

ADMINISTRATIVE PANEL DECISION
Case No. DCN-1600707

Complainant:	Fareportal Inc.
Respondent:	兰宝光
Domain Name:	<Fareportal.cn>
Registrar:	West 263 International Limited

1. Procedural History

The Complaint was filed with the Hong Kong International Arbitration Centre (hereinafter called the “HKIAC”) on 4 October 2016 [5:17].

On 4 October 2016 [12:40], the HKIAC acknowledged the Complainant’s Complaint Form (hereinafter called the “Complaint”) and the case filing fee.

On 4 October 2016 [13:00], the HKIAC wrote to West 263 International Limited (hereinafter called the “Registrar”) to request the Registrar to verify details of the domain name <Fareportal.cn> (hereinafter called the “Disputed Domain Name”).

On 17 October 2016 [15:06], the Registrar wrote to the HKIAC verifying that the Respondent is listed as the registrant of the Disputed Domain Name and provided the Respondent’s contact details.

The HKIAC verified that the Complaint satisfies the formal requirements of the China Internet Network Information Center (hereinafter called the “CNNIC”) Domain Name Dispute Resolution Policy (hereinafter called the “Policy”), the Rules of Procedure under the Policy (hereinafter called the “Rules”) and the HKIAC Supplemental Rules (hereinafter called the “Supplemental Rules”) and on 17 October 2016 [18:29], the HKIAC formally notified the Respondent of the Complaint and requested the Respondent to submit its response to the Complaint in accordance with the Policy, the Rules and the Supplemental Rules on or before 7 November 2016.

On 17 October 2016 [18:37] the following message was received “*your email message has been received*” [a translation from the Chinese text into English by the Panelist] from email address 15047470900@qq.com to the HKIAC and no further response was received by the HKIAC.

In its email of 17 October 2016 [18:29], the HKIAC advised the Respondent of the Complainant’s language request and invited the Respondent to submit a response regarding the Complainant’s language request on or before 24 October 2016 for the Panel’s consideration.

On 8 November 2016 [10:17] the HKIAC wrote to Dr. Christopher To enquiring from Dr. Christopher To as to whether he is available to act as a Panelist and if so whether he is in a position to act independently and impartially between the Complainant and the Respondent (hereinafter collectively called the “Parties”).

On 9 November 2016 [00:08] Dr. Christopher To wrote to the HKIAC confirming his ability to act.

On 9 November 2016 [11:13] the HKIAC wrote to the Parties informing the Parties that Dr. Christopher To (hereinafter called the “Panelist”) has been appointed in accordance with the Policy, the Rules and the Supplemental Rules in respect of the Disputed Domain Name.

The Panelist is of the view that the Panel was properly constituted and that the Panelist has acted impartially in reaching its conclusion.

2. Factual Background

A. Complainant

The Complainant is a technology company that develops computer software used to power travel-related websites. The company is incorporated in New York, United States of America and the owner of United States Patent and Trademark Office Registration Number 4,356,358 (registered on 25 June 2013) for the trade mark “FAREPORTAL” in class of

35,39 and 42, as well as with the Chinese trade mark office (registered on 26 August 2016) under the same categories.

FAREPORTAL is also used by Fareportal Inc. as its business name and as such functions as both a trademark and a trade name (hereinafter called “Trade Mark”).

The Complainant is not aware of any other legal proceedings pending in connection with the Disputed Domain Name.

B. Respondent

The Respondent is an individual with an email address of 31537805@qq.com and is hosted under sever ns1.hawhost.com. The Disputed Domain Name’s website provides the following telephone number 400 600 6862 and 15910624000.

C. The website at the Disputed Domain Name

The Disputed Domain Name has been resolved to a website (hereinafter called “Infringing Website”) that sells adult entertainment toys and services and the Disputed Domain Name is also offered for sale on the Infringing Website.

3. Parties’ Contentions

A. Complainant

The Complainant contends that the Disputed Domain Name is identical to the Trade Mark, the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, and the Disputed Domain Name has been registered and used in bad faith.

B. Respondent

The Respondent did not reply to the Complainant’s contentions.

4. Findings

A. Language of the Proceedings

Pursuant to Article 6 of the Policy, the language of the proceedings shall be Chinese, unless otherwise agreed by the Parties, or determined by the Panel. No agreement has been entered into between the Complainant and the Respondent to the effect that the language of the proceedings should be English.

Article 31 of the Rules provides the Panel with a broad discretion with respect to the conduct of the proceedings. It is important to ensure fairness to the Parties and the maintenance of an inexpensive and expeditious process of resolving domain name disputes.

