Decision for dispute CAC-UDRP-102836

Case number	CAC-UDRP-102836
Time of filing	2019-12-23 09:28:02
Domain names	baiduglass.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	Baidu Online Network Technology (Beijing) Co., Ltd.

Complainant representative

Organization	Thomsen Trampedach GmbH

Respondent

Name	Zhu Haisen Zhu Haisen

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings pending or decided which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant has registered numerous BAIDU <word> and BAIDU <design> trademarks in the world, especially in China. This has contributed to the word “baidu” becoming inseparable from the Complainant’s business in the eyes of the public.

Complainant's trademark registrations:

The Complainant has registered over 1000 trademarks incorporating BAIDU <word> and Baidu <design> and has therefore been granted exclusive rights to BAIDU from as early as 2007 and including the following:
--Chinese trademark registration No. 4650377 BAIDU (with stylized design elements), registered on May 14, 2008, for class 12.
--Chinese trademark registration No. 5916520 BAIDU, registered on March 28, 2010, for class 42.

The Complainant’s trademarks are protected, inter alia, for services in class 42: “Computer programming; computer software design; computer database access time leasing; computer software leasing; computer system analysis; providing translation service by computer information network; providing legal information by computer information network; providing computer information by computer information network; Computer information network provides technical research information”.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT

Please Note: The Registration Agreement into which the Policy is incorporated is not, as is customary, included as an Annex as it is publicly available only in "embedded" form at the following website: https://www.webnic.cc/policy-agreement/

LEGAL GROUNDS:

a. The domain name(s) is(are) identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (Policy, Paragraph 4(a)(i); Rules, Paragraphs 3(b)(viii), (b)(ix)(1))

While not identical. the disputed domain name <baiduglass.com> is confusingly similar to Complainant's BAIDU Marks. It is well established that the test of identity or confusing similarity will be applied disregarding the addition of the gTLD suffix ".com". See the WIPO Overview of WIPO Panel Views on Selected UDRP Questions Third Edition ("WIPO Overview 3.0") at 1.11.1. Only <baiduglass> is to be assessed under the first limb of the policy.

BAIDU is the most important trademark owned by the Complainant, and is well-known globally. It is beyond dispute that the trademarks were registered earlier than the registration date of the dispute domains (16th November 2018). See the creation date displayed in Annex I.

"Baiduglass" is a combination of "baidu" and "glass". As the identity of "baidu" with the Complainant's trademarks is undeniable, it must therefore be examined whether the addition of "glass" has an impact on whether the domain name as a whole is confusingly similar to the BAIDU trademark. In this regard, it has been consistently held by previous panels that where the relevant trademark is recognisable within the disputed domain name, the addition of other terms (including descriptive terms) does not prevent a finding of confusing similarity. See the WIPO Overview 3.0 at 1.8. The word "glass" is undoubtedly descriptive, and it must therefore be concluded that its incorporation does not prevent "baiduglass" from being confusingly similar to the Complainant's trademark. Nor is the Complainant aware of any secondary meaning that may have been acquired by "baiduglass" independent of that derived from the incorporation of the BAIDU trademark.

For the foregoing reasons, the domain name <baiduglass.com> is confusingly similar to the Complainant's trademark BAIDU in accordance with Paragraph 4(a)(i) of the Policy.

b. The Respondent has no rights or legitimate interests in respect of the domain name(s); (Policy, Paragraph 4(a)(ii); Rules, Paragraph 3(b)(ix)(2))

The Complainant submits that the Respondent has no rights or legitimate interests in the disputed domain names. As mentioned above, the Complainant has the exclusive right to the trademark BAIDU, rights well established prior to the Respondent's registration of the disputed domain names in 2018.

The Respondent is not a licensee of the Complainant, nor has he otherwise been granted permission by the Complainant to make any use of the Baidu trademarks whatsoever.

Trademark registration searches on http://wsjs.saic.gov.cn, the website of the Trademark Office of National Intellectual Property Administration of the People's Republic of China, showed that the Respondent has neither registered nor applied for any trademark identical to "baiduglass", "baidu", or any other mark incorporating the term "baidu".

