 12, 2005