Decision for dispute CAC-UDRP-100707

Case number	**CAC-UDRP-100707**
Time of filing	**2013-11-22 09:07:53**
Domain names	**mountgai.com**

Case administrator

Name	**Lada Válková (Case admin)**

Complainant

Organization	**Mount Gay Distilleries Limited**

Complainant representative

Organization	**Nameshield (Laurent Becker)**

Respondent

Organization	**shan gai gong zuo shi**

OTHER LEGAL PROCEEDINGS

None of which the Panel is aware.

IDENTIFICATION OF RIGHTS

The Complainant is the current registrant of the trade mark MOUNT GAY in several countries including, since September 15, 1964, in the United Kingdom, No. B869290.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

A respondent is not obliged to participate in a proceeding under the Policy but if it fails to do so, asserted facts may be taken as true and reasonable inferences may be drawn from the information provided by the complainant. See Reuters Limited v. Global Net 2000, Inc, WIPO Case No. D2000-0441. See also Microsoft Corporation v. Freak Films Oy, WIPO Case No. D2003-0109; SSL INTERNATIONAL PLC V. MARK FREEMAN, WIPO Case No. D2000-1080 and ALTAVISTA COMPANY V. GRANDTOTAL FINANCES LIMITED et. al., WIPO Case No. D2000 0848.

The Complainant is a Barbados company engaged for many years in selling rum under the MOUNT GAY mark, which is well known.

The disputed domain name was registered on July 27, 2013. It does not resolve to an active website.

The Respondent failed to reply to a cease and desist letter from the Complainant.

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 which the Complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).

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).

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).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met, in particular the requirements of UDRP Rule 2(a), and there is no other reason why it would be inappropriate to provide a decision.

Although the registration agreement is in Chinese, at the request of the Complainant, the Panel determines, pursuant to UDRP Rule 11(a), that the language of the proceedings shall be English, because the disputed domain name is registered in ASCII characters, using the Roman alphabet.

PRINCIPAL REASONS FOR THE DECISION

The Panel finds the disputed domain name to be confusingly similar to the Complainant's MOUNT GAY trade mark, based on a visual and aural comparison of the disputed domain name and the trademark. See Wal-Mart Stores, Inc. v. Traffic Yoon, WIPO Case No. D2006-0812, the test being whether Internet users would be likely to wonder whether there is an association between the domain name and the trademark owner: see SANOFI-AVENTIS v. Jason Trevenio, WIPO Case No. D2007-0648.

The Panel finds that the MOUNT GAY mark is distinctive and well known in many countries. The Complainant’s assertions that the Respondent is not commonly known by the disputed domain name and is not affiliated with the Complainant are sufficient to constitute a prima facie showing of absence of rights or legitimate interest in the disputed domain name on the part of the Respondent. The evidentiary burden therefore shifts to the Respondent to show by concrete evidence that it does have rights or legitimate interests in that name: Do The Hustle, LLC v. Tropic Web, WIPO Case No. D2000-0624 and the cases there cited. The Respondent has made no attempt to do so. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

Although the disputed domain name was registered only recently and has not been used for an active website, these circumstances do not preclude a finding of bad faith registration and use: see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition, paragraph 3.2 and Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003.

Taking into account that the Complainant’s trademark is well known; the absence of a Response; and the failure of the Respondent to reply to the Complainant’s cease and desist letter, the Panel concludes that the Complainant's mark must

have been in the Respondent's mind when registering the disputed domain name and that the Respondent did so with intent to divert Internet users away from the Complainant's website. Accordingly the Panel finds that the disputed domain name was registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **MOUNTGAI.COM**: Transferred

PANELLISTS

Name	**Alan Limbury**

DATE OF PANEL DECISION 2014-01-04

Publish the Decision