Further, there is no indication that the Respondent makes use of the disputed domain to provide any goods or services with "baiduglass" as his business name, and he is not well-known amongst consumers by the disputed domain. See Annex VIII, Sogu and Google search results for Zhu Haisen.

The disputed domain name is currently being used for the purpose of displaying a "lottery" website promoting the gambling

company FENGHUANG LOTTERY, having its website at the domain fh61111.com. See Annex III. As is demonstrated below in the discussion of the third element under paragraph 4(a), this is not consistent with a legitimate, good faith use of the disputed domain.

Lastly, given the renown and popularity of the Complainant's “baidu” trademark worldwide, it is simply not possible to conceive of any plausible actual or contemplated active use of the domain names by the Respondent that would not create a false association with the Complainant, thereby resulting in a misleading diversion or taking unfair advantage of the Complainant's rights.

Therefore, the Respondent has no rights or legitimate interests in the disputed domain names, in accordance with paragraph 4(a)(ii) of the Policy.

c. The domain name(s) was/were registered and is/are being used in bad faith. (Policy, paragraphs 4(a)(iii), 4(b); Rules, paragraph 3(b)(ix)(3))

<Baiduglass.com> was registered during the year 2018 i.e. significantly later than the Complainant’s registrations of the trademark “baidu”, and later than the time the Complainant became a famous brand and trade name in China and elsewhere because of its well-known business.

Given the Complainant's renown and goodwill in Chinese society, the “baidu” name is inseparable from the Complainant. In 2018, it would be inconceivable for the Respondent, who is based in China, to argue that he did not have knowledge of the Complainant and its trademark “Baidu”, or that he randomly selected the terms at the time of registration of the domain names.

The Complainant therefore submits that the Respondent had the Complainant in mind and deliberately registered the domain names containing the trademark BAIDU. Should the contrary nevertheless be the case, the Complainant submits that the Respondent was willfully blind as to the existence of the Complainant’s rights. All domain name registrants are required, under paragraph 2 of the Policy, to warrant that their registrations do not infringe any third-party rights. While it may be too far to suggest that the Respondent was under an obligation to search for Chinese national trademarks at the time of registration, even the most basic Internet search for “baidu glass” would have yielded a plethora of references to the Complainant’s prior rights (see the decision in WIPO Case No D2009-0462 compart.com). See Annex VIII in this regard. As the Complainant either knew or should have known of the Complainant’s prior rights, it is clear that the disputed domain was registered in bad faith.

It is equally clear that the disputed domain is being used in bad faith. As mentioned, the disputed domain currently directs to a website promoting a gaming/gambling company with name FENGHUANG LOTTERY (with its main accessible at fh61111.com). This gambling website asks the visitor to provide both personal information and payment details. The Complainant undertook searches regarding the business information of the gambling company via qichacha.com (Annex IX), which contains information derived from the Chinese government’s company information database, and the result shows there are two gambling companies with name of FENGHUANG. The first of these is Shenzhen Fenghuang Jingcai Network Technology Co., Ltd. with Lin Liwang as its legal representative. The other is Guangzhou Fenghuang Lottery Technology Co., Ltd., legally represented by Le Jialiang. No direct relationship between the Respondent and these two companies was identified.

The Complainant submits that this is a clear example of bad faith use within the meaning of paragraph 4(b)(iv) of the Policy. The Respondent patently uses the disputed domain <baiduglass.com> in order to attract Internet users through confusion for commercial gain. An Internet user confronted with the disputed domain, a combination of the Complainant’s name and trademark and a generic word, is likely to make the initial assumption that the domain is connected with the Complainant. The Complainant therefore considers that there is a likelihood of confusion with the Complainant. Further, previous panels deciding under the Policy have considered that this likelihood of confusion is not dispelled by the fact that content on the landing page is unrelated, as traffic will have reached the website on the basis of that confusion (see e.g. WIPO Case No D2012-2510 – agaplesiongag.org and WIPO Case No D2012-1517 – hummerextendedwarranty.org). The fact that the

website displayed at the disputed domain name promotes an unrelated gambling company is, in the absence of a legitimate use of the domain, an indication that the Respondent intends to realize commercial gain (see e.g. WIPO Case No D2013-1409 – wrdpress.com).