The Complainant has requested that English be the language of the proceedings for the following reasons:

- i. The Complainant is located in the United States of America, an English speaking country and the Complainant has no knowledge of the Chinese language;
- ii. In order to proceed in the Chinese language, the Complainant would have had to retain specialized translation services at a cost very likely to be higher than the overall costs of these proceedings;
- iii. The use of the Chinese language would be a burden on the Complainant [see *Salomon SAS*, HKIAC Case No. DCN-1500618 (taking into account “*all relevant circumstances of the case, including matters such as the parties’ ability to understand and use the propose language, time and costs*”)];
- iv. The Complainant drafted the Complaint as well as the cease and desist letter in the English language;
- v. The Complainant is of the view that the Respondent is familiar with the English language as it registered FAREPORTAL as well as other English-language brand domain names such as “sparkdigital.cn”, “hoildaytouch.cn”, “themill.cn” and “systemsltd.cn”;
- vi. The Disputed Domain Name is registered in ASCII characters using the Roman alphabet [see *Giglio S.P.A.*, HKIAC Case No. DCN-1600676 (conducting the

proceedings in English only where “*the Disputed Domain Name {was} registered... using the Roman alphabet*”]; and

- vii. The Complainant believes that this case, is a sufficiently exceptional case and that the language of the proceedings should be in the English language [see *Chopard Int’l SA, et al*, HKIAC Case No. DCN-0400020 (finding case was “*sufficiently exceptional*” where the disputed domain name was in the English language and the complaint and inter-party communications were in English)].

The Respondent did not file any submissions with respect to the language of the proceedings nor did it file a response in relation to the matter on hand.

In exercising its discretion to use a language other than that of the registration agreement, the Panelist has to exercise such discretion judicially in the spirit of fairness and justice to both Parties, taking into account all relevant circumstances of the case at hand, including matters such as the Parties’ ability to understand and use the proposed language, time and the associated costs.

The Panelist is also obliged by virtue of Article 31 of the Rules to ensure that the proceedings take place with due expedition.

All communications from the HKIAC in these proceedings have been sent to the Parties in both the Chinese and English languages, and the Respondent has been given the opportunity to file submissions regarding the language of the proceedings.

Some elements of the Infringing Website are in the English language [the Complainant stated in its Complaint that “*while much of the page {Infringing Website} is in Chinese characters, the top of the page is branded with ‘www.aizhigu.com’ ... and English-language words are displayed throughout the website*”], which demonstrates the likely possibility that the Respondent is proficient in the English language.

The Respondent has chosen not to take part in these proceedings and based on the above circumstances, the Panelist finds it is not foreseeable that the Respondent would be unduly prejudiced, should the language of the proceedings be conducted in English.

Having considered all matters herein, the Panelist determines under paragraph 11(a) of the Rules that the language of the proceedings shall be English.

B. Basis of the Decision

Article 8 of the Policy provides that a Complaint filed in respect of a registered “.cn” domain name shall be upheld if the following conditions are fulfilled:

- i. The Disputed Domain Name is identical with or confusingly similar to the Complainant's name or mark in which the Complainant has civil rights or interests;
- ii. The Disputed Domain Name holder has no right or legitimate interest in respect of the domain name or major part of the domain name;
- iii. The Disputed Domain Name holder has registered or has been using the domain name in bad faith.

Article 7 of the Policy states that the Complainant and the Respondent, shall each bear the burden of proof for their own claims.

With reference to the Complaint and the attached documentation, the Panelist finds as follows:

Identical or Confusing Similarity

The Complainant has rights in the Trade Mark acquired through use and registration which incidentally predates the date of registration of the Disputed Domain Name [August 2015]. As numerous administrative panels have recognized that “*the incorporation of a trademark in its entirety is sufficient to establish that a domain name is identical or confusingly similar to the complainant’s registered mark*” [see *Rolex Watch U.S.A., Inc v. Spider Webs Ltd.*, WIPO Case No. D2001-0398 dated 2 July 2001]. The Disputed Domain Name is identical to the Trade Mark and the Respondent is taking advantage of internet users’ interest by capitalizing on a trademark owner’s goodwill in its mark for the purpose of diverting internet traffic to the Infringing Website thus disrupting the Complainant’s business [see *TracFone Wireless, Inc. v. PIPHY Productions*, WIPO Case No. D2006-1459 dated 18 January 2007].

The Panelist therefore holds that the Compliant fulfills the first condition of Article 8 of the Policy.

