



香港國際仲裁中心

Hong Kong International Arbitration Centre

.hk Domain Name Dispute Resolution

ARBITRATION PANEL DECISION

Case No.	DN-0600017
Complainant:	Store Friendly,
Respondent:	FRBSH(HONGKONG)INTERNATIONAL ENTERPRISE GROUP CO.,LIMITED
Domain Name:	storefriendly.com.hk
Registrar:	Hong Kong Domain Name Registration Company Limited

Procedural History

On October 7, 2006, the Complainant has submitted Complaint to the Hong Kong International Arbitration Centre (the "Centre"), in accordance with the Domain Name Dispute Resolution Policy effective on (the "Policy") adopted by the Hong Kong Domain Name Registration Company Limited (HKDNR) on 27 June 2005, the Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "Rules"), and HKIAC Domain Name Dispute Supplemental Rules (the "Supplemental Rules").

The Complainant has sought a one-person Panel.

On October 19, 2006, the Centre has forwarded a request to HKDNR to verify the registration information of disputed domain name and HKDNR confirmed with registrant details as shown above.

On November 20, 2006, the Centre forwarded a copy to the Respondent by on-line notification. The 20 day deadline for the Respondent to respond calculated from November 20, 2006 expired and the Respondent did not file a Response with the Centre, as confirmed by the Centre.

On January 5, 2007, Arthur Chang has been appointed as the sole Panelist for this case and all parties have been informed by email.

The Panel has sent questions for clarification and asked the Complainant to provide evidence to support their claim on January 11 and January 24, 2007 respectively and as a result, the Panel asked for extension of submitting the decision to February 2, 2007.

The Panel finds that the Administrative Panel was properly constituted and appointed in accordance with the Rules and the Supplemental Rules.

Factual Background

For Complainant

The following facts are asserted by the Complainant in the Complaint:

For Respondent

HKIAC confirmed that documents have been sent and received by the Respondent. Nothing has been received by HKIAC regarding response of the Respondent related to this case. The disputed domain name was registered on April 13, 2006.

Parties' Contentions

Complainant

Complainant asserted that the disputed domain name is **Identical or Confusing Similar to the Complainant's trademark**- The trade mark "storefriendly 儲存易 & device" ("the Trade Mark") has been registered in Hong Kong in Class 39 with its Registration No. 300313631 since 2004 and the Trade Mark is absolutely owned by the Complainant. Through substantial use and advertising, the Complainant claimed they have established a substantial reputation in the Trade Mark of which is well known to the public so that members in the trade and the public will associate the same exclusively with the Complainant. In the light of the above, the ordinary consumer would assume that any entity using "storefriendly" as or as part of its name is related to Complainant. The disputed domain name is identical to a trade mark in Hong Kong in which storefriendly, Inc. has rights. The disputed domain name wholly incorporates and is identical to Complainant's trademark "storefriendly" and also Complainant's domain name "storefriendly.com", save for the geographical designation ".hk".

The Complainant also asserts that Respondent does not have **Right or Legitimate Interests of the Disputed Domain name**- the Complainant has also not licensed or otherwise permitted the Respondent to use its "storefriendly" mark or to apply for any domain name incorporating the mark. The Complainant also pointed out "storefriendly" is not related to the Respondent in any form. The Complainant

therefore believes the Respondent has no right or legitimate interests in the disputed domain name.

The Complainant further asserts that Respondent's registration and use of domain name is in **Bad Faith**- The Complainant pointed out that the Respondent used the disputed domain name "storefriendly.com.hk" to show "由於財務理由,我們公司暫停營業,所有客戶本公司會稍後通知" as shown in Fig.1. This company is not authorized to use this domain name and this domain name is identical to Complainant's trade mark and website "storefriendly.com". The Complainant has received customer enquiry about why the Complainant company is closing and suggest the Respondent has used the disputed domain name "storefriendly.com.hk" in Bad Faith.

Respondent

Save as outlined above, the Respondent did not respond to any of the claim as submitted by the Complainant.

Findings

The Policy requires a Complainant to establish that:

- (i) the domain name which is the subject of the dispute is identical or confusingly similar to a trade mark or service mark in Hong Kong in which the Complainant has rights;
- (ii) the registered holder of the disputed domain name has no rights or legitimate interests in respect of the domain name;
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Panel is bound by the Policy to make a decision based on the information provided to the Panel during the course of the proceedings.

Identical/Confusingly Similar

The Complainant has registered trade mark "storefriendly 儲存易 & device" in Hong Kong in Class 39 with its Registration No. 300313631 since 2004. Through certain advertising and marketing, the Complainant has established some reputation for Store Friendly.

In the disputed domain name www.storefriendly.com.hk, “.com.hk” is the country level code. Taking away .com.hk, the domain name storefriendly is confusingly similar to the trade mark of the Complainant. The trade name of Complainant also carries the same name as the disputed domain name.

As such, The Panel is satisfied that the Complainant has met the requirements of paragraph 4(a)(i) and the disputed domain name is identical or confusingly similar to the trademark that the Complainant holds.

Rights and Legitimate Interests

The Panel is satisfied that the Complainant has met the requirements of paragraph 4(a)(ii) because:

1. The Complainant has not licensed or authorized the Respondent to use its "storefriendly" mark.
2. The name of Respondent does not review any relationship with the name "storefriendly" directly or indirectly in any form.
3. There is no evidence that the Respondent is holding any trademark relating to the disputed domain name

As such, the Panel agrees the Respondent has no right or legitimate interests in respect of the disputed domain name.

Bad Faith

According to the Policy 4b, 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 you have registered or you have 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 your documented out-of-pocket costs directly related to the Domain Name; or
- (ii) you have 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the Domain Name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your web site or location or of a product or service on your web site or location.

When the Panel attempted to access the web site of the disputed domain name on Jan 21, 2007, it was re-directed to a page showing “由於財務理由,我們公司暫停營業,所有客戶本公司會稍後通知”. This creates a very bad image for the Complainant and in fact, the Complainant has received customer enquiry about why the company of Complainant was not operating. As a result, the Respondent has caused damage to Complainant's reputation, disrupting the Complainant's normal business or creating confusion with the Complainant's name or mark.

As such, The Panel is satisfied that the Complainant has met the requirements of paragraph 4(b)(iii) of the Policy in showing bad faith registration and use of the Disputed Domain Name.

Decision

Based on the information provided to it and on its findings of fact, the Panel concludes that the Complainant has established its case.

The Complainant asks that the Disputed Domain Name be transferred to the Complainant. The Panel orders that the Disputed Domain Name to be transferred to the Complainant.

Panelist :
Arthur Chang
30 January 2007
Hong Kong