Liminally, the Complainant considers it to be a very significant malicious use of a domain name to take advantage of the Complainant's well-known brand name to induce visitors to enter a gambling website, thereby obtaining private information and obtaining commercial profits.

In sum, the Complainant asserts that there can be no doubt of the Respondent’s bad faith in the registration and use of the disputed domains in accordance with paragraphs 4(a)(iii), 4(b) of the Policy.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

It is well established that the specific top level of a domain name such as “.com”, “.org” or in casu “.net” does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.

Previous panels have found that the slight spelling variations or addition of generic word elements does not prevent a domain name from being confusing similar to the complainant’s trademark. Adding the word "glass" after the trademark BAIDU in the disputed domain name does not take away the confusing similarity between the domain name and the trademark. It does not affect the confusing similarity in this case whether or not the word "glass" is considered distinctive or simply generic as the dominant element BAIDU is identical in the trademarks of the Complainant and the disputed domain name. Simple adding of common words is not a sufficient element to escape the finding that the disputed domain name is confusingly similar to the complainant’s trademarks and domain names.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

The Complainant contends that the Respondent is not affiliated with him nor authorized by him in any way to use his trademarks in a domain name or on a website. The Complainant does not carry out any activity for, nor has any business with the Respondent.

The Respondent has not filed a response or in any other way proven or pointed to any possible legitimate interest in the disputed domain name.

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

Given the distinctiveness and well-known character of the BAIDU trademark, it is clear that the Respondent has registered the disputed domain name with knowledge of the Complainant and its trademark. Given the circumstances of the case, including the provided information of the use and reputation of the Complainant’s trademark BAIDU and the distinctive nature of this mark, it is inconceivable to the Panel in the current circumstances that the Respondent registered the disputed domain name without prior knowledge of the Complainant and the Complainant’s mark.

The Panel therefore finds that the disputed domain name was registered in bad faith.

In addition, the disputed domain name is not used for any bone fide offerings.

All the elements presented by the Complainant surrounding the actual use of the disputed domain name lead to the conclusion that the Respondent has intentionally attempted to attract Internet users to the Respondent's website for commercial gain by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of such websites.

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

1. The three essential issues under the paragraph 4(a) of the Policy are whether:

i. the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

ii. the Respondent has no rights or legitimate interests with respect to the disputed domain name; and

iii. the disputed domain name has been registered and is being used in bad faith.

2. The Panel reviewed carefully all documents provided by the Complainant. The Respondent did not provide the Panel with any documents or statements. The Panel also visited all available websites and public information concerning the disputed domain name, namely the WHOIS databases.

3. The UDRP Rules clearly say in its Article 3 that any person or entity may initiate an administrative proceeding by submitting a complaint in accordance with the Policy and these Rules.

4. The Panel therefore came to the following conclusions:

a) The Complainant states and proves that the disputed domain name is confusingly similar to its trademarks and its domain names. Indeed, the trademark is partially incorporated in the disputed domain name.

The disputed domain name is therefore deemed confusingly similar.

b) The Respondent is not generally known by the disputed domain name and have not acquired any trademark or service mark rights in the name or mark, nor is there any authorization for the Respondent by the Complainant to use or register the disputed domain name.

The Panel therefore finds that the Respondent does not have rights or legitimate interest with respect to the disputed domain name.

c) It is clear that the Complainant's trademarks and website(s) were used by the Complainant long time before the disputed domain name was registered and that the disputed domain name was registered in bad faith. It is concluded that it is inconceivable that the Respondent will be able to make any good faith use of the disputed domain name.

The Panel therefore finds that the disputed domain name has been registered and is being used in bad faith.

For the reasons stated above, it is the decision of this Panel that the Complainant has satisfied all three elements of paragraph 4(a) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

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Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **BAIDUGLASS.COM**: Transferred

PANELLISTS

Name	**Lars Karnoe**

DATE OF PANEL DECISION 2020-01-24

Publish the Decision