Rights or Legitimate Interests of the Respondent

Article 10 of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a Respondent has rights or legitimate interest in the Disputed Domain Name:

- (i) before any notice to the Respondent of the dispute, the Respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the Respondent (as an individual, business, or other organisation) has been commonly known by the domain name even if the Respondent has acquired no trade mark or service mark rights; or
- (iii) the Respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

From the Complaint, there is no evidence shown that the Complainant had authorized, licensed, or permitted the Respondent to register or use the Disputed Domain Name or to use the Trade Mark. As mentioned above the Complainant has prior rights in the Trade Mark which precedes the Respondent's registration [August 2015] of the Disputed Domain Name.

There is also no evidence to show that the Respondent is or has ever been commonly known by the Trade Mark [see *LEGO Hong Kong Limited v. ITRAVEL Limited, HKIAC Case No. DHK-1400110; WhatsApp Inc. v. T Lam, HKIAC Case No. DHK-1300100* and *Conair Corp. v. Tom Lee CCTV Limited, HKIAC Case No. DHK-1400108*].

In fact the Respondent is not making a protected non-commercial or fair use of the Disputed Domain Name and this may give the impression that the Respondent is not operating any bona fide or legitimate business which may give it rights in the Disputed Domain Name. By incorporating the Complainant's Trade Mark into its Uniform Resource Locator (commonly known as "URL"), the Respondent uses the Disputed Domain Name to mislead and divert

internet users which may in the long term tarnish the Trade Mark of the Complainant, which the Complainant has over the years developed considerable goodwill.

From the above, there is a strong prima facie case that the Respondent has no rights or legitimate interest in the Disputed Domain Name and the burden is thus on the Respondent to produce evidence to rebut this presumption.

Given that the Respondent failed to submit a response, as such the Respondent has failed to show that it has acquired any Trade Mark rights in respect of the Disputed Domain Name or that the Disputed Domain Name is used in connection with a *bona fide* offering of goods or services. To the contrary, the Disputed Domain Name has been used without the Complainant's authorization and seeks to capitalize on the Complainant's reputation in the Trade Mark by diverting internet users about the Complainant's travel-related services to the Infringing Website, where it advertises and sells its own goods and services.

There has been no evidence adduced to show that the Respondent has been commonly known by the Disputed Domain Name.

There has been no evidence adduced to show that the Respondent is making a legitimate non-commercial or fair use of the Disputed Domain Name.

As such, the Panelist finds that the Complaint fulfils the second condition of Article 8 of the Policy.

Bad Faith

Under Article 9 of the Policy, any of the following circumstances may amount to evidence of the registration and use of a domain name in bad faith:

- (i) the Disputed Domain Name holder has registered or acquired the domain name for the purpose of selling, renting or otherwise transferring the domain name to obtain unjustified benefits;
- (ii) the Disputed Domain Name holder registered the domain name in order to prevent the owners of the name or mark from reflecting the name or the mark in a

- corresponding domain name, provided that the domain name holder has been engaged in a pattern of such conduct;
- (iii) the Disputed Domain Name holder has registered or acquired the domain name for the purpose of damaging the Complainant's reputation, disrupting the Complainant's normal business or creating confusion with the Complainant's name or mark so as to mislead the public;
 - (iv) other circumstances which may prove the bad faith.

It is well settled among administrative panels that the Respondent's method of infringement, through the use of the Complainant's exact Trade Mark to attract internet users to its Infringing Website demonstrates bad faith use under the Policy [see *Popular Enters., LLC v. Am. Consumers First et al.*, WIPO Case no. D2003-0742 and *Ameriqwest Mortgage Co. v. Phayze Inc.*, WIPO Case No. D2002-0861].

The Respondent's actions will have a significant impact on the Complainant's Trade Mark, as the use of the Disputed Domain Name for a pornographic website unaffiliated with the Complainant would directly harm the reputation and goodwill of the Complainant which in turn will affect its business development in the long term.

The Respondent has registered numerous domain names at the ccTLD for China ".cn" that are identical or confusingly similar to names and marks owned by others for the purpose of offering for sale and to sell adult entertainment toys and services.

Also the Respondent has not provided full contact information on the CNNIC Whois database. By supplying incomplete or misleading contact information on a Whois database is further evidence of bad faith registration [see *Maxtor Corp. v. Shenyang Shixin Co., Ltd*, HKIAC Case No. DCN-0300001 and *Home Dir., Inc. v. HomeDirector*, WIPO Case No. D2000-0111].

In light of the Respondent's use of the Infringing Website in the manner described above, and the offer for sale of the Disputed Domain Name via the Infringing Website, the Panelist finds the requisite element of bad faith has been satisfied, under Article 9 of the Policy.

5. Decision

For all the foregoing reasons, in accordance with Article 14 of the Policy and Article 37 of the Rules, the Panelist orders that the Disputed Domain Name < **Fareportal.cn** > be transferred to the Complainant.

Dr. Christopher To
Sole Panelist

Date: 21 November